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土著人民人权和基本自由情况特别报告员
鲁道夫·斯塔文哈根先生的报告

增 编

对厄瓜多尔的访问*

* 本报告的内容提要以所有正式语文分发。报告本身附于本内容提要之后，仅以原文和英文分发。

内 容 提 要

这是根据人权委员会第 2001/57 号决议提交的报告，讲述了土著人民人权和基本自由情况特别报告员 2006 年 4 月 24 日至 5 月 4 日对厄瓜多尔的正式访问情况。

厄瓜多尔是一个约有一千二百万居民的多民族和多文化国家。该国有 14 个得到正式承认的土著民族。据各方面估算，这些土著民族在全国总人口中所占比例从少于 10% 至 30% 以上不等。1998 年的厄瓜多尔宪法虽具体规定了土著人民和各民族在各个领域应享有的集体权，然而尚未写入相应的附属立法，致使这些权利难以得到充分贯彻。

政府设立了若干国家机构以改善这种土著人民境况，为土著人民参与实施政府政策创造了机会。多年来，厄瓜多尔政府业已承认了土著领地，特别是亚马逊区域，并允许各社区谈判规约土地和资源使用问题的协议。土著组织在同政府就以何种方式进行社会和政治参与的谈判方面发挥了重大作用，致使这些组织转变成了一股全国性的政治力量。

尽管近期出现了经济增长，各类土著经济、社会 and 人的发展指数仍低于全国平均水平。除了土著社区的收入低和失业率等积累性问题之外，还出现了移徙问题。不只是乡村贫困，移居城镇地区的土著人民，特别是妇女的境况，也日趋艰难。土著社区还对自由贸易协议谈判的结果可能产生的有害影响感到关注。

土著享受的诸如教育和保健之类的基本服务有限。为土著人民设立的双语跨文化教育方案和保健方案未取得预期成果，主要原因在于预算和技术资源的短缺。

由于未在土著司法领域制定出可比照的立法，导致土著管辖权与一般司法之间的冲突事件。没有充分的监察专员体制、无翻译人员以及从事司法事务人员对跨文化问题的敏感意识低，恶化了土著人民诉诸司法体制的相关问题。

对土著人民生境的逐步摧毁和开采活动对环境及土著权利的影响，特别是对围绕着亚马逊区域、北部边境和太平洋沿岸地区的影响，令人产生了极大的关注。那些与外界无接触或自愿生活在封闭之地的居民情况尤其值得关注，因为在他们生活领地内发生的非法砍伐树木及其它非法活动对他们形成了不利的影响。在土著土地上的石油开采活动也同样激发了某些社区采取犹如亚马逊区域 Sarayaku 族寻求美洲人权体制保护之类的抵制行动。对于在与哥伦比亚交界的北部边境地区，空中喷洒药物灭杀非法作物的行动及其它一些源于哥伦比亚境内冲突的行动，对土著人民的健康造成了影响，人们对此已发出了关注的声音。

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE, RODOLFO STAVENHAGEN, ON HIS VISIT TO ECUADOR (25 APRIL-4 MAY 2006)

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Introduction and context

1. Pursuant to Commission on Human Rights resolution 2001/57 of 24 April 2001, which established his mandate, and at the invitation of the Government, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Ecuador from 25 April to 4 May 2006.
2. The purpose of the visit was, among other things, to better gain an understanding of the situation of the human rights of the indigenous peoples of Ecuador through discussions with various social players on issues such as the effects of the 1998 Ecuadorian Constitution, which recognizes the collective rights of indigenous peoples; their access to justice; their rights to land and natural resources; the impact of the oil industry on their communities; and concerns over negotiations on the free trade agreement with the United States of America.
3. The Special Rapporteur would like to express his gratitude to the Government of Ecuador and, in particular, to the Council for the Development of Ecuadorian Nationalities and Peoples (CODENPE) and its head, Dr. Lourdes Tibán, for their invitation and cooperation, in addition to the many indigenous organizations for their hospitality and information. The Special Rapporteur also expresses his special gratitude to Dr. Diego Iturralde, of the Inter-American Institution for Human Rights, for his support throughout the mission.

I. PROGRAMME OF THE VISIT

4. The Special Rapporteur visited the provinces of Pichincha, Imbabura, Esmeraldas, Chimborazo and Pastaza, in addition to the capital, Quito. In the capital, he met representatives of the Ecuadorian Government, including the President and members of the Cabinet, in addition to representatives from indigenous institutions such as CODENPE, the Department of Bilingual Intercultural Education (DINEIB) and the Department of Health for Indigenous Peoples (DNSPI).
5. The Special Rapporteur also met the President of Congress; the President of the Supreme Court; the Constitutional Court; the Supreme Electoral Tribunal; the Office of the Ombudsman, and the National Department for the Indigenous Peoples (DINAPIN).
6. During his visit, the Special Rapporteur interviewed local authorities and representatives of indigenous nationalities and peoples, local indigenous community leaders and members of civil and grass-roots organizations. In Imbabura, he met leaders of the Kayambi, Kitu-kara, Otavalo, Natabuela and Caranqui peoples. In San Lorenzo (Esmeraldas), he met Awá, Chachi and Épera leaders. In Riobamba (Chimborazo) he met representatives from the Quechua, Waranka, Puruha, Kañari, Chibuleo, Saraguro, Panzaleo and Salasaka peoples and nationalities. In Pastaza, in the Amazon region, he visited the Sarayaku community; in Puyo he interviewed representatives from the Shuar, Achuar, Huaorani, Zápara, Shiwiar and Andoa communities from the provinces of Zamora Chinchipe, Morona Santiago, Napo and Orellana. In the capital, he spoke with representatives from the Cofán, Quechua, Shuar, Siona and Secoya communities from the border with Colombia.
7. The Special Rapporteur also met representatives from the United Nations, international cooperation agencies, the business sector, non-governmental and civil society organizations and academic centres.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

8. Ecuador is a multi-ethnic and multicultural country of approximately 12 million inhabitants. Its territory is often divided into four large regions: the Pacific Coastal region, the Sierra (highland or Andean region), Amazonia (the most extensive region, yet containing barely 5 per cent of the population) and the Galápagos archipelago.

9. In ethnic terms, there are mestizo, Afro-Ecuadorian, white and indigenous populations, the latter comprising 14 nationalities, of which the Quechua are the majority. No specific figures are available for the total indigenous and Afro-Ecuadorian population. Depending on the definition used, the census records the indigenous population at 6 per cent, whereas other sources put it at between 35 and 45 per cent of the total. In 9 of the country's 22 provinces, indigenous people make up the majority or a significant minority of the population, while approximately 12 per cent live in the highly urbanized cantons of Quito and Guayaquil.

10. The 1998 Ecuadorian Constitution defines the State as a multicultural and multi-ethnic body (art. 1). It lays down a significant range of specific collective rights for indigenous peoples and nationalities (arts. 83 and 84), and establishes various political and administrative bodies pertaining to such rights. Indigenous rights cover such areas as cultural diversity, identity, territories, indigenous jurisdiction, official use of languages, health, education, economic issues, cultural heritage, indigenous women, and indigenous border peoples.

11. Various laws and executive decrees govern the realization and protection of some of these rights, such as the Criminal Code (1971), the Decentralization and Social Participation Act (1997), the Agrarian Development Act (1997), the National Human Rights Plan (1999), and the Regulations on Consultation and Participation in Oil Activities (2002).

12. Progress has been made on lands and territories. The emergence on the social and political scene of the indigenous movement meant that, from 2002, the State began to return ancestral territories amounting to approximately 4 million hectares to the peoples of the coastal and Amazon regions, and began to recognize indigenous communal lands in the highland regions as inalienable, imprescriptible and not subject to seizure. The National Institute for Agrarian Development (INDA) is involved in allocating these lands, which are not put on the free land market, and form the material basis of support for indigenous peoples. Titling of collectively owned indigenous lands has permitted negotiations on the management of their natural resources.

13. Indigenous land ownership is not suitably covered by legislation. This therefore frustrates efforts by communities and peoples to exercise their autonomy and to participate fully in the management of natural resources in their territories. Various specialists believe that territorial reorganization is needed if this pending issue is to be resolved, while respecting the collective human rights of the indigenous peoples.

14. The Constitution includes some requests made during the long period of political organization of the Ecuadorian indigenous peoples, which first had repercussions at the national level during the 1990s. These requests were made, among others, by the Confederation of Indigenous Nationalities (CONAIE), the Federation of Peoples of the Quechua Nationality of Ecuador (ECUARUNARI), the National Confederation of Rural, Indigenous and Black Organizations (FENOCIN), the Ecuadorian Federation of Evangelical Indigenous People

(FEINE), and the Ecuadorian Indigenous Federation (FEI). All these organizations, although not always acting in unison, share the main demands of Ecuador's indigenous peoples and communities.

15. In 1998, an Indigenous Peoples Commission was constituted in the National Congress. Since its creation this had been led by an indigenous woman deputy, which facilitated both the 1998 ratification of the 1989 International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the debate and subsequent approval of the Indigenous Nationalities and Peoples Act. In November 2002 after its adoption in full this was vetoed by the then president, Gustavo Noboa Bejarano.

16. The constitutional rights of indigenous peoples have not yet been incorporated into adequate secondary legislation, which has made the management of public policies, administration of justice and allocation of resources to these peoples difficult. They are urging action in this respect and have even suggested the need to convoke a new Constituent Assembly on this issue. An oft-cited example of the failure to develop proper legal arrangements is the lack of any regularization of indigenous land.

17. Recent advances include the establishment of CODENPE, a representative and participative authority, whose executive secretary holds the rank of a minister. The establishment of DNSPI, DINEIB, the Ecuadorian Nationalities and Peoples Information and Research System (SIDENPE), the Indigenous Peoples' Development Fund (FODEPI) and DINAPIN, as part of the Office of the Ombudsman, were also significant. As these institutions were established by presidential or ministerial decree, they are not subject to government legislation, which weakens their ability to shape policies and generate resources for indigenous peoples.

III. HUMAN RIGHTS SITUATION OF THE INDIGENOUS PEOPLES OF ECUADOR: PRIORITY AREAS

A. Impact of oil exploration on indigenous communities

18. In the 1970s, oil exploration became one of the main economic activities and sources of foreign exchange earnings in Ecuador. It is seen as an activity of national interest, through which the State can regularly meet its current and social expenditures. The oil areas, particularly in the Amazon region, were divided into "blocks" and subsequently granted in concession to various transnational companies. These activities have had considerable impact on the environment and living conditions of local peoples, particularly indigenous peoples, and provoked tension and conflict between some indigenous communities, oil companies and the State.

19. A case in point is the indigenous Quechua community of the Sarayaku, in the Amazonian province of Pastaza. In 1992, the ancestral lands of the Sarayaku in Pastaza were legally recognized by Ecuador. Four years later, the State signed a participation contract with the Argentine oil company Compañía General de Combustibles (CGC) for oil exploration and development of over 200,000 hectares in block 23, 65 per cent of which comprises the ancestral land of the Sarayaku and other indigenous communities. The Sarayaku community complain that the contract was signed without consultation or their prior informed consent and allege

non-compliance with ILO Convention No. 169, ratified by Ecuador after the oil concession. The Sarayaku also complain of non-compliance with an agreement between CGC, Pastaza police and indigenous organizations to respect Sarayaku ancestral territories. They have protested and demanded that the company withdraw, although some members of other indigenous communities in Sarayaku territory wish to maintain a working relationship with the company that provides them with income and certain services. This has further divided the community.

20. Sarayaku members complain that oil activities have polluted their rivers and affected the health of the region's indigenous peoples. In 2003, community leaders complained of threats, the militarization of the area and the permanent harassment of their members by the CGC private security services. The case was brought to the attention of the Inter-American Commission on Human Rights, which asked the Government to take protective measures in favour of the community. As no satisfactory response was received from the State and the threats continued, the Commission then referred the case to the Inter-American Court of Human Rights, which ordered provisional measures to protect the community. These measures were upheld by the Court in its decision of June 2005, triggering a limited response from the Ecuadorian authorities.

21. Further complaints have been lodged concerning the placing of explosive charges in Sarayaku territory for seismic exploration by CGC and the destruction of holy places and plant life. The Government informed the Special Rapporteur that some of these complaints had been upheld, but that removing the explosive charges would be too expensive. In March 2006, in a new hearing before the Inter-American Commission for Human Rights, government representatives proposed an amicable settlement with the Sarayaku, consisting of the voluntary withdrawal of CGC from block 23, recognition of and public apologies for human rights violations committed against the Sarayaku, the establishment of an economic fund for the central-south Amazon region, and reforms to the prior consent rules relating to oil operations. The proposal has been rejected pending a ruling by the Commission or Court. The Ecuadorian Office of the Ombudsman, along with the Sarayaku community, has asked the State to comply with the measures laid down by the Commission and the Court, but the Special Rapporteur has been informed that this compliance is still pending.

22. Relations between the State, the oil companies (both national and transnational) and the indigenous communities are complex, requiring the full attention of the authorities and human rights defenders. A director of the State oil company assured the Special Rapporteur that, in some regions, the companies are careful to comply with the law, adjust their activities to environmental and human rights requirements, and maintain satisfactory relationships with the indigenous communities in which they are based. Nevertheless, he recognized that there are other regions in which this does not occur and where there is, in his own words, "chaotic chaos".

23. Although the State company, PetroEcuador, offers open participation to the indigenous population in oil exploration projects, indigenous organizations complain that this has not always occurred in practice. The Government also states that it played an important role in establishing tripartite dialogue between the companies, the State and the indigenous communities. In 2002, after almost 15 months of negotiations, a consensus was achieved by which the oil companies would carry out environmental impact studies before each contract. According to the Government, this has worked well. For the last seven years, oil companies have contributed to a fund for indigenous development; however, indigenous organizations complain of cronyism and paternalistic practices.

24. The Special Rapporteur received statements from many indigenous communities stressing the negative effects on them of failure by such oil companies as Texaco, Occidental, Chevron, Repsol, Shell and Perenco to comply with human rights and environmental protection rules. The Cofán complained about the degradation and pollution of their territories, the child health and nutrition problems caused by oil operations and the fact that the company is putting the communities affected under pressure. In Orellana, 12 Quechua communities pointed to pressure and violations of their collective human rights by an oil company in block 7. This is one of many cases demonstrating the incompatibility of the constitutional human rights of indigenous peoples and the oil concessions awarded by the State with the consent of some communities. With no State social policy, the local indigenous population must make do with the minimal social services provided by the oil companies, and they complain that their collective right to prior, free and informed consultation, as guaranteed in the Constitution, is not respected. In order to comply with the constitutional principle of consultation, the Consultation and Participation Act was adopted in 2002. Indigenous organizations have requested that it be repealed, owing to its limitations and problems, in addition to the numerous conflicts provoked by its application in various regions.

25. Among the complaints made to the Special Rapporteur, contracts between oil companies and the armed forces for the provision of security services are particularly significant, as members of the security services have been accused of committing abuse and acts of violence against local indigenous populations. The Minister of Defence assured the Special Rapporteur that these contracts had been suspended during his term in office. Complaints continue, however, of violations of the human rights of indigenous peoples, including acts of persecution, torture, degrading treatment and the illegal detention of opposition organization leaders. It is claimed that those responsible for these violations have gone unpunished.

B. Situation of indigenous peoples on the northern border

26. The border between Ecuador and Colombia includes a number of provinces on the coast, in the highlands and in Amazonia, inhabited by six indigenous peoples. The Awá and Quechua live in the highlands, while the Cofán, Siona, Secoya and Quechua live in Amazonia. The main problems for these communities arise from the implementation of Plan Colombia, drug trafficking, the expansion of palm and oil companies and the almost total lack of State institutions to protect and guarantee the rights of these indigenous peoples.

27. The Awá have been particularly affected. In all, 3,500 Awás live in Ecuador and 36,000 hectares of the approximately 120,000 hectares of their ancestral territories have been recognized. They live in extreme poverty in the border provinces of Carchi, Esmeraldas and

Imbabura. In addition to lacking such basic services as electricity, telephone, drinking water and sewerage, they face pressure from logging companies on their forests; gold-mining companies, which have had concessions since the 1980s; and oil palm companies. These activities are placing pressure on Awá resources, forcing many members of the community to emigrate to the cities.

28. Currently, the region's most serious problem is the aerial spraying of illicit crops on the Colombian side of the border, using glyphosate mixed with other products, under the auspices of Plan Colombia (see the report of the Special Rapporteur on Colombia, E/CN.4/2005/88/Add.2). Damage caused by this practice has affected Ecuador, particularly its indigenous communities, and has given rise to complaints by the Ecuadorian Government and to bilateral negotiations between the two countries. International studies indicate that this practice has negative effects on environmental resources and the health of people and animals. Skin and other diseases, pollution of rivers and aquifers, and other damage have been reported. Furthermore, spraying has been seen as having serious effects on banana plantations and varieties of tuber crops, the local staple. In addition, the population often uses untreated water from the river forming the border between the two countries.

29. In some communities in Sucumbíos, short-cycle crops are disappearing fewer than 15 days after spraying. It is stated that, four years after the spraying began, some banana varieties, yucca, maize, fruit trees and aromatic herbs have disappeared, or their yield has considerably diminished. It is alleged that spraying has also had a negative effect on the health and food security of border populations by polluting their water sources and the aquatic life. Complaints have been made concerning large traces in many rivers, including the Mira river in the province of Esmeraldas, of the chemical product used for spraying in Colombia. The situation of these river communities is a matter of concern, as they use the river for domestic purposes.

30. Some indigenous communities in the area, including the Awá, are vulnerable and this is particularly worrying. In addition to the impact of spraying, they complain that their rights are being violated and that they are being subject to other abuses. They protest that their rights to food and health have been affected by spraying. Apparently, after spraying, the entire Sumac Pamba community was displaced and did not return to their place of origin. As a consequence, it appears that the local wildlife, which provided a source of daily consumption, both for households and for recreational purposes, has died and various activities have been affected, as polluted water cannot be used. Spraying appears to be destroying subsistence crops, diminishing soil quality and reducing yields, affecting both the economic activities of communities and the population's access to adequate food. In addition to the involuntary displacements caused by these activities, attention is also drawn to the lack of access to public services and the militarization of the border zone.

31. Another study carried out in Sucumbíos province on children and education in schools concluded that, since the implementation of Plan Colombia, there has been an upsurge in armed conflict and violence in the area and the number of children in schools has halved. Children go to school irregularly and teachers are working in precarious conditions as the area is one of high risk. Conditions were unsanitary in 45 per cent of schools visited. Children became ill for months on end owing to effects from spraying, and only half of the teachers had the necessary teaching materials.

32. The Ecuadorian Government is concerned by the effects of these practices on the indigenous border population and has begun bilateral negotiations with the Colombian Government. As a result, Colombia announced that it would suspend spraying, but this has not definitively ended the controversy. Ecuador has requested a complete halt to spraying in a 10-kilometre strip along the border. Although technical studies on the environmental impact of spraying glyphosate have provided various results, the Special Rapporteur has received testimony from members of affected communities which clearly indicates that, in the long term, the effects of such practices are considerable.

33. An international study undertaken in March 2006 concludes: “a thoroughgoing investigation must urgently be launched into the situation affecting the Awá indigenous people, which is linked to the consequences of spraying, and to their abandonment by the State”. The Awá request “a study to ascertain the effects of these spraying exercises, sufficient support for indigenous health, the creation of a health department for the Awá people, the denunciation of the land invasion, eviction and paramilitary threats made under the auspices of Plan Colombia and which affect Colombian and now Ecuadorian indigenous Awás, and the conduct of continuous immunization campaigns”.

34. In 2004, a United Nations inter-agency mission was sent to study the problems affecting indigenous and non-indigenous populations on both sides of the border, leading to the preparation of a report for the Government of Ecuador. In 2005, on the basis of this report, the United Nations established an inter-agency programme for peace and development on the northern border, in order to provide a coordinated framework for action in both countries. In 2006, at the request of the Ecuadorian Government, a United Nations technical mission examined the issue of glyphosate spraying. This report was sent to the Government of Colombia. According to the latest information, Colombia has ceased spraying within a 10-kilometre strip along the Ecuadorian border.

35. Drug trafficking has eroded the growing of environmentally friendly crops by introducing coca farming as an illicit survival strategy, i.e., traditional crops are giving way to the small-scale cultivation of coca. The number of refugees from conflict zones in Colombia has increased. According to testimony received, the presence of soldiers, guerrillas and drug traffickers in the area bordering Colombia has had a negative impact on the living conditions of indigenous border peoples. Acts of violence and harassment, particularly against women, are reported. The sexual exploitation of women, young girls and teenagers, and trafficking in persons has increased alarmingly. The number of indigenous Ecuadorian farmers, including minors, carrying out illicit planting on the Colombian side of the border has risen.

36. According to reports, the expansion of oil palm companies has progressively dispossessed communities of their ancestral territories. One study shows that these companies currently own 60,000 hectares, of which 30,000 are under crops, and there are plans to acquire in total 150,000 hectares, using loans from Brazil. The conflict in the zone specifically affects women and girls from communities living in areas directly and indirectly influenced by the northern border conflict.

C. Uncontacted peoples and threats to their existence

37. Since the 1960s, the Huaorani (or Huao Tiriro), living in the north-east of the Ecuadorian Amazon, have been subject to growing pressure from oil and logging companies on the one hand and, on the other, the Summer Institute of Linguistics (SIL), an evangelical organization from the United States of America. In its work SIL promoted the development of economic activities which took advantage of the region's natural resources. Over this period, the State has also encouraged colonization of the area by introducing oil activities and extending the agricultural border. These activities led to an increase in the non-indigenous population, which reached 80 per cent of the area's population at the end of the twentieth century. The swift transformation of this area took place against a backdrop of violent clashes with the native peoples of Amazonia, which steadily weakened the Huaorani family groups and led to the extermination of the Tetetes in the Aguarico-Napoas region.

38. In a few decades, these processes aggressively transformed the living conditions and culture of the Huaorani, who have only managed to rally in defence of their collective, territorial and economic rights in recent years. As a consequence of this pressure, some clans separated from the central Huaorani group and retreated deeper into the jungle, rejecting all contact with the outside world. Despite this, as a result of oil incursions in recent decades, some violent encounters have taken place, leading to deaths on both sides, but mainly among the Huaorani. In addition to oil incursions, the illegal felling of timber species of high commercial value has put further pressure on the territories of these peoples living in voluntary isolation, in addition to increasing inter-ethnic tension.

39. In the 1990s, the State recognized 700,000 hectares of Huaorani land. This was smaller than their traditional territory and included areas taken from the Yasuní National Park. The land allocated to the Huaorani also includes the Tagaeri-Taromenani people, who are uncontacted, semi-nomadic hunter-gatherers, today also known as peoples in voluntary isolation. In 1999, the Tagaeri-Taromenani area was decreed "untouchable land", a conservation area where all types of extractive activity are prohibited in perpetuity. The exact limits of this vast jungle region are yet to be determined and it is not clear how many people make up the indigenous population that this action aims to protect.

40. In this area, the State does not have a sufficient presence or a carefully designed management plan to be able to prevent the progressive incursion of Ecuadorian and Colombian settlers and illegal loggers, or resist the growth of what is termed international "eco-tourism". In recent decades, this situation has led to a series of violent clashes between the invaders (the majority of whom are also of Huaorani lineage) and the isolated groups. In 2003, a massacre left at least 20 dead and in April 2006, during the Special Rapporteur's visit, another violent encounter was reported, although the truth and scale of this has yet to be confirmed. The land allocated to the Tagaeri-Taromenani borders similar land in neighbouring Colombia and Peru. Only concerted international action in the long term will be able to save these peoples from extinction. At the time of finalizing this report, it has not been possible to obtain information to corroborate joint regional action in this field.

41. In 1995, the Organization of American States (OAS) suggested that the Government of Ecuador establish special measures to protect the Tagaeri-Taromenani. According to information received by the Special Rapporteur, by 2006, the State had not fully complied with these recommendations or with the provisions contained in the 1999 executive decree that established the “untouchable” area, in which all types of extractive activities were prohibited. The Government is continuing to award oil concessions in “untouchable” land and permit the removal of timber species prohibited under the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES).

D. Páramos (heathlands) in the Andean region

42. Indigenous communities in the Ecuadorian highlands have a long history of harmonious and productive integration with the environment. Their traditional forms of social and economic organization have enabled them to maintain a rural survival economy and satisfy their basic needs for many generations. This balance has been lost in recent decades because of growing environmental degradation and demographic pressure on natural resources.

43. Environmental degradation in the Andean heathlands has affected the living conditions of the Quechua highland communities, in addition to their water, soil and forests. The heathlands, a highly fragile ecosystem, are essential for water conservation, but are threatened, along with the communities who form part of this habitat. “Ecological corridors” have been created for conservation, with participation from non-governmental and private international organizations. Regional indigenous organizations are calling for the right to be full participants in conservation and of forestation projects, demanding that the Government enact the corresponding legislation. Depletion of water sources in the heathlands is a severe problem for communities. Environmental degradation is impoverishing communities and encouraging emigration in search of alternative opportunities.

E. Population movements and social and economic conditions

44. The growing population density and the decline in agricultural, forest and water resources in the highlands, in addition to poverty and unemployment, have spurred emigration by rural people to the cities, lowland areas, particularly in eastern Ecuador, and abroad. Many indigenous people emigrate to North America and Europe. Migration is one of the country’s most serious issues, with major implications for human rights, as was noted in 2001 by the Special Rapporteur on the human rights of migrants. The situation of indigenous women is particularly distressing.

45. Various studies show that, recently, an increasing number of women are involved in international migration and more specifically, indigenous migration, as a response to, among other things, the incorporation of women into paid and productive activities. This trend has also been observed in Ecuador. Because of the discrimination from which they suffer, indigenous women migrants are particularly vulnerable, becoming easy prey for trafficking and slavery networks, in addition to numerous abuses in the workplace.

46. In 2003, the Committee on the Elimination of Racial Discrimination concluded that, despite legal and constitutional guarantees, indigenous and Afro-Ecuadorian peoples continued to suffer from discrimination, and also drew attention to double discrimination against women.

In 2004, the Committee on Economic, Social and Cultural Rights expressed its concern that the Government's efforts to improve health and safety in the workplace were insufficient, particularly in the mining sector and on banana plantations. The Special Rapporteur was able to note in situ that these continue to be problems requiring immediate governmental action.

47. Poor working conditions on farms growing flowers for export represent another common problem. Indigenous people make up the majority of workers and suffer health problems due to the lack of hygiene in the workplace. Thousands of children and young people are exploited without State supervision and are thus particularly vulnerable. In Cotopaxi, for example, there are farms where conditions are reminiscent of the worst periods of slavery, as workers are often paid a mere two or three dollars per day, for 20 hours' work.

48. The Épera, Ecuador's smallest ethnic group, live in Esmeraldas province and their current settlement dates back to the 1950s. They have complained of a lack of land, as their 400 members possess only 330 hectares. Their principal water source, the Cayapa river, is polluted and drying up. As a consequence, inhabitants of the community are suffering from various illnesses. They also report a major shortfall in basic social services. Although they received land, there have been no development projects to improve their situation and many community members are emigrating in search of other opportunities. Furthermore, other Épera are arriving from neighbouring Colombia, fleeing the armed conflict and placing further strain on the already precarious local family economy.

49. The Tsa'chila in Santo Domingo de los Colorados complain of the systematic loss of land, pollution of rivers and soil, a housing shortage, lack of bilingual intercultural education, a deficient health service and low health indicators, insufficient State support for development programmes and scanty municipal budgets. They ask that the "development with identity" concept be promoted, to provide opportunities to communities and slow the migratory flow of their members.

50. The canton of Guamote, established in 1944, now has 35,600 inhabitants, of which 90 per cent are indigenous. It has one of the highest illiteracy rates due to the lack of resources at the provincial and national levels. In terms of health, the child mortality rate is high and there are serious health problems. The people lack adequate technical assistance for production, and all of this has led to growing emigration.

51. Confronted with such problems, the State has promoted, among other measures, a development project for the indigenous and black peoples of Ecuador (PRODEPINE). Its first phase lasted for four years (1998-2002), with an investment of \$50 million from the United States of America. The World Bank and the International Fund for Agricultural Development (IFAD), indigenous and black organizations, and the national Government were all involved in this process. This project was rejected by a CONAIE assembly because of its harmful interference in the organizational framework of indigenous nationalities and was discontinued.

F. Social welfare indicators

52. The Ministry of Housing states that Ecuador has a major deficit of some 1.1 million houses. The supply of drinking water and the collection and disposal of solid waste are also in a state of crisis. The Government has proposed to solve these problems by 70 per cent over the next 15 years, but it lacks the necessary resources. A 2004 survey on indigenous health shows that the percentage of indigenous people with access to piped water is three times less than the rest of the population, as is the case with access to domestic sanitary facilities connected to mains sewerage. In all, 23 per cent of indigenous homes lack sufficient food and 36 per cent find it difficult to meet food costs (this figure is higher than among mestizos). Indigenous child mortality (aged under five) is 50 per cent greater than the national average (51 per thousand live births compared to 35 per thousand). Chronic malnutrition among indigenous children is more than double that of mestizo children (46.7 per cent compared to 21.2 per cent).

53. DNSPI states that indigenous health has not received the attention it deserves under the Government's general policies. The problem is acknowledged, as is the need to take steps to resolve it, but the necessary resources are not allocated. The Pan American Health Organization (PAHO) and the World Health Organization (WHO) are together promoting 93 indigenous health initiatives designed to ensure that the Government's health model is properly intercultural. Only 0.25 per cent of the total State budget is allocated to this area.

54. The Andean Regional Office of the United Nations Development Fund for Women (UNIFEM) has developed a programme focusing on indigenous women, in particular on combating poverty, exclusion and violence; promoting gender equality in democratic processes and citizenship-building; and fighting against HIV/AIDS, through, among other measures, a project in Sucumbíos and another with indigenous migrant women from the highlands.

G. Indigenous political participation and social movements

55. An intercultural election observation mission undertaken in various provinces during the 2004 local elections concluded that there was ill-treatment and ethnic discrimination within polling stations and that these problems remain a major factor in the political exclusion of indigenous peoples. The study concludes that the Supreme Electoral Court is promoting discriminatory practices against the country's indigenous citizens, given the lack of any specific policy to promote the rights of indigenous peoples within the electoral process.

56. Since 1996, the Pachakutik movement, the political wing of the indigenous organization CONAIE, has made gains at the local level. In the May 2000 elections, it made its greatest electoral gain since it was founded and later briefly participated in the national Government. In the 2006 electoral process, it again took part, putting forward its own candidate for the post of President of Ecuador.

57. Since November 2003, the Ecuadorian Government has negotiated a free trade treaty with the United States of America. For the Government, most members of the business sector and part of the population, this treaty would solve the country's numerous economic problems. Within indigenous organizations, however, there is concern over the impact that the treaty may have on the life of indigenous communities. The Government's negotiator informed the Special Rapporteur that he had endeavoured to raise some of the issues that trouble indigenous peoples

during the negotiations. For example, he had conveyed their concerns about biodiversity and patents and there is reference in the draft treaty to the awareness of communities, who must be consulted and who must give consent, the first time such a provision has been included in this area. In addition, he said that he was aware of the impact that the treaty could have on the countryside, particularly the land and water resources of indigenous small producers, which is why they will remain outside the scope of the treaty. It is believed that some products for domestic consumption, produced primarily by coastal indigenous peoples, such as rice, soya or meat, would only be considered after 10 years, during which time the State should implement support policies for these small-scale producers.

58. In their discussions with the Special Rapporteur, indigenous organizations expressed their distrust of the treaty and their disagreement with the Government. They fear that the effects on the indigenous economy, particularly small producers, will be disastrous, as has been the case in other countries. They demand that the indigenous peoples are consulted in negotiations on the free trade treaty and that their needs are taken into account.

59. Indigenous protests against the free trade treaty during the first months of 2006 drew the attention of Ecuadorian society. In March 2006, indigenous organizations again held large protests, taking to the streets and marching through cities, which included a march to Quito and a strike by indigenous local authorities. They were demonstrating against both the Government's policies on free trade and on other matters and against the powerful oil companies.

60. In response, the Government declared a state of emergency in various provinces and civil society organizations reported acts of repression and police brutality in various parts of the country (Imbabura, Pinchincha, Chimborazo, Cotopaxi, Tungurahua, Cañar, Pastaza and Zamora). Reports were also filed of numerous acts of ethnic discrimination against indigenous people (particularly women) that were recorded by the media. There were also violent clashes between demonstrators and the forces of law and order, which led to injuries and arrests. Some media outlets incited racial hatred against the indigenous population, accusing them of being responsible for social protest and conflict in Ecuadorian society. After some weeks, the state of emergency was lifted, but social tensions concerning the free trade treaty, oil companies and government policies were still in evidence during the Special Rapporteur's visit.

H. Administration of justice and indigenous justice

61. Under the Constitution, ombudsmen shall be appointed to protect the interests of indigenous communities and communities shall be entitled to use their mother tongue in any action against them. The Constitution also states that indigenous authorities shall exercise judicial function by applying their own rules and procedures to solve internal conflicts in accordance with their customs or customary law. There are no legal provisions stipulating the scope of the powers vested in the indigenous authorities under article 191 of the Constitution or the manner in which these are to be exercised, nor has any law been passed to harmonize these functions with the national system. In 2002, a draft bill to harmonize and allocate responsibilities for the administration of justice was submitted to the National Congress, but, following an unfavourable report by the Civil and Criminal Specialized Standing Commission, the draft was shelved.

62. The absence of legislation has not prevented indigenous communities from various regions invoking in practice their constitutionally established right to exercise their authority and what they consider their legal uses and customs and to do so more and more frequently, to resolve situations of a conflict of interest and to protect themselves from external aggression. In this context, there have been numerous conflicts of jurisdiction between indigenous and legal authorities, apparent abuses by both authorities, instances of their taking the law into their own hands and even the formation of self-defence groups which claim that their actions are protected by indigenous customary law.

63. The President of the Supreme Court told the Special Rapporteur of the need to harmonize these two justice systems and cited various examples in which courts tried cases that had already been tried and resolved in the indigenous justice system. Refusal to recognize these decisions based on customary law is a crucial aspect of the more general issue of the failure to develop legislation to implement innovative provisions of the Constitution. He also spoke of the need to establish a court specifically for indigenous issues, in addition to a network of justices of the peace and judges in indigenous law. Congress urgently needs to consider issuing regulations giving effect to the constitutional principle recognizing indigenous justice so that it may be harmonized with the ordinary system of justice.

64. DINAPIN has operated as part of the Office of the Ombudsman since 2000. Its mission is to monitor and uphold the rights of indigenous nationalities, peoples and organizations in Ecuador through the dissemination, promotion and defence of those rights. To carry out this task, DINAPIN has created a network of indigenous human and collective rights activists at the national level who, protected by the Ombudsman Act, defend and promote human and collective rights throughout Ecuador. The Office of the Ombudsman is also developing other initiatives within its mandate, such as providing court-appointed lawyers, proposing solutions to intracommunity conflicts or securing the release of indigenous prisoners.

65. The difficulty of legislating in the area of indigenous justice and determining its scope represents a significant gap in private contracts negotiated by community representatives in foreign languages, such as Spanish or English, relating to specialized legal issues in the financial or intellectual property domain that affect indigenous people and territories.

I. Bilingual intercultural education

66. DINEIB, established in 1987, is legally responsible for education programmes for indigenous peoples and nationalities. It has the status of a national institution, although it lacks the necessary resources to perform all the tasks assigned to it. Bilingual intercultural education is provided in 2,802 schools in 16 provinces, to some 123,400 pupils of 14 nationalities.

67. Nevertheless, not all indigenous children have access to schooling. A 2003 study in Cotopaxi showed that 526 rural children did not go to school, as their homes were too far away. In State schools, the Government runs a school meals programme for indigenous children, but a study shows that more than 1.3 million children still do not receive breakfast and lunch regularly, the meals provided under the programme as an inducement to ensure their attendance at school.

68. As a general rule, the so-called “Hispanic” schools (which are neither intercultural nor bilingual) have better resources, meaning that many parents prefer their children to attend these schools, leaving intercultural bilingual schools for poor indigenous people. In terms of good-quality, culturally appropriate indigenous education, the Ecuadorian bilingual intercultural education programme is generally considered one of the most successful in Latin America, despite its aforementioned limitations.

69. During 2005, the United Nations Educational, Scientific and Cultural Organization (UNESCO) undertook various activities and projects on literacy and bilingual intercultural education, organizing two educational workshops to support native languages, in coordination with DINEIB and promoting the Literacy and Education Programme for Life in the canton of Cayambe. Within the framework of an agreement between the Provincial Council of Chimborazo and the United Nations, the United Nations Children’s Fund (UNICEF) undertook to facilitate children’s access to basic education, by implementing a programme to provide schoolbooks to 5,182 children aged 5.

J. International cooperation

70. Ecuador is carrying out a number of programmes explicitly targeting indigenous and Afro-Ecuadorian peoples through multilateral and bilateral cooperation. These projects relate to bilingual intercultural education and, in conjunction with the German Agency for Technical Cooperation (GTZ), the training of indigenous university teachers. The European Union is cooperating in the implementation of a credit scheme specifically targeting women in Chimborazo province, and another development project in Cotopaxi province, with the local provincial council and the Cotopaxi Indigenous and Campesino Movement (MICC). The Spanish Agency for International Cooperation (AECI), together with the organization CODENPE, is currently running a development project with 31 municipalities led by indigenous people (referred to as “alternative municipalities”).

IV. CONCLUSION

71. In recent decades, the indigenous peoples of Ecuador have made important steps forward in securing recognition of their human rights and fundamental freedoms. Constitutionally, Ecuador is a multicultural and multi-ethnic country, which recognizes a range of collective rights of the country’s 14 indigenous nationalities.

72. One of Ecuador’s principal challenges is to give full effect to the constitutional principles concerning indigenous rights through secondary legislation and regulations on various constitutional rights. There are worrying delays in this field, given that the political instability of recent years has prevented the Government from adopting the necessary laws arising from the Constitution in this matter.

73. The same situation obtains among the various governmental authorities created by presidential or ministerial decree to tackle issues of particular concern to indigenous peoples, such as CODENPE, DINEIB, DNSI and DINAPIN. These institutions, which enjoy the active participation of indigenous representatives, lack the necessary legislative support and budgetary resources to allow them adequately to meet the needs of these peoples.

74. The situation of indigenous peoples is particularly sensitive where the administration of justice and the efforts to harmonize the ordinary system of justice with the indigenous justice system recognized in the Constitution are concerned.

75. Available data indicate that, as a rule, more indigenous people live in poverty and extreme poverty, and meet fewer indicators of social and human development than other sectors of the population. In the inter-Andean corridors and the Andean heathlands, where demographic pressure on the land's limited resources is greater, indigenous agricultural production and living conditions are precarious, causing growing emigration to the cities and abroad, a phenomenon that particularly affects indigenous communities. Indigenous women and children are particularly vulnerable in this process.

76. Ecuador has made important steps forward in bilingual intercultural education and in the application of an intercultural approach to indigenous health, but these programmes are still weak, as they have insufficient institutional underpinning and lack resources. International cooperation agencies and the United Nations are running some indigenous support programmes in these areas.

77. For some decades, the Ecuadorian economy has been highly dependent on oil exports. Oil operations are carried out primarily in indigenous territories, with negative effects on the environment and the communities' living conditions. This situation has led to numerous conflicts between the State, oil companies and indigenous communities, who oppose the operations of these companies. Indigenous people are calling for the full application of their right to consent, through a process of free, prior and informed consultation.

78. Similar conditions govern the situation among Amazonian communities, which are confronted by the activities - sometimes illicit - of, among others, mining and logging companies and oil palm plantations. Among the indigenous nationalities on the northern border, this situation is further complicated by the aerial spraying of illicit crops, carried out in neighbouring Colombia under the auspices of Plan Colombia, which has negative effects on the Ecuadorian indigenous border populations. Some indigenous populations are living in voluntary isolation in the forest in these regions, and their situation is particularly worrying. Their survival and "untouchable" territory are threatened by such factors as pressure from illicit logging activities and the incursion of settlers.

79. The use of elements of the armed forces to secure the interests of oil, mining and logging companies operating in indigenous territories has triggered various abuses and complaints, and led to numerous incidents with the indigenous population, who complain of the militarization of their communal areas.

80. In March 2006, a large number of indigenous people suffered violations of their rights while protesting against the free trade treaty being negotiated by Ecuador with the United States of America. This led to the declaration of a state of emergency in some provinces and the disproportionate use of the police against the demonstrators.

V. RECOMMENDATIONS

A. Legislation

81. The Special Rapporteur recommends that the National Congress of Ecuador enact legislation concerning the collective rights of indigenous nationalities, peoples and communities, as established in the country's Constitution, relating in particular to the administration of justice; indigenous territorial areas; rules governing such economic activities as oil operations, mining, logging, agriculture, fishing and tourism, in addition to others that affect natural resources in indigenous territories; bilingual intercultural education; conservation and preservation of the cultural heritage of indigenous peoples; respect and protection of peoples in voluntary isolation; the right to prior, free and informed consultation and consent in accordance with international law; indigenous health services; prevention and punishment of sexual offences; exploitation in conditions of servility, the forced and commercial exploitation of women and girls belonging to indigenous peoples and nationalities; extension of various social services to indigenous communities; biodiversity and environmental conservation and management; economic development plans and projects; an office for the human rights of indigenous peoples; and local, communal and regional forms of indigenous government.

82. The Special Rapporteur recommends strengthening the legal arrangements underpinning indigenous institutional structures in the various established bodies. Specifically, the Special Rapporteur recommends that DINEIB, the Department for Intercultural Health and CODENPE be given the appropriate legal status, and that the necessary resources be assigned to them so that they can raise the quality of their services.

83. The Special Rapporteur recommends that the Ordinary and Indigenous Justice Compatibility Act be adopted and that the Government request the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide technical support for the legislative development of indigenous justice.

84. The Special Rapporteur recommends that all Ecuadorian authorities, particularly notaries and registrars of property, be trained in the legal system pertaining to ancestral and historical indigenous territories and the creation of rights in rem.

B. Northern border and environment

85. The Special Rapporteur recommends that the Governments of Ecuador and Colombia appoint an independent international commission to study the effects of aerial spraying on indigenous border populations. Corresponding binding measures are also recommended, to provide compensation for the damages caused.

86. The Special Rapporteur recommends that Colombia definitively halt the aerial spraying of illicit crops in the border region with Ecuador.

87. The Special Rapporteur recommends that the Ecuadorian Government draw up and apply an emergency plan (in consultation with the region's indigenous peoples) on the critical situation of indigenous border communities (particularly the Awá), as a result of

the impact of the internal conflict in Colombia, illicit drug production and trafficking activities, environmental degradation, the influx of indigenous refugees from Colombia and the situation of violence and insecurity in the area. Concessions granted to oil and mining companies must be reviewed. The State must shape public policies aimed at protecting the various sectors, peoples and communities who live on the northern border, with their full participation, including the right to free, prior and informed consultation.

88. The Special Rapporteur recommends that Ecuador implement measures (including those under CITES) to ensure rigorous control of timber species in indigenous lands, in particular those inhabited by peoples in voluntary isolation, and coordinate actions with the various State authorities to ensure effective protection in the trade and export of all species.

C. Consultation, participation and recognition

89. The Special Rapporteur recommends that all Ecuadorian authorities comply with the provisions of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in the Sarayaku case, and more specifically, that the State Procurator-General unconditionally uphold the unimpeded protection of the Sarayaku community, including its rights, its land ownership and the life and physical integrity of all of its members.

90. The State must recognize the ancestral lands of the Shuar and other Amazonian peoples who have yet to receive this recognition.

D. Security, social protest and justice-related activities

91. The Special Rapporteur recommends that the armed forces abstain from concluding service provision contracts with oil companies that could damage the rights of the indigenous communities in whose territories they are operating.

92. The Special Rapporteur recommends that Ecuador carry out a thoroughgoing investigation into accusations of abuse and violence against members of indigenous communities committed by some elements of the armed forces, under the auspices of the said contracts, and that those responsible are punished. It is further recommended that any inappropriate arrangement between the aforementioned companies and the armed forces, which has its aim to protect the private economic interests of the companies and could damage the legitimate rights of the indigenous peoples and communities in the regions affected by the activities of the oil companies, be prevented.

93. Following the disproportionate response of the authorities to the social protest mounted by indigenous organizations during the state of emergency against the free trade treaty, the Special Rapporteur recommends that the Government carry out a thoroughgoing investigation into the events and punish, among others, those who abused the human rights of the indigenous demonstrators.

E. Peoples in voluntary isolation

94. The Special Rapporteur recommends that the Human Rights Council call on the three countries involved in protecting the peoples living in voluntary isolation (Colombia, Ecuador and Peru) and the international community to pool forces and resources in order to protect and safeguard endangered indigenous peoples living in the Amazonian region. (The Special Rapporteur made a similar recommendation to the Colombian Government following his mission there in 2005.)

95. In the “untouchable” area and the Yasuní National Park, any oil activities shall be suspended and illegal logging shall be punished, in addition to any activity that disturbs the peace of peoples living in voluntary isolation. Furthermore, an integrated programme for the restructuring of the local economy in Huaorani regions shall be drawn up, and real and effective controls shall be set in place to prevent the removal of timber from these territories.

96. Prompt steps should be taken to enact the necessary national legislation for the promotion, protection and safeguarding of the rights of peoples in voluntary isolation, in strict compliance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council.

97. In the Andean region, the Special Rapporteur recommends that the State take into consideration the intercultural realities of the area, in addition to the needs and rights of indigenous communities, in connection with any State activities relating to the conservation, management and development of inter-Andean corridors, forests and heathlands in the region, and ensure respect for the lands and territories of indigenous peoples and nationalities.

F. International cooperation and the academic sector

98. The Special Rapporteur recommends that international cooperation agencies consider and pay particular attention to indigenous needs in their various specialized areas.

99. The Special Rapporteur recommends that university and research institutions, both in Ecuador and abroad, focus on and adapt their programmes to the constitutional principles of multiculturalism and the promotion of the human rights of indigenous peoples.

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