

HUMAN
RIGHTS
WATCH

Amazonians on Trial

Judicial Harassment of Indigenous Leaders and
Environmentalists in Ecuador

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Summary

When President Lenín Moreno took office in May 2017, he inherited an economy heavily reliant on extractive industries and an executive branch that had, during the previous decade, amassed broad powers to curb public debate of its policies on the environment and other pressing issues. Under his predecessor, President Rafael Correa, the government abused these powers to harass, intimidate, and punish Ecuadorians who opposed oil and mining projects that the president endorsed.

When environmental activists and indigenous people mobilized to protest President Correa's policies, he took to the airwaves to denounce them. In 2013, he issued a presidential decree allowing his administration to arbitrarily shut down civil society organizations—which it did later that year, dissolving the Pachamama Foundation (Fundación Pachamama in Spanish), one of the country's most prominent environmental groups. In 2016, his administration sought to do the same with another leading environmental group, Ecological Action (Acción Ecológica in Spanish), but backtracked after the move provoked an international outcry, including condemnation by UN experts.

The Correa administration also used the criminal justice system to target environmentalists and indigenous leaders to be prosecuted. Human Rights Watch examined three of the most prominent cases involving indigenous leaders and environmentalists accused of criminal activity by the Correa administration. In two of the cases, Human Rights Watch found that prosecutors did not produce sufficient evidence that supports the serious charges they brought. In the third case, a criminal investigation involving six indigenous leaders and an environmentalist has been kept open for four-and-a-half years even though it has failed to produce any evidence of wrongdoing.

Since taking office, President Lenín Moreno has signaled a change in direction from his predecessor, opening a dialogue with environmentalists, indigenous leaders and other government critics. His administration reinstated the Pachamama Foundation. He replaced the presidential decree that allowed the government to shut organizations down with one

that is less far-reaching, but still problematic (the provision used to shut down Pachamama Foundation remains in place.)¹

Despite these positive steps, the abusive criminal prosecutions examined in this report remain unaddressed. In one case, a baseless conviction on charges of terrorism was overturned by Ecuador’s National Court of Justice—only to be replaced with a conviction for an entirely distinct offense that the accused has never been tried for. And no wider steps have been taken to ensure that the criminal justice system is not abused to target indigenous leaders and environmentalists again in the future.

Cases Examined by Human Rights Watch

José “Pepe” Acacho

Pepe Acacho, a Shuar indigenous leader in Morona Santiago province, was charged with “terrorism” in 2010 for allegedly inciting violence during a 2009 protest by Shuar people against a new mining law. At the time, Acacho was president of the Interprovincial Federation of Shuar Centers (FICSH), an organization that advocates for Shuar people in Ecuador. In 2013, a trial court found him guilty and sentenced him to 12 years in prison.

Human Rights Watch reviewed the trial documents, including transcripts of the testimonies, and found no credible evidence to support Acacho’s conviction.

Acacho called on community members to protest in Spanish language radio interviews—which were presented in court—but he did not say anything in those interviews that could reasonably be construed as incitement to violence.

The only evidence presented by prosecutors in court that Acacho had incited violence came from three Shuar-speaking witnesses who claimed to have listened to recordings of interviews that Acacho did on a Shuar radio in which he urged demonstrators to bring “spears and poison” to the protests. However, the recordings of these interviews were not reproduced in court, and it does not appear as though the court ever had possession of the Shuar-language interview recordings. These three witnesses were connected to

¹ Executive Decree no. 193, October 23, 2017, http://www.elcomercio.com/uploads/files/2017/10/23/Decreto_No._193_20170923175846.pdf (accessed March 9, 2018), article 19(1).

government officials and one of them was an employee of a mining company Acacho had opposed as president of the FICSH, raising concerns as to whether they might have faced inappropriate pressure to alter their testimony in favor of the prosecution. A fourth Shuar-speaking witness who testified about the content of the Shuar radio broadcasts, who had neither ties to the government nor the mining company, testified in a completely different manner and said that Acacho had not called for violence.

Acacho lodged an appeal with the National Court of Justice, which in January 2018 overturned the conviction for “terrorism” but convicted him of the lesser crime “illegally impeding the free movement of vehicles, people or merchandises.” Acacho did not necessarily have reason or meaningful opportunity to defend himself against the factual allegations underpinning the lesser charge, because he was not originally charged with that offense and facts relevant to rebutting the charge may not have been relevant to his defense at the original trial. This was in clear violation of his due process rights, under legal standards the court acknowledged and says it applied, but without any indication of its reasoning or how it had applied the standards. Instead, the court concluded that: “the accused exercised their right to defense fully, [by] alleging their innocence for the charge against them.”

On March 16, Acacho’s defense attorney filed an extraordinary protection action with the constitutional court, claiming the sentence undermined his client’s constitutional rights. Less than three hours later, the provincial court of Morona Santiago ordered Acacho’s arrest; he will be taken to prison and forced to serve his eight-month sentence whenever police act on the judge’s orders to detain him, unless the constitutional court recognizes his due process rights have been violated and vacates the verdict.

Agustín Wachapá

Agustín Wachapá, a Shuar indigenous leader in the province of Morona Santiago, is being tried for allegedly inciting violence after a clash between police and opponents of a mining project in December 2016. At the time he was arrested, he was president of the FICSH, as Pepe Acacho had been when he was charged with terrorism.

President Correa responded to the December 2016 incident by publicly denouncing several indigenous leaders who opposed the mining project and singling out Wachapá, portraying

him as violent. The Correa government quickly moved to shut down Ecological Action, an environment group active in opposing the project.

Following a criminal complaint filed by the Interior Ministry against Wachapá, a prosecutor accused him of “incitement to discord,” and he was promptly arrested. He told Human Rights Watch he spent four months in the maximum-security section of the Latacunga prison, until he was granted provisional release after paying a US\$6000 bail in April 2017.

The only evidence that has any arguable probative value in the prosecution’s entire file is a message on Wachapá’s Facebook that he posted *after* the confrontation took place. Though the writing on Wachapá’s post is ambiguous, in Human Right Watch’s estimation, it was not defensible for the prosecution to bring serious criminal charges solely on the strength of this one weak and doubtful piece of evidence. The charge is, by any reasonable estimation, devoid of meaningful evidentiary support.

Additional evidence includes a radio interview in which Wachapá discussed the Shuar’s pre-colonial history as warriors. The prosecution presented no evidence that could reasonably be construed to show that Wachapá incited violence.

The trial court is scheduled to issue a verdict on March 28, 2018. If found guilty, Wachapá could be sentenced to up to three years in prison.

11th Oil Round Case

Seven indigenous leaders and environmentalists who protested oil exploration in the Amazon in 2013 have been the subject of a criminal investigation that has been kept open for four-and-a-half years even though it has failed to yield probative evidence against them.

On November 28, 2013, indigenous leaders and environmental activists demonstrated outside the Hydrocarbons Secretariat in Quito, where foreign investors were gathered to bid on rights to explore for oil in two million hectares of land in the southeastern Amazon, including the territories of seven indigenous peoples. An incident of violence during the protest prompted a criminal investigation against a demonstrator who was caught on video hitting a foreign businessman on the head with the flat edge of his spear.

President Correa responded to the incident by publicly denouncing the organizers of the protest, and his government promptly shut down the Pachamama Foundation, the prominent environmental group mentioned above that participated in the demonstration.

The Attorney General's Office then opened a criminal investigation not only against the man who wielded the spear, but also against six prominent indigenous leaders and an environmentalist. Human Rights Watch had access to the case file and found that it contained nothing that could reasonably be construed as evidence that these seven activists had committed crimes.

The law mandates that the prosecutor archive such investigations after two years, but the investigation remains open.

Recommendations

The cases detailed in this report show abuse of power by officials and misuse of the criminal justice system to harass indigenous leaders and environmentalists who helped mobilize public protests against government policy.

President Lenín Moreno and the leaders of the Ecuadorian judiciary and national assembly must take steps to end the misuse of the Ecuadorian criminal justice system to harass, intimidate and improperly punish indigenous leaders and environmentalists.

They should ensure that the cases documented in the report—and other cases involving criminal charges against indigenous leaders and environmental activists—are properly handled by the criminal justice system in accordance with international human rights law. Specifically, they should guarantee that:

- No one serves prison time for a crime for which they have not had an opportunity to defend themselves against at trial;
- No one is prosecuted in the absence of credible evidence linking them to a crime; and,
- Criminal investigations are not kept open indefinitely in the absence of credible evidence linking the people being investigated to a crime.

President Lenín Moreno and the leaders of the Ecuadorian judiciary and national assembly should appoint an independent and credible investigative body to examine how judicial authorities and the Attorney General's Office conducted the cases documented in this report as well as other recent cases involving criminal investigations and prosecutions of indigenous leaders and environmentalists under President Rafael Correa's administration.

Activists whose rights were violated through abusive, unwarranted criminal prosecutions should receive compensation through the appropriate mechanisms contemplated in domestic law, in accordance with international standards.

Methodology

This report is largely based on a review of the court records from each of the three cases.

- In the case of Pepe Acacho, Human Rights Watch had access to, among others:
 - the October 2, 2009 criminal complaint that prompted the investigation;
 - the September 6, 2010, transcript of the charges hearing;
 - the August 9, 2013, decision of the provincial court of justice with transcripts of the testimonies during the trial (case no. 479-2013);
 - the October 7, 2014, decision of the provincial court of justice in response to Acacho's appeal (case no. 14111-479-2013), and;
 - the January 15, 2018, decision of the National Court of Justice (trial no. 17721-2014-1796).
- In the case of Agustín Wachapá, Human Rights Watch had access to, among others:
 - the electronic public records in the proceedings for case no. 14256-2016-00781 and case no. 17711-2017-0092 (made available by the Council of the Judiciary on its website);
 - the report by the forensic expert who retrieved Wachapá's publication from Facebook (report no. DCP121600496), and;
 - the official summary of the charges hearing from December 21, 2016.
- In the 11th Oil Round case, Human Rights Watch had access to the file of the criminal investigation in the prosecutor's office in Quito. The file contained various lists of suspects compiled by police and the prosecutor, in this report Human Rights Watch referred to the last list of suspects that appeared in the file.

Human Rights Watch also conducted a total of 37 interviews, including with the two activists on trial and two of the suspects targeted by the criminal investigation, their defense lawyers, the chief public defender of Ecuador, a public defender in Quito, the national human rights ombudsman, three assistants of a national congressman, two prosecutors (*procurators*), four academics, and 18 civil society representatives.

Most of the interviews were conducted in Quito between 5-11 November 2017, and follow-up interviews were conducted over the phone between December 2017 and March 2018. All interviews were conducted in Spanish by Human Rights Watch staff fluent in the language.

All participants were informed of the purpose of the interview and that their accounts might be used publicly. They consented orally. In the cases where interviewees requested that their name remain anonymous, their name has been withheld when they have been quoted.

No interviewee received compensation for providing information.

Cases Examined by Human Rights Watch

José “Pepe” Acacho

José “Pepe” Acacho, a Shuar indigenous leader in Morona Santiago province, was charged with “terrorism” in 2010 for allegedly inciting violence during a 2009 protest by Shuar people. Acacho was convicted in 2013. He appealed the verdict to the National Court of Justice, which in 2018 overturned the conviction for “terrorism” and instead convicted him of the lesser crime “illegally impeding the free movement of vehicles, people or merchandises,” for which he was never tried.² The court stated its decision did not violate Acacho’s right to defend himself against a new charge, but provided no legal reasoning to justify this assertion.³ As explained below, Human Rights Watch believes that the new conviction violated Acacho’s due process rights.

In September 2009, while he was serving as president of the Interprovincial Federation of Shuar Centers (FICSH), Pepe Acacho called on Shuar people to protest recently promulgated laws regulating mining and water use. He and other opponents of these laws believed that they would reduce indigenous peoples’ control over natural resources in their ancestral territories. Demonstrators blocked the Upano River bridge, in the city of Macas. On September 30, Acacho met public officials in the city of Sucúa, 23 kilometers away, to discuss the protesters’ demands.⁴ According to witnesses who later testified in Acacho’s trial various government officials were indeed present at the meeting, though accounts differ as to exactly who these officials were.⁵

Acacho told Human Rights Watch that he left the meeting believing they had reached an agreement. His understanding was that a government representative who had been present at the meeting was going to consult authorities in Quito to sign off on it.⁶

² Código Penal, 1971, https://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-cp.pdf (accessed March 13, 2018), art. 129.

³ *Prosecutor v. Acacho González José Luis*, National Court of Justice of Ecuador, judgment of January 15, 2018, case no. 1772120141796, pp.14-15.

⁴ Human Rights Watch interview with Julio César Sarango, criminal defense attorney, Quito, November 8, 2018 and Human Rights Watch telephone interview with José “Pepe” Acacho, January 16, 2018.

⁵ Note: the case judgment includes the testimonies of different witnesses introduced by the prosecution and the defense. *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v. Acacho et al.*, Provincial Court of Justice of Morona Santiago, judgment of August 9, 2013, case no. 0479-2013 (witnesses Julian Matias Larrea Arias, p.72; Miguel Alcides Torres Sarmiento, p. 70 and Wilson Medardo Cabrera Riera, p.62).

⁶ Human Rights Watch telephone interview with José “Pepe” Acacho, January 16, 2018.

Acacho gave Human Rights Watch an account of his movements the rest of that evening. He said that he set off by car to Macas around 5p.m. Approximately 30 minutes later, he received calls from friends alerting him to the fact the police were dispersing protestors with tear gas. Between 5:30p.m. and 6p.m. he was informed that a teacher, Bosco Wisum, had been killed. Acacho reached the Sevilla Don Bosco town, on the eastern side of the Upano River, where he saw injured demonstrators being taken away. He decided to remain in Sevilla Don Bosco, where he stayed until 11pm and then returned to Sucúa where he spent the night.⁷

The confrontation on the bridge that day left 38 police officers injured, according to the local chief of police.⁸ One demonstrator, Shuar teacher Bosco Wisum, was shot dead.⁹ Human Rights Watch was not able to ascertain how many demonstrators were injured.

On October 2, 2009, the local chief of police filed a criminal complaint alleging terrorism, rebellion, and illicit association against “all the demonstrators pertaining to Shuar indigenous organizations, led by José Akachu [sic],” referring to Pepe Acacho.¹⁰ Nearly a year later, in September 2010, a prosecutor charged Pepe Acacho with “terrorism,” alleging that he incited the violence at the Upano River bridge in September 2009 that resulted in Wisum’s death.¹¹

The definition of terrorism under Ecuador’s criminal code at the time was broad and vague, criminalizing those who would intend to further “patriotic, social, economic, political, religious, revolutionary, radical, proselytist, racial, localist, regional, etc.” aims. (Indeed, the word “etcetera” is used five times in defining the crime.)¹² The Inter-American Commission on Human Rights (IACHR) has since expressed concern for the application of this law to prosecute human rights defenders, and the United Nations Committee on

⁷ Ibid.

⁸ Criminal complaint presented to the provincial prosecutor’s office of Morona Santiago by Colonel Oswaldo Chérrez de Cueva on October 2, 2009.

⁹ Bosco Wisum es símbolo de lucha para amazónicos, *El Universo*, October 4, 2009, <https://www.eluniverso.com/2009/10/04/1/1355/bosco-wisum-simbolo-lucha-amazonicos.html> (accessed March 9, 2018).

¹⁰ Criminal complaint presented to the provincial prosecutor’s office of Morona Santiago by Colonel Oswaldo Chérrez de Cueva on October 2, 2009.

¹¹ *Prosecutor and Members of the National Police v. Acacho González Pepe Luis et al.*, Provincial Court of Morona Santiago, Case no. 85-2010, Charges Hearing, September 6, 2010.

¹² Código Penal, 1971, https://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-cp.pdf (accessed March 8, 2018), art. 160-A.

Economic, Social and Cultural rights (CESCR) has called on Ecuador to clarify its scope of application.¹³

On February 1, 2011, the day after Acacho finished his term as president of the FICSH, a judge issued a warrant for his arrest and pre-trial detention. Acacho was promptly apprehended and flown to Quito, where he was imprisoned in the García Moreno penitentiary along with two other individuals accused of the same crime.¹⁴ Acacho told Human Rights Watch that they were held with convicted prisoners for eight days.¹⁵ They were released after another judge revoked the pre-trial detention order.¹⁶

The trial took three years to reach its conclusion. Three weeks before the court reached its verdict, on July 20, 2013, Vice President Jorge Glas hosted the president's weekly TV show, substituting for Correa, and broadcast a video in which the narrator accused Acacho of "inciting violence, calling on [protesters] to use weapons, to use poison." Without mentioning Acacho by name, Glas claimed that this incitement was responsible for the death of Wisum.¹⁷

On August 9, 2013, the trial court in Morona Santiago found Acacho guilty of "terrorism" and sentenced him to 12 years in prison. The court also convicted Pedro Mashiant Chamik,

¹³ Inter-American Commission on Human Rights, "Criminalization of the Work of Human Rights Defenders," December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> (accessed March 8, 2018), p. 72; United Nations Committee on Social, Economic and Cultural Rights, "Final Observations of the Committee on the third report of Ecuador, approved by the Committee on Social Economic and Cultural Rights in its forty-ninth period (14 to 30 November 2012)," E/C.12/EQU/CO/3, November 30, 2012. http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.EQU.CO.3_sp.pdf (accessed March 8, 2018), para. 10.

¹⁴ "Pepe Acacho fue detenido esta mañana," *Ecuador Inmediato*, February 1, 2011, http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=142888 (accessed March 9, 2018).

¹⁵ Human Rights Watch telephone interview with José "Pepe" Acacho, January 16, 2018.

¹⁶ Survival, "Protestas en Ecuador por la detención de un líder indígena," February 8, 2011, <https://www.survivalbrasil.org/noticias/6981> (accessed March 8, 2018); El Tiempo, "Jueza ordena liberación de tres indígenas acusados de terrorismo," *El Tiempo*, February 8, 2011, <http://www.eltiempo.com.ec/noticias/ecuador/4/251250/jueza-ordena-liberacion-de-tres-indigenas-acusados-de-terrorismo> (accessed March 8, 2011); El Universo, "Jueza da la razón a indígenas, detenciones fueron 'capricho,'" *El Universo*, February 9, 2011, <https://www.eluniverso.com/2011/02/09/1/1355/jueza-da-razon-indigenas-detenciones-fueron-capricho.html?p=1354&m=638> (accessed March 8, 2018); El Tiempo, "Dirigentes shuar están libres," *El Universo*, February 9, 2011, <http://www.eltiempo.com.ec/noticias/ecuador/4/251308/dirigentes-shuar-estan-libres> (accessed March 8, 2018); El Universo, "Jueza acepta pedido de hábeas corpus a Pepe Acacho y dos dirigentes shuar," *El Universo*, <https://www.eluniverso.com/2011/02/08/1/1355/jueza-ordena-liberacion-acacho-mashiant-kaniras.html> (accessed February 8, 2011).

¹⁷ "Enlace Ciudadano Nro. 331 desde la parroquia Febres Cordero – Guayaquil," July 20, 2013, video clip, YouTube, <https://www.youtube.com/watch?v=209q6T-1kCE> (accessed March 8, 2018).

a Shuar man who was at the protest that day, but declared innocent Fidel Kañiras, who had previously been charged with the murder of Bosco Wisum, along with four other men.¹⁸

Human Rights Watch reviewed the trial documents, including transcripts of the testimonies, and found no credible evidence to support Acacho's conviction.

Not a single witness testified that Acacho had been present in Macas on the day of the confrontation. On the contrary, the 20 witnesses cited by the court who were present during the confrontation—including the local police chief and 10 police officers—testified that they did not see Acacho in Macas that day.¹⁹ In addition, four other witnesses confirmed that Acacho was at the meeting in Sucúa prior to the confrontation.²⁰ One witness stated he was in the car, heading back to Macas, when the violence broke out.²¹ The sentence cites only one witness who testified that he saw Acacho in the vicinity of Macas—in a car with armed young men on the road that led to Upano River bridge—but even if this testimony were accurate, it still does not place Acacho at the site of the protest or subsequent confrontation and does not establish that he instigated the violence.²²

The verdict cites five radio presenters and reporters on Spanish-language radio programs who testified that in the days prior to the confrontation, Acacho had appeared on their programs and called on Shuar people to participate in the demonstration. However, none of the five testified that Acacho had incited violence on their programs.²³

¹⁸ *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v. Acacho et al.*, Provincial Court of Justice of Morona Santiago, judgment of August 9, 2013, case no. 0479-2013.

¹⁹ *Ibid.* (witnesses Dora Marisol Ortiz Garay, p. 19; Galo Humberto Molina Nieto, p. 19; witness Nelson Medardo Juanga López, p. 19; Laura Beatriz Martínez Nieves, p. 25; Miguel Arturo León Crespo, p. 25; Manuel Eduardo Riofrío Bravo, p. 26; Wilson Efrén Ortiz Robles, p. 26; Galo Patrick Pichama Jembecta, p. 32; Luis Enrique Castillo Guamán, p. 41; police officer Freddy Fernando Tapia Paladíos, p. 43; police officer Fausto Lenin Salinas Samaniego, p. 45; police officer Luis Alonso Chimbolema Chacha, p. 48; police officer Henry Santiago Vaca Benalcazar, p. 51; police officer Juan Pablo Iñiguez Guerrero, p. 52; police officer César Danilo Chamorro Lope, p. 53; police officer Roberto Carlos Arciniegas Pozo, p. 53; police officer Alfredo Patricio Chuquin Faringo, p. 54; police officer Giovanni Javier Leon Gualli, p. 55; police officer Willian Anibal Rocha Angamarca, p. 56; Colonel Oswaldo Arturo Chérrez de la Cueva (chief of police), p. 59).

²⁰ *Ibid.* (witnesses Julian Matias Larrea Arias, p. 72; Wilson Ortiz, pp. 26-27; Samuel Yakum Shimpui, p. 97; Oswaldo Mankash Shimpis, p. 76).

²¹ *Ibid.* (witness Julian Matias Larrea Arias, p. 72).

²² Provincial Court of Justice of Morona Santiago, *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v Acacho et al*, judgment of August 9, 2013, case no. 0479-2013 (witness Galo Bonifacio Pichama Aztuchi, p. 28)

²³ *Ibid.* (witnesses Carlos Galarza, p. 22; César Augusto Correa, p. 23; Laura Martínez, p. 25; Manuel Eduardo Riofrío Bravo, p. 26; Wilson Medardo Cabrera Riera, p. 62).

The only witnesses in the trial who claimed they heard Acacho incite violence said that he did so during interviews on Shuar-language radio programs. These were three Shuar speakers who testified that Acacho, during these radio broadcasts, had called on protesters to take to the streets with “spears and poison.”²⁴ One of the three also alleged that Acacho had “subtly” urged on people to bring “machetes, shotguns, weapons, poison.”²⁵

No recordings of the interviews in Shuar were played in court, according to Acacho’s defense lawyer.²⁶ And indeed, there is no indication in the court records that any recordings of these broadcasts were played during the trial. Moreover, while the court includes in its list of evidence the recordings of the radio broadcasts in Spanish, it does not include the recordings in Shuar, raising questions as to whether the court was even in possession of these recordings.²⁷

There are reasons to doubt the credibility of the three witnesses who claimed to have translated the statements in Shuar that Acacho made on the radio. These witnesses’ connections to government officials and a local mining company raises concerns as to whether they faced inappropriate pressures to alter their testimony in favor of the prosecution.²⁸ Indeed, the only Shuar-speaking witness who was connected to neither testified that Acacho had not incited violence on the radio.

One of the three witnesses testified that he was called to translate Acacho’s statements by the Ministry of Communications (CONATEL), which at the time was headed by Jorge Glas, who later appeared on television, as vice president, accusing Acacho of terrorism before the court had rendered its verdict.²⁹ This witness said he was “cooperating with the government” because one of his sons had been hurt during the protest and because his

²⁴ Ibid. (witnesses Martha Masana Kajekai, pp. 36-37; Rubén Celestino Pitiur Mamamt, pp. 37-39; Ignacio Roberto Chalco Nase, p.35).

²⁵ Ibid. (witness Rubén Pitiur Mamant, pp. 38-39).

²⁶ Human Rights Watch telephone interview with Julio César Sarango, criminal defense attorney, March 13, 2018.

²⁷ *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v. Acacho et al.*, Provincial Court of Justice of Morona Santiago, judgment of August 9, 2013, case no. 0479-2013, p.3.

²⁸ Ibid. (witnesses Martha Masana Kajekai, pp. 36-37; Rubén Celestino Pitiur Mamamt, pp. 37-39; Ignacio Roberto Chalco Nase, p.35).

²⁹ “Enlace Ciudadano Nro. 331 desde la parroquia Febres Cordero – Guayaquil,” July 20, 2013, video clip, YouTube, <https://www.youtube.com/watch?v=209q6T-1kCE> (accessed March 8, 2018).

wife had been sexually harassed by a group of protestors.³⁰ Another witness was an employee of a mining company that has a large concession in the province of Morona Santiago, which has been opposed by Acacho and the local indigenous population, who claim it is on their ancestral land.³¹ This witness said she had been summoned to translate the recordings by the governor, Sonia Ortega, whom she referred to as a friend.³² The third witness said he had been summoned to translate Acacho's message by his employer, a local public official appointed by the governor.³³

In Ecuador, governors are functionaries of the Interior Ministry.³⁴ They act as the representative of the president in the provinces. The governor at the time of the 2009 protest and confrontation—and when these witnesses were summoned to translate Acacho's statements—was Sonia Ortega, whom President Correa had instated in June 2009. In 2013, Ortega was no longer governor and instead was serving as a judicial clerk for the court that tried Acacho.³⁵ She served as a witness for the prosecution, testifying that she heard Acacho on the radio calling on people to protest (she did not say she heard him call on them to arm themselves).³⁶

A fourth Shuar-speaking witness who testified about the content of the Shuar radio broadcasts—who unlike the other three was connected neither to the government nor to mining company—said that Acacho called on people to join the demonstration to defend their territory and its natural resources but did not say that he urged them to arm themselves or protest violently.³⁷

Acacho categorically denies the allegations that he incited violence. He told Human Rights Watch that he had only called for peaceful demonstrations and that the witnesses who testified that he had called for violence had mistranslated and misrepresented his

³⁰ *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v. Acacho et al.*, Provincial Court of Justice of Morona Santiago, judgment of August 9, 2013, case no. 0479-2013, (witness Rubén Pitiur Mamant, pp. 38-39).

³¹ *Ibid.* (witness Martha Masana Kajekai, pp. 36-37).

³² *Ibid.*

³³ *Ibid.* (witness Ignacio Roberto Chalco Nase, p.35).

³⁴ Interior Ministry, <http://www.ministeriointerior.gob.ec/organigrama-del-ministerio-del-interior/> (accessed March 8, 2018).

³⁵ *Ibid.* (witness Sonia Carmita Ortega Mosquera, p.13).

³⁶ *Prosecutor, Members of the National Police and Bosco Taisha Wisuma Chapaik v. Acacho et al.*, Provincial Court of Justice of Morona Santiago, judgment of August 9, 2013, case no. 0479-2013 (witness Sonia Carmita Ortega Mosquera, p. 13).

³⁷ *Ibid.* (witness Jorge Jimbiquiti Pandama Tiquisu, p. 40).

message in Shuar. Acacho said that he never urged protestors to bring machetes or shotguns. He said that he used the word “Nanki”, which in Shuar language refers both to the spear as an object and to the positive qualities that a person should embody such as bravery and energy, adding that he never called on protestors to use violence of any kind.³⁸

After the verdict, President Correa celebrated the outcome on his nationally broadcast TV show, saying that Acacho’s “irresponsibility” had led to the violence and the death of a demonstrator and that the 12-year prison sentence was justified.³⁹

Acacho’s defense lawyer appealed the conviction, asking the courts to apply the new 2014 criminal code, which came into force after the trial. However, in October 2014, an appeals court refused to re-examine whether Acacho’s acts should be considered terrorism under the new code’s definition. Acacho appealed this ruling to the National Court of Justice.⁴⁰

On January 15, 2018, the National Court of Justice threw out Acacho’s terrorism conviction—ruling that the courts had mistakenly applied the anti-terrorism law—and replaced it with a conviction for the lesser crime of “illegally impeding the free movement of vehicles, people or merchandises,” reducing his prison sentence to eight months.⁴¹ It was a crime for which Acacho had never been charged nor tried.

The court justified its decision by recalling its jurisprudence in previous cases where it had modified the charges on appeal. The court described three tests that its decision had to

³⁸ “Ecuador: Courts Stalling on Protester Appeals”, Human Rights Watch news release, July 21, 2015, <https://www.hrw.org/news/2015/07/21/ecuador-courts-stalling-protester-appeals>; Human Rights Watch telephone interview with José “Pepe” Acacho, January 16, 2018.

³⁹ Rafael Correa hosted a TV Show called Citizens’ Connection (*Enlace Ciudadano* in Spanish) between May 20, 2007 and May 20, 2017. It aired every Saturday between 10 a.m. and 2 p.m. through two state-owned TV stations and 54 radio stations. The president would address ordinary citizens, recount the achievements of his administration, interrogate ministers and berate his critics, amongst others. Correa aired 523 episodes in total throughout his two terms in office.; “Ecuador: Courts Stalling on Protester Appeals”, Human Rights Watch news release, July 21, 2015, <https://www.hrw.org/news/2015/07/21/ecuador-courts-stalling-protester-appeals>.

⁴⁰ “Ecuador: Courts Stalling on Protester Appeals”, Human Rights Watch news release, July 21, 2015, <https://www.hrw.org/news/2015/07/21/ecuador-courts-stalling-protester-appeals>.

⁴¹ Código Penal, 1971, https://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-cp.pdf (accessed March 13, 2018), art. 129.; *Prosecutor v. Acacho González José Luis*, National Court of Justice of Ecuador, judgment of January 15, 2018, case no. 1772120141796.

withstand to guarantee that Acacho's procedural rights and right to defense were upheld, then immediately asserted that it had passed them without any additional reasoning.⁴²

Acacho did not necessarily have reason or meaningful opportunity to defend himself against the factual allegations underpinning the lesser charge, because they were not relevant to his defense at the original trial. Because of this and because the court made no effort to address this issue in its ruling, Human Rights Watch believes that the new conviction violated Acacho's due process rights.

Acacho's defense attorney filed a petition with the National Court of Justice to clarify the sentence, but on February 22 the court rejected it.⁴³ On March 16, he filed an extraordinary protection action with the constitutional court, claiming the sentence undermined Acacho's constitutional rights.⁴⁴ Less than three hours later, the provincial court of Morona Santiago ordered his arrest; Acacho will be taken to prison and forced to serve his eight-month sentence whenever police act on the judge's orders to detain him, unless the constitutional court recognizes his due process rights have been violated and vacates the verdict.⁴⁵

Acacho told Human Rights Watch that the ordeal had taken an enormous toll on him and his family. "It destroys you," he said, recalling the many times that his wife and three children have been approached by strangers: "'your husband is a terrorist,' 'your father is a terrorist,' 'he is an instigator'; can you imagine your family being treated this way?" He also stressed the high economic cost that he has incurred whilst defending himself throughout 7 years of trial, having to constantly attend hearings, pay legal fees, and comply with a travel ban that limits his freedom of movement.⁴⁶

⁴² *Prosecutor v. Acacho González José Luis*, National Court of Justice of Ecuador, judgment of January 15, 2018, case no. 1772120141796, pp.14-15.

⁴³ Human Rights Watch online communication with Pepe Acacho, February 22, 2018.

⁴⁴ Writ of acknowledgment of extraordinary protection action, March 16, 2018, case no. 17721-2014-1796 (receipt of acknowledgment at 11:40 a.m.); Human Rights Watch telephone interview with Julio César Sarango, criminal defense attorney, March 21, 2018.

⁴⁵ Ordinance of the Provincial Court of Morona Santiago, March 16th, 2018 (issued at 2:48 p.m.); Human Rights Watch telephone interview with Julio César Sarango, criminal defense attorney, March 21, 2018.

⁴⁶ Human Rights Watch telephone interview with José "Pepe" Acacho, January 16, 2018.

Agustín Wachapá

Agustín Wachapá, a Shuar indigenous leader in the province of Morona Santiago, is being tried for allegedly inciting violence through a Facebook post in 2016. At the time, he was president of the Interprovincial Federation of Shuar Centers (FICSH), the same organization Pepe Acacho presided over in 2010 when he was charged with terrorism.

The FICSH had opposed mining concessions in Morona Santiago, in the Ecuadorian Amazon, alleging they encroached on Shuar ancestral territory. The area encompassed by the San Carlos Panantza mining concession is home to 12,289 people, of which 46 percent are of the Shuar nation.⁴⁷ ExplorCobres S.A. (EXSA) owns the concession and plans to develop open-pit copper mines.⁴⁸ Ecological Action (Acción Ecológica in Spanish), a prominent Ecuadorian environmental organization, had publicly opposed the project and expressed support for Shuar people's territorial claims.⁴⁹

On December 14, 2016, police and military personnel clashed violently with opponents of the San Carlos Panantza mining project. The violence left one police officer dead and seven injured.⁵⁰ President Correa responded by declaring a state of exception throughout the whole province.⁵¹ Three days later, he addressed the issue on his TV show. Correa broadcast a nine-second video clip of an interview with Agustín Wachapá in which he says: "For the Shuar war is a game, to kill and to decapitate..." The clip ended abruptly, cutting him off mid-sentence. Correa referred to the clip as evidence that indigenous leaders who were critical of his government were violent.⁵² After showing the clip, Correa said: "they've lost all ability to distinguish between right and wrong."⁵³

⁴⁷ Inter-American Commission for Human Rights, 163rd Period of Hearings, "Ecuador: Industrias Extractivas y Pueblos Indígenas", July 7, 2017, video clip, YouTube, <https://www.youtube.com/watch?v=zCRTamwJYqQ> (accessed March 9, 2018).

⁴⁸ Mining Ministry, "Proyecto San Carlos Panantza", <http://www.mineria.gob.ec/proyecto-san-carlos-panantza/> (accessed March 9, 2018).

⁴⁹ Acción Ecológica, "El festín minero y el proyecto Panantza San Carlos Namkims una nueva víctima de la minería y las empresas chinas en Ecuador", August 17, 2016, <http://www.accionecologica.org/editoriales/1961-2016-09-06-16-05-19> (accessed March 9, 2018).

⁵⁰ AFP, "Decretan estado de excepción en Morona Santiago", *El Universo*, December 15, 2016, <http://www.eluniverso.com/noticias/2016/12/15/nota/5955001/decretan-estado-excepcion-morona-santiago> (accessed March 9, 2018).

⁵¹ Executive Decree no. 1276, December 14, 2016 http://portal.corteconstitucional.gob.ec/Raiz/2017/003-17-DEE-CC/REL_SENTENCIA_003-17-DEE-CC.pdf (accessed March 9, 2018).

⁵² "Enlace Ciudadano 505, con el Presidente Rafael Correa desde Quito-Pichincha," December 17, 2016, video clip, YouTube <https://www.youtube.com/watch?v=4Q4ltUqhoYg> (accessed March 8, 2018).

⁵³ Ibid.

Wachapá told Human Rights Watch that his statement was taken out of context, that he was in fact referencing Shuar people's pre-colonial history during an interview at a local radio station and that the interview had also been filmed.⁵⁴ The interview took place on December 1, 2016, prior to the violent incident on the San Carlos Panantza mine, and, he added, his remarks were not intended as a commentary about contemporary events.

A day after Correa's address, Ecological Action called on the government to create a "Peace and Truth Commission" to investigate alleged violations of environmental law and indigenous rights in the context of the San Carlos Panantza mining project.⁵⁵ On December 20, only two days later, the vice minister of the interior, Diego Torres Saldaña, requested the Environment Ministry to dissolve the organization.⁵⁶ Saldaña accused Ecological Action of inciting violence in Morona Santiago and "deviating from its purported aims."⁵⁷

Saldaña relied on two decrees issued by President Correa in 2013 and 2015 that gave the executive branch the power to dissolve NGOs if they were found to have "compromise[d] public peace" or engaged in activities that are different from those they identified when registering with the government.⁵⁸ Five United Nations special rapporteurs issued a joint statement that described the move to dissolve Ecological Action as part of a "strategy to asphyxiate civil society."⁵⁹ Ecological Action successfully appealed the dissolution in January 2017, after receiving an outpouring of international solidarity.⁶⁰

⁵⁴ Human Rights Watch telephone interview with Agustín Wachapá, January 24, 2018.

⁵⁵ Acción Ecológica, "Sobre lo ocurrido en Morona-Santiago: Necesitamos un baño de paz y verdad con la naturaleza", December 18, 2016, <http://www.accionecologica.org/editoriales/2048-2016-12-19-03-07-15> (accessed March 8, 2018).

⁵⁶ Interior Ministry, "Solicitud de extinción y disolución de Organización Social Corporación Acción Ecológica", Oficio No. MDI-VSI-2016-00033, December 19, 2016, http://www.accionecologica.org/images/2005/solicitud_de_extincion_del_Ministerio_del_Interior_al_MAE.pdf (March 8, 2018).

⁵⁷ Interior Ministry, Informe No. MDI-CGAJ-2016-261, December 19, 2016, http://www.accionecologica.org/images/2005/informe_juridico_del_MAE.pdf (accessed March 8, 2018).

⁵⁸ Executive Decree no. 16, "Reglamento para el Funcionamiento del Sistema Unificado de Información de las Organizaciones Sociales y Ciudadanas", June 4, 2013, <http://www.elcomercio.com/uploads/files/2017/10/23/Decreto-16.pdf>; Executive Decree no. 739, "Reglamento Sistema Unificado Información de Organizaciones Sociales", August 21, 2015, <http://www.industrias.gob.ec/wp-content/uploads/2015/09/REGLAMENTO-ORGANIZACIONES-SOCIALES.pdf>, (accessed March 9, 2018), art. 22.

⁵⁹ Special rapporteur on freedom of peaceful assembly and freedom of association, special rapporteur on freedom of expression, special rapporteur on human rights defenders, special rapporteur on the rights of indigenous peoples, "Ecuador: UN Experts condemn repressive measures against human rights organizations," December 30, 2016, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=21065&LangID=S> (accessed March 8, 2018).

⁶⁰ Adriana Noboa, "Acción Ecológica cree inviable una posible apelación a resolución de Ambiente", *El Comercio*, January 12, 2017, <http://www.elcomercio.com/tendencias/ministeriodelambiente-niega-disolucion-accion-ecologica.html> (accessed March 8, 2018).

In addition to moving to dissolve the environmental group, Saldaña also filed a criminal complaint against Wachapá with the Attorney General's Office. In response to Saldaña's complaint, on December 21, 2016, a prosecutor charged Wachapá with "incitement to discord."⁶¹ He cited as evidence a post the indigenous leader had made on Facebook referring to the events of December 14:

The Interprovincial Federation of Shuar Centers ,in the face of the incidents that took place this morning ,where the Ecuadorian army fired on the Shuar nation , declares State of emergency and war between Ecuadorians , asks for unity and the immediate withdrawal of the military from Shuar territory and we do not take responsibility for what happens and we do not acknowledge President Rafael Correa the most corrupt president in the history of Ecuador . from this moment we begin mobilizing in all of the amazon and throughout the country . The Shuar and Achuar People will never give up and will not surrender the mines of our territory. Never retreat. Never give up.

Long live the freedom and courage of the Amazon jungle dammit. [sic]⁶²



Agustín Wachapá

17 December 2016 · 🌐

La Federación Interprovincial de Centros Shuar ,frente a estos acontecimientos pasados esta mañana ,donde hay balaceras del ejército ecuatoriano a la nacionalidad Shuar , declara Estado de emergencia y guerra entre ecuatorianos , pide unidad y salida inmediata a los militares del territorio Shuar y no nos responsabilizamos lo que ocurra y desconocemos al Presidente de Rafael Correa el presidente mas corrupto de la historia del Ecuador . desde este momento iniciamos movilización en todo la amazonia y del país. La Nacionalidad Shuar y Achuar jamas rendirá y peor entregar las minas de nuestro territorio. Retroceder nunca. Rendirse jamas.

Viva la libertad y coraje desde la selva amazónica carajo.

Agustín Wachapá's original Facebook post from December 17, 2016⁶³

⁶¹ Attorney General, Torres Saldaña Diego José, Prosecutor of Morona Santiago v. Wachapá Atsasu Jimpikit Agustin, Charges Hearing, Gualaquiza Judicial Unit, December 21, 2016.

⁶² Human Rights Watch provided a literal translation of Wachapá's original post on Facebook.

⁶³ Agustín Wachapá's personal Facebook profile, <https://www.facebook.com/awachapa/posts/1512935215400995>.

Wachapá was promptly arrested in the town of Sucúa, in Morona Santiago, on December 21. A judge heard the charges and allowed the case to proceed to trial.⁶⁴ The next day, Wachapá was transferred to the prison of Latacunga, nearly 300 kilometers away, where he was taken into pre-trial detention.⁶⁵ The judge justified the pre-trial detention ruling by referring to Wachapá’s post on Facebook, which he said was “a strong indication that a crime [of incitement to discord] has been committed.”⁶⁶

Wachapá told Human Rights Watch that he was held in the maximum-security section of the Latacunga prison for four months, until April 25, 2017, when he was granted provisional release after paying a US\$6000 bail.⁶⁷

Wachapá was charged under article 348 of the Ecuadorian criminal code, which carries a one to three-year prison sentence for those who “foster discord between citizens, by arming them or inciting them to take up arms against each other.”⁶⁸

To support these charges, the prosecution provided the following items—none of which, in Human Rights Watch’s estimation, could reasonably be construed as evidence that Wachapá had armed anyone or incited violence:

1. A copy of the complaint presented by Torres Saldaña and his statement;⁶⁹
2. A copy of presidential decree no. 1276 that declared the state of exception;⁷⁰
3. A police report on the December 14 confrontation at the mine—an incident that took place *before* Wachapá’s Facebook posting—that did not refer to Wachapá or link him in any way to the event that day;⁷¹
4. A police report about the arrest of Agustín Wachapá on December 21, 2016;

⁶⁴ *Attorney General, Torres Saldaña Diego José, Prosecutor of Morona Santiago v. Wachapá Atsasu Jimpikit Agustín*, Hearing Summary, Gualaquiza Judicial Unit, December 22, 2016.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Human Rights Watch telephone interview with Agustín Wachapá, January 24, 2018.

⁶⁸ Código Orgánico Integral Penal, 2014, http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf (accessed March 14, 2018) art. 348.

⁶⁹ *Attorney General, Torres Saldaña Diego José, Prosecutor of Morona Santiago v. Wachapá Atsasu Jimpikit Agustín*, Trial Hearing Summary, Gualaquiza Judicial Unit, September 18, 2017.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

5. The testimony of a radio presenter recounting the December 1, 2016, interview in which, according to Wachapá, he discussed Shuar peoples' pre-colonial history as warriors;⁷²
6. A screenshot of Wachapá's posting on Facebook.⁷³

There are six items in the prosecution's case file. Of these, five are of no relevance to the charge of incitement. Neither the presidential decree nor the police report of the December 14 confrontation describe any action committed by Wachapá, and the testimony of the radio presenter relates to a program dated two weeks prior to Wachapá's Facebook post. The report about Wachapá's arrest describes him trying to evade police officers, which is not probative that he incited violence.

The sixth piece of evidence advanced by the prosecution is a Facebook post published by Wachapá on December 17, 2016. The post's writing is ambiguous; it would seem Wachapá, in the name of the FICSH, called for a "state of emergency and war between Ecuadorians" but immediately after also demanded "unity and the immediate withdrawal of the military from Shuar territory." However, in context, Wachapá's message can be understood as referring to the state of exception that president Correa had declared three days prior and the subsequent deployment of military personnel in the Morona Santiago province.

Nonetheless, even if Wachapá's post is read as a call to war despite the context elucidated above, this single Facebook post would constitute the only evidence that has any arguable probative value in the prosecution's entire file. In Human Rights Watch's estimation, it was not defensible for the prosecution to bring serious criminal charges in this case solely on the strength of this one weak and doubtful piece of evidence. The charge is, by any reasonable estimation, devoid of meaningful evidentiary support.

Wachapá's trial is scheduled to conclude on March 28, 2018.⁷⁴ Under the Ecuadorian criminal code, he could be sentenced to up to three years in prison for the crime of incitement to violence. He remains under a travel ban.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Human Rights Watch telephone interview with Agustín Wachapá, January 24, 2018; Human Rights Watch telephone interview with Julio César Sarango, criminal defense attorney, March 21, 2018.

As his family's primary source of income, Wachapá told Human Rights Watch that the ordeal had "ruined" his family economically.⁷⁵ During the time he spent in detention, unable to work, his elder son was forced to abandon university temporarily to provide for his mother and his younger sibling.⁷⁶

11th Oil Round

Seven indigenous leaders and environmentalists who protested oil exploration in 2013 remain subject to a criminal investigation that has failed to yield any evidence against them for over four years.

On November 28, 2013, indigenous and environmental activists demonstrated outside the Hydrocarbons Secretariat in Quito, where foreign investors were gathered to bid on rights to explore for oil in two million hectares of land in the southeastern Amazon, including the territories of seven indigenous peoples.⁷⁷

At the end of the auction, some of the demonstrators accosted a Belarusian businessman and a Chilean diplomat as they left the meeting. Video footage broadcast by local news media shows protesters following the men through the streets and yelling at them.⁷⁸ One of the protesters, an indigenous man identified as Patricio Sake by police, is seen in the video hitting the businessman on the head with the flat edge of his spear.⁷⁹

On his TV show on November 30, President Rafael Correa showed a video of the protest and close ups of the faces of indigenous leaders and environmentalists who participated, calling them "violent people, bad people, often corrupt."⁸⁰ Correa repeatedly called upon the interior minister, José Serrano, to investigate "these violent people" and to report back

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Sebastián Mantilla, "XI Ronda Petrolera", *El Comercio*, November 28, 2012, <http://www.elcomercio.com/opinion/xi-ronda-petrolera.html> (accessed March 9, 2018); Amazon Watch, "Ecuadorian Government Responds with Crackdown Following 11th Round Failure", December 5, 2013, <http://amazonwatch.org/news/2013/1205-ecuadorian-government-responds-with-crackdown-following-11th-round-failure> (accessed March 9, 2018); Pachamama Alliance, <https://www.pachamama.org/advocacy/fundacion-pachamama> (accessed March 9, 2018).

⁷⁸ El Ciudadano, "EC350: Oposición con barbarie y violencia contra la 11 Ronda Petrolera y un empresario de Belarús", November 30, 2013, video clip, YouTube <https://www.youtube.com/watch?v=O2klyoTl9kc> (accessed March 14, 2018).

⁷⁹ Ibid., min 2:55.

⁸⁰ "Enlace Ciudadano 350 desde Arenillas, El Oro", December 8, 2014, video clip, YouTube <https://www.youtube.com/watch?v=WGxXXViKVao> (accessed March 9, 2018), min 03:26-03:28.

to him.⁸¹ The president singled out the Pachamama Foundation (*Fundación Pachamama*), one of the country's most prominent environmental organizations, which had helped to organize the protest. "When we close them down, for clearly getting involved in politicking, then of course they will complain there is no freedom of association," he said.⁸²

Four days later, on December 4, the Ministry of the Environment ordered the closing of the Pachamama Foundation.⁸³ The ministry relied on a decree issued by President Correa in June 2013 that gave the executive branch the power to dissolve NGOs on the grounds that they have "compromise[d] public peace" or have engaged in activities that are different from those they identified when registering with the government.⁸⁴

The ministry's order for dissolution stated it was dissolving Pachamama Foundation because its activities "deviated from the purpose for which they were constituted" and quoted a report from the Interior Ministry that stated "representatives of the organizations 'Pachamama' and 'La Hormiga' began a violent protest, infringing on public order and the physical integrity of the attendees," without specifying who these members were or what they had done.⁸⁵

In December 2013, the Pachamama Foundation was forced to cease operations. Pachamama was given no advance notice, no real opportunity to challenge the decision, and no choice but to return the funding it had received from international donors and close down its operations.⁸⁶

⁸¹ Ibid. min 03 :23.

⁸² Ibid., min. 03:29.

⁸³ Environment Ministry, "Se disuelve la Fundación Pachamama, tras comprobarse que la ONG violó el Reglamento de Organizaciones Sociales", December 4, 2013, <http://www.ambiente.gob.ec/se-disuelve-la-fundacion-pachamama-tras-comprobarse-que-la-ong-violo-el-reglamento-de-organizaciones-sociales/> (accessed March 14, 2018).

⁸⁴ Executive Decree no. 16, "Se expide reglamento para el funcionamiento del sistema unificado de información de las organizaciones sociales y ciudadanas", June 4, 2013, https://minka.presidencia.gob.ec/portal/usuarios_externos.jsf (accessed March 14, 2018).

⁸⁵ Environment Ministry, Acuerdo no. 125, December 4, 2013, http://www.ministeriointerior.gob.ec/wp-content/uploads/2013/12/acuerdo_ministerio_ambiente.pdf (accessed March 14, 2018) and Interior Ministry, Oficio No. MDI-VSI-2013-00030 quoted in Environment Ministry, Acuerdo no. 125, December 4, 2013; Environment Ministry, "Se disuelve la Fundación Pachamama, tras comprobarse que la ONG violó el Reglamento de Organizaciones Sociales", December 4, 2013, <http://www.ambiente.gob.ec/se-disuelve-la-fundacion-pachamama-tras-comprobarse-que-la-ong-violo-el-reglamento-de-organizaciones-sociales/> (accessed March 9, 2018).

⁸⁶ Daniel Wilkinson, "Environmentalists under Siege", *Foreign Affairs*, August 27, 2015, <https://www.hrw.org/news/2015/08/27/environmentalists-under-siege-ecuador> (accessed March 14, 2018).

In addition to shutting down the NGO, the Correa administration also sought criminal charges against leading indigenous and environmental activists present at the protest. Secretary of Hydrocarbons Gustavo Donoso filed a criminal complaint on November 28, 2013, in which he did not identify the alleged culprits but instead pointed to whole organizations as suspects and accused them of allegedly “shoving, threatening and assaulting” the Belarusian businessman.⁸⁷ The Secretary referred to “CONAIE, CONFENIAE [and] the Amazonian Women”.⁸⁸

The prosecutor opened a criminal investigation against 10 suspects: the spear-wielding protestor, Patricio Sake; a man with no known affiliation, Eucevio Ruis Santi; a student, Andrea Medina Dalgo, and 7 suspects who were outspoken indigenous leaders and environmental activists.⁸⁹ These are:

- Bartolo Ushigua, then vice president of CONAIE and a Sapara indigenous leader.
- Franco Viteri, then president of the Confederation of Indigenous Nations of the Ecuadorian Amazon (CONFENIAE, previously known as GONOAIE);
- Gloria Ushigua, coordinator of the Sapara Women’s Association “Ashiñwaka” from Pastaza;
- Jaime Vargas, then president of the Achuar Nation, currently president of CONAIE;
- Manuel Humberto Cholando, then president of CONAIE and previously president of the Confederation of Kichwa Peoples of Ecuador (ECUARUNARI);
- Margoth Escobar, well-known environmental and indigenous rights defender from Pastaza;
- Patricia Gualinga, indigenous rights defender, leader of the Kichwa people of Sarayaku and a witness in the case her people won against the Ecuadorian state at the Inter-American Court for Human Rights in 2012 for widespread damages caused by oil exploration in their territory.

Human Rights Watch was able to review the case file. The *Quick Solutions Unit* (*Unidad de Soluciones Rápidas* in Spanish) of the Prosecutor’s Office is in charge of investigating it.⁹⁰

⁸⁷ Investigación Previa no. 170101813115127, Human Rights Watch reviewed this file in the prosecutor’s office in Quito; it contained the complaint submitted by Secretary Donoso.

⁸⁸ Ibid. CONAIE refers to the Confederation of Indigenous Peoples of Ecuador (Confederación de Nacionalidades Indígenas del Ecuador in Spanish), CONFENIAE refers to the Confederation of Indigenous Nations of the Ecuadorian Amazon (Confederación de las Nacionalidades Indígenas de la Amazonia Ecuatoriana in Spanish).

⁸⁹ Investigación Previa no. 170101813115127, Human Rights Watch reviewed this file in the prosecutor’s office in Quito.

⁹⁰ Investigación Previa no. 170101813115127, Human Rights Watch reviewed this file in the prosecutor’s office in Quito.

More than four years after the investigation started, the file contained only the following items:

- Press clippings from various news outlets that reported on the protest, without specific information about the suspects;
- Screenshots of Facebook postings by the Pachamama Foundation and several other environmental organizations calling on the public to join the protest—none of which contain language that could be reasonably construed as incitement to commit violence;
- Copies of close-up photographs of the faces of the suspects, with no indication of where or when they were taken;
- Written testimony by three police officers who claim they had been yelled at and shoved by protesters, but do not mention any of the indigenous or environmental activists, nor indicate the identity of the persons who did the yelling and shoving.

In Human Rights Watch’s estimation, none of these items could reasonably be construed as evidence that the 7 suspects had committed crimes.

Under article 585 of the Ecuadorian criminal code, the prosecutor should have archived the investigation in 2015, at most two years after it was opened if he did not press charges.⁹¹ Nonetheless, more than 4 years later, the criminal investigation remains open.

⁹¹ Código Orgánico Integral Penal 2014, http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf (accessed March 14, 2018), art. 585. Human Rights Watch also consulted two Ecuadorian legal experts—both practicing criminal defense lawyers and academics—who confirmed this would be the appropriate course of action for the prosecutor.

Ecuador's Human Rights Obligations

The Rights of Victims of Abusive Prosecutions

Under the International Covenant on Civil and Political Rights (ICCPR), which Ecuador ratified in 1969, the state must uphold the right of every person “be presumed innocent until proved guilty according to law.”⁹² Ecuador must also ensure every accused person’s right to “a fair and public hearing by a competent, independent and impartial tribunal established by law” in the determination of any criminal charge against him/her.⁹³

Furthermore, “when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law.”⁹⁴

The ICCPR also mandates that “no one shall be subjected to arbitrary arrest or detention.”⁹⁵ In the event a person is arbitrarily deprived of their liberty by an unlawful arrest or detention, they “shall have an enforceable right to compensation.”⁹⁶

Under the American Convention on Human Rights (ACHR), which Ecuador ratified in 1977, the state is also under an obligation to protect the right of every person “to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.”⁹⁷

⁹² *United Nations Treaty Collection, Status of Treaties: International Covenant on Civil and Political Rights* https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en (accessed March 8, 2018); International Covenant on Civil and Political Rights (ICCPR), adopted December 19, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.T.S. 171, entered into force March 23, 1976, ratified by Ecuador on March 6, 1969, Article 14 para. 1.

⁹³ ICCPR, art. 14(2).

⁹⁴ ICCPR, art. 14(6).

⁹⁵ ICCPR, art. 9(1).

⁹⁶ ICCPR, art. 9(5).

⁹⁷ American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Ecuador in August 12, 1977, art. 10 http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (accessed March 8, 2018).

International Standards for Independent and Impartial Courts

The United Nations Human Rights Committee, which assesses state compliance with the ICCPR and provides authoritative interpretations of the treaty's provisions, has called on States to “take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making.”⁹⁸ The Committee has qualified “the requirement of competence, independence and impartiality of a tribunal” as “an absolute right that is not subject to any exception.”⁹⁹

Regarding the role of judges in upholding the requirement of impartiality, the Committee has established that they must not “act in ways that improperly promote the interests of one of the parties to the detriment of the other.”¹⁰⁰

International Standards for Prosecutors

The UN Guidelines on the Role of Prosecutors note that “prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.”¹⁰¹

International Standards of Protection for Environmental Human Rights Defenders

International norms recognize that states have a responsibility to protect and enable the work of human rights defenders.¹⁰² In addition, the special procedures created by the United Nations Human Rights Council have contributed to developing standards of protection specifically for environmental human rights defenders (EHRDs).

⁹⁸ U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before the courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), p. 5, para 19 <https://www.icj.org/wp-content/uploads/2014/03/Human-Rights-Committee-General-Comments-equality-before-courts-and-tribunals-report-CCPR-C-GC-32-2007-eng.pdf> (accessed March 8, 2018).

⁹⁹ *Ibid.*, p. 5, para. 19.

¹⁰⁰ *Ibid.*, p. 6, para. 21.

¹⁰¹ *Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Guidelines on the Role of Prosecutors*, adopted on September 7, 1990, <https://www.icj.org/wp-content/uploads/2014/03/UN-Guidelines-role-prosecutors-instruments-1990-eng.pdf> (accessed March 8, 2018), art. 14.

¹⁰² See United Nations General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, A/RES/53/144, March 8, 1999, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf> (accessed March 8, 2018), art.12.

The UN special rapporteur on the situation of human rights defenders has underlined the “unprecedented risks” faced by environmental human rights defenders, referring to the “growing number of attacks and murders of environmental defenders”.¹⁰³ The special rapporteur called on states to “reaffirm and recognize the role of environmental human rights defenders and respect, protect and fulfil their rights” as well as “ensure a preventive approach to the security of environmental human rights defenders by guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses [sic].”¹⁰⁴

In March 2018 the special rapporteur on human rights and the environment presented to the Human Rights Council the synthesis of his work over the course of his mandate: a set of framework principles “to facilitate implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”.¹⁰⁵ Crucially, framework principle 4 calls upon states to “provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”¹⁰⁶

In *Kawas Fernández v. Honduras*, a case concerning violence against EHRDs, the Inter-American Court of Human Rights, determined that “the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”¹⁰⁷

¹⁰³ Special Rapporteur on the situation of human rights defenders, “Violence against environmental defenders – New UN major report urges zero-tolerance”, October 21, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20730&LangID=E> (accessed March 9, 2018).

¹⁰⁴ Situation of human rights defenders, August 3, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement> (accessed March 9, 2018), p. 25.

¹⁰⁵ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, January 24, 2018, A/HRC/37/59, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement> (accessed March 9, 2018), p.3, para.7.

¹⁰⁶ *Ibid.*, p.9.

¹⁰⁷ Inter-American Court of Human Rights, *Kawas-Fernández Case*, Judgment of April 3, 2009, Inter-Am. Ct.H.R., (Ser. C) No. 196 (2009) http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf (accessed March 8, 2018), para. 145.

Building on these standards, states in Latin America and the Caribbean adopted on March 4, 2018, the Regional Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Matters of Latin American and Caribbean Countries (LAC P10). This international treaty establishes specific standards of protection for environmental human rights defenders (EHRDs).¹⁰⁸ Ecuador was one of the 24 countries that negotiated the agreement and adopted it by consensus. The standards of protection consist of three elements: an enabling environment for the work of EHRDs; measures to recognize and promote the work of EHRDs, including by upholding freedom of expression and assembly; and measures to prevent, investigate and sanction attacks or threats against EHRDs.¹⁰⁹

¹⁰⁸ *Economic Commission for Latin America and the Caribbean (ECLAC)*, “Latin America and the Caribbean Adopts Its First Binding Regional Agreement to Protect Rights of Access in Environmental Matters”, March 4, 2018, <https://www.cepal.org/en/pressreleases/latin-america-and-caribbean-adopts-its-first-binding-regional-agreement-protect-rights> (accessed March 8, 2018); *Economic Commission for Latin America and the Caribbean (ECLAC)*, “Countries Agree on Protection of Defenders of Human Rights in Environmental Matters during Negotiation of Regional Treaty”, December 1, 2017, <https://negociacionp10.cepal.org/9/en/news/countries-agree-protection-defenders-human-rights-environmental-matters-during-negotiation> (accessed March 8, 2018).

¹⁰⁹ Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, March 4, 2018, art.9. The text of the agreement was distributed in the last negotiating session and is on file with the author.

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