
ECUADOR

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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In 2010 and 2011, there was a growing tendency on the part of the Ecuadorean Government to criminalise human rights defenders for their participation in peaceful social protests to defend the rights of indigenous peoples and environmental rights in relation to mining companies. Criminal proceedings against defenders were accompanied by declarations to discredit and threaten them, which hampered their work. Moreover, a defender who denounced corruption and abuses in prisons before national and international mechanisms was assassinated.

Political context

In May 2010, the Truth Commission (*Comisión de la Verdad*), created by President Rafael Correa in 2007, published its final report on crimes against humanity and serious human rights violations which occurred between 1984 and 2008¹. The Commission registered 456 victims of human rights violations for this period and found that a great majority of the violations committed by members of the armed forces and the national police force remained in impunity. These high levels of impunity were also denounced by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Philip Alston, who visited Ecuador in July 2010. The Special Rapporteur considered that a number of problems that affect security in Ecuador, such as hired killers, acts of mob justice such as lynching and other forms of organised crime, were aggravated by “a widely dysfunctional criminal justice system”².

Repression was employed as a response to the demands and criticisms of social groups, organisations and individuals. Acts of stigmatisation and judicial harassment continued against the media and journalists who denounced issues that were controversial for the Government; organised community leaders struggling for the respect of their economic, social and cultural rights were criminalised and had unfounded criminal charges levelled against them, the legal classification “sabotage and terrorism” was abused in order to sanction social protest, and repeated use of force was

1/ Particular emphasis was placed on the period of the Government of Mr. León Febres-Cordero Ribadeneyra (1984-1988), during which 68% of the human rights violations registered in the report occurred. See Truth Commission Report, *Informe final 2010: Sin verdad no hay justicia*, May 2010.

2/ See UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Press Release, July 15, 2010.

employed to repress social demonstrations. A number of social protests that took place in 2010 were against natural resource extraction, their negative impact on indigenous territories and the lands of peasants and on the environment, and in particular against two legislative bills that aimed to regulate this issue. In March 2010, the Constitutional Court declared the Mining Law of January 2009 to be “conditionally constitutional”, after it was questioned, because it did not comply with the right to prior consultation of indigenous peoples. In an unusual ruling, the Court established the law as “conditionally constitutional with respect to those articles in which, the rights of communities, peoples and nations have not been incorporated. This implies that, in order for the State to be able to begin mining exploitation in the territories of indigenous, afro-Ecuadorian and Montubian communities, peoples and nations, they must comply with the process for prior consultation established in the Constitution”³. Equally, the procedures of discussion and approval of the draft Law on Water Resources (Water Law) has been paralysed since March 2011 in the National Assembly, due to persistent denouncements from peasants and indigenous organisations on the effects of the said law in their lands, and because of demands for a prior consultation process to be implemented⁴.

In May 2010, the Special Rapporteur of the Inter-American Commission on Human Rights (IACHR) on the Rights of Persons Deprived of Freedom, Mr. Rodrigo Escobar Gil, visited Ecuador and condemned the use of torture by the police in criminal investigations, the lack of separation of detainees who are awaiting or undergoing trial and those who were convicted, and the persistent problem of overcrowding. He also expressed concern about the scarce resources destined to the daily management of those deprived of their freedom, in particular the small amount spent on food (one dollar per day)⁵.

Assassination of a defender who denounced corruption and abuses in prisons before the United Nations and national mechanisms

In 2010, a defender of the human rights of persons deprived of freedom was assassinated after denouncing the situation to national

3/ See Sentence No. 001-10-SIN-CC of the Constitutional Court, March 18, 2010, Press Release of the Constitutional Court, March 18, 2010 and the Ecumenical Commission of Human Rights (*Comisión Ecueménica de Derechos Humanos* - CEDHU).

4/ The communities consider that the Water Law permits the development of mining projects in areas of water sources, ensures the provision of water to mining companies but not to indigenous and peasants communities, and does not resolve the urgent issue of the contamination of water sources. Moreover, it aims at giving power over water systems to a centralised State authority, meaning that the communities will lose their control over this resource. See CEDHU.

5/ See IACHR Press Release No. 56/10, May 28, 2010.

and international mechanisms. On July 6, 2010, Mr. **Germán Antonio Ramírez Herrera**, a forensics expert and member of a national network of independent experts created by the Foundation for the Comprehensive Rehabilitation of Victims of Violence (*Fundación para la Rehabilitación Integral de Víctimas de Violencia - PRIVA*), was assassinated. Mr. Ramírez Herrera was killed after he presented cases of killings, torture, and cruel, inhuman and degrading treatment in the Quevedo prison, during the visit to Ecuador of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Mr. Ramírez Herrera denounced the presumed complicity of the prison authorities in the cases he presented. These cases had also been presented before national mechanisms such as the Human Rights Ombudsman and the Office of the President. The killing of Mr. Herrera was denounced before the State Attorney General's office and as of April 2011, the case was still in the preliminary investigation stage.

Harassment against environmental rights defenders and defenders of indigenous peoples' rights who participated in peaceful demonstrations

In 2010 and 2011, there was a high incidence of acts of judicial harassment against environmental rights defenders and community leaders who denounced or protested against damages caused by extractive companies, against legislative measures affecting natural resources and in favour of the human rights of indigenous peoples. Defenders who peacefully demonstrated against the draft Water Law were subjected to judicial harassment. On May 4, 2010, environmental defenders Messrs. **Carlos Pérez Guartambel**, President of the Azuay Community Water System (*Sistema Comunitario de Aguas del Azuay*), **Federico Guzmán Paute**, President of the Victoria del Portete Parish Committee (*Junta Parroquial de Victoria del Portete*), **Pablo Quesada**, member of the Tarqui Parish (*Parroquia Tarqui*), and **Efraín Reinaldo Arpi** and **Isaac Lozano**, leaders from the San Joaquín community, were arrested on charges of "sabotage and terrorism" and remanded in custody, for having participated in a demonstration against the draft Water Law. The five defenders were released on May 5, 2010, following a *habeas corpus* hearing before the President of the Provincial Court of Cuenca. The judicial authorities could not prove the criminal responsibility of the accused due to a lack of evidence. However, in place of these charges, criminal proceedings were brought for "obstruction of public roads" against Messrs. Carlos Pérez Guartambel, Federico Guzmán Paute and Efraín Reinaldo Arpi. Mr. Pablo Quesada and Mr. Isaac Lozano were absolved of all charges. On August 24, 2010, the Azuay First Tribunal of Criminal Guarantees declared the accused to be innocent and ordered the case to be closed. The Attorney General's office responded to this decision by

filing an appeal, which was still pending as of April 2011. In a similar case, after Messrs. **Marco Guatemal**, President of the Imbabura Indigenous and Peasants Federation (*Federación Indígena Campesina de Imbabura*), **César Cuascota**, President of the González Suárez Communities Union (*Unión de Comunidades de González Suárez*), and **José Miguel Tocagón**, President of the San Rafael Communities Union (*Unión de Comunidades de San Rafael*), participated in national protests in May 2010 against the draft Water Law, the former Governor of the Province of Imbabura accused them of the crime of “sabotage and terrorism”. Mr. César Cuascota was declared innocent and Mr. José Miguel Tocagón gained recourse to a precautionary measure to provisionally suspend the criminal proceedings. In the case of Mr. Marco Guatemal, due to a lack of material evidence, the charges of “sabotage and terrorism” were dismissed. Nevertheless, the Public Ministry continued to press charges of “obstruction of public roads” against him, which were still pending as of April 2011. Similarly, the Shuar indigenous community in the east of Ecuador, continued to be subjected to acts of judicial harassment in 2011, dating back to their participation in a peaceful demonstration on September 30, 2009 in the province of Morona Santiago, to demand the indigenous communities’ right to prior consultation in relation to the draft Water Law⁶. Within this context, on February 1, 2011, Messrs. **José Aacho González**, President of the Inter Provincial Federation of Shuar Centres (*Federación Interprovincial de Centros Shuar*), **Pedro Mashiant Chamik** and **Fidel Kanira Taish**, leaders from member organisations of the Shuar Federation, were arrested and charged with “organised terrorism”. On February 8, 2011, a *habeas corpus* hearing took place in Quito in favour of the three Shuar leaders, which ordered their release. By April 2011 the trial had been temporarily suspended because the defence requested an annulment and filed for appeal before the Morona Santiago Provincial Court of Justice, which had yet to be resolved.

Defenders who participated in peaceful demonstrations to demand respect for the rights of indigenous peoples were also victims of judicial harassment. Mr. **Marlon Santí**, President of the Confederation of Indigenous Nations of Ecuador (*Confederación de Nacionalidades Indígenas del Ecuador - CONAIE*), and Mr. **Delfín Tenesaca**, President of the Confederation of Kishwa Peoples of the Sierra (*Confederación de los Pueblos Kishwas de la Sierra - ECURRUNAR*), continued to be victims of judicial harassment for taking part in protests to demand respect for

6/ On this day, indigenous peoples were repressed by elite groups from the national police force sent from Quito. As a result of this repression, the indigenous leader Mr. Bosco Wisuma was killed, and the community’s radio station was closed for some time, charged with “instigating the uprising”.

the rights of indigenous peoples. Due to their participation in a peaceful demonstration of the Indigenous Movement (*Movimiento Indígena*) held on June 24, 2010 during the Summit of the Bolivarian Alliance for the Americas (*Alianza Bolivariana para las Américas - ALBA*) in Otavalo, with the aim of demanding the fulfilment of the rights of indigenous peoples established in Article 57 of the Ecuadorean Political Charter, and denouncing the lack of attention on the part of the Ecuadorean authorities including the right to water, to a healthy environment, to intercultural education and health, the Attorney's office in Imbabura began judicial proceedings against Mr. Santí and Mr. Tenesaca for "sabotage and terrorism". A hearing took place on March 3, 2011, yet by the end of April 2011, the case was still ongoing.

Moreover, defenders who opposed mining projects were also victims of harassment, including at the judicial level. On April 27, 2010, one of the concession holders in the region of Piedra Azul, in the province of Azuay, arrived at the offices of the Women's Front for the Defence of Pachamama (*Frente de Mujeres Defensoras de la Pachamama - el Frente*), an organisation opposed to large scale mining projects and so-called "small-scale mining" due to its impacts on the environment and on communities. The concession holder stated that judicial proceedings had been brought against Ms. **Rosío Pérez**, President of el Frente, because of her work denouncing illegal mining in the Piedra Azul area, which was affecting water sources in the region⁷. Subsequently, it was proven that there were no such proceedings against Ms. Rosío Pérez, but that she had in fact been threatened. Moreover, judicial proceedings have been ongoing since 2009 against Ms. **Yolanda Gutama**, Ms. **Virginia Chuñir** and Ms. **Etelvina Miscango**, peasants from Molleturo and leaders of el Frente, who were charged with "obstruction of public roads" for their participation in a national community protest against the approval of the draft Mining Law. These women were forced into hiding during some time because they lacked the resources to pay the amount fixed as bail to avoid being taken into custody. As of April 2011, the three defenders had returned to their normal activities, after charges were suspended. Despite this, the bail charge had not been cancelled and the case remained open, with the intention of harassing the women.

Additionally, organisations who work with indigenous peoples and who are opposed to the exploitation of natural resources continued in 2010

7/ El Frente had effectively denounced these acts before the Decentralised Agency for the Regulation of Mining (*Agencia Desconcentrada de Regulación Minera - ADRCM*) in Cuenca and to the Provisional Office of the Environment Ministry in Azuay.

to be publicly discredited and threatened with expulsion. For instance, President Correa, in the radio programme “Diálogos con el Presidente”, threatened in July 2010 to expel from Ecuador non-governmental organisations (NGOs) that intervene in “politics” and he condemned the actions of international NGOs who work with indigenous peoples against certain projects for oil and mineral extraction. The President declared: “These little gringos come with their full bellies to convince indigenous peoples that oil should not be extracted, and that mines should not operate. They give money to indigenous peoples, when they get what they want they leave, and the indigenous peoples are left poorer than ever”⁸.

Urgent Interventions issued by The Observatory from January 2010 to April 2011

| Names | Violations / Follow-up | Reference | Date of Issuance |
|--|--|--------------------------------------|-------------------|
| Messrs. Carlos Pérez Guartambel, Federico Guzmán Paute, Efraín Reinaldo Arpi, Pablo Quesada, Isaac Lozano, Ms. Rosío Pérez and Ms. Rosa Gutama | Arbitrary detention / Release / Harassment / Threats | Open Letter to the authorities | May 10, 2010 |
| Mr. Germán Antonio Ramírez Herrera | Assassination | Urgent Appeal ECU 001/0710/OBS 085 | July 15, 2010 |
| Messrs. José Acacho González, Pedro Mashiant Chamik, Fidel Kanira Taish, Santiago Bosco Sharup Wachapa, Sharian Pedro Narankas Mashiant, Andrés Juan Vizuma Shimbiu, Ernesto Washikta Chiriap, Francisco Washikiat Saant Tsenjush, Luis Alberto Catan Shinqui, Rufino Antonio Marian Kasent and Ms. Clara Elena Chuncho Juanga | Arbitrary detention / Judicial harassment | Urgent Appeal ECU 001/0211/OBS 014 | February 4, 2011 |
| | Release / Judicial harassment | Urgent Appeal ECU 001/0211/OBS 014.1 | February 10, 2011 |
| Messrs. Marlon Santí and Delfín Tenesaca | Judicial harassment | Urgent Appeal ECU 002/0311/OBS 030 | March 8, 2011 |

8/ It should be mentioned that this kind of intimidation is not new. In March 2009, the legal status of Ecological Action (*Acción Ecológica*) was taken away for “lack of fulfilment of the aims for which it was created”, after the organisation supported indigenous protests against a law promoted by the Government, authorising the activities of transnational mining companies. This decision was not implemented and on August 31, 2009, the association recovered its legal registration.