

## VERDICT OF THE ETHICAL TRIBUNAL REGARDING THE CRIMINALIZATION OF HUMAN RIGHTS AND ENVIRONMENTAL DEFENDERS<sup>1</sup>

Cuenca, Ecuador, June 22nd - 23rd, 2011

The Ethical Tribunal on Criminalization was organized in response to the request of Ecuadorian communities, peoples, social organizations and NGOs who have been victims of an increasingly widespread practice of criminalization and legal persecution as a result of their struggle for their collective rights and those of nature. This practice has been encouraged by national and transnational corporations, particularly in the extractive sector, and carried out by different judicial, police, military, and administrative authorities.

We have responded to this call as citizens committed to the promotion and defense of human rights and the rights of nature, convinced that the abusive use of force on the part of law enforcement officials and the use of the justice system taking place in criminal and administrative courts to restrict social mobilizations taking place in the defense of rights, seriously undermines the capacity of individuals, communities, social organizations and NGOs to bring about *sumak kawsay* (see definition below).

We have learned from the experiences of courts of opinion, People's Tribunals, Truth and Ethical Commissions, and all such initiatives that appeal to the human conscience to judge the acts and omissions of states, corporations and other private agents deliberately carried out in order to weaken, limit and eliminate the legitimate claims for human rights and the rights of nature. Given the limitations of national and international legal systems, these acts often remain in the most intransigent and notorious impunity.

Our efforts in no way intend to replace the state's duty to ensure the enjoyment of guarantees within its jurisdiction. We do, however, seek to invigorate the justice system so that it does not become a tool for restricting the rights to collective organization, association, assembly, protest, social mobilization, participation, and the defence of collective rights and the rights of nature.

Those of us participating in this ethics tribunal do so based upon our commitment to peoples and to *Pachamama* (Mother Earth, see definition below). We are not legal practitioners, but rather people who believe and feel that our place in life is together in the struggle with the oppressed. In this regard, the decisions of this tribunal should be understood as a small contribution to the dissemination of the processes of resistance and injustices that we live on a daily basis. This is just a drop of water, like many others that together make up the small streams that are moving with dignity and converging to form currents of rebellion.

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<sup>1</sup> Unofficial translation to English from the original Spanish, please double check legal language in particular with original documentation. All international covenants cited have been quoted directly from the original in English.

We trust that the experience of the People's Tribunal against Criminalization will contribute to:

- Reveal the dramatic situation that communities and individuals are facing who are exposed to the selective punitive power of the state
- Encourage law enforcement officials to limit the use of force against them
- Promote legal activism in favour of rights and not of interests related to the exploitation of territories
- Promote the efforts of oversight bodies with the aim of monitoring, investigating and punishing activities that violate collective rights and the rights of nature
- Promote similar efforts among the peoples of Abya Yala until the justice system and executive and legislative powers understand that the survival of humanity depends on full respect for nature, overcoming racism, respect for the connection peoples have to their ancestral territories, and for the wisdom of native seed and water conservation.

We, Elsie Monge of Ecuador, Raúl Zibeche of Uruguay, Lía Isabel Alvear of Colombia, and María Hamlin Zúñiga of Nicaragua, acting as judges along with Raul Moscoso and Diana Murcia, both lawyers acting as associate judges of the People's Tribunal on Criminalization held in Cuenca, Ecuador, on June 22, 2011 deliver the following verdict:

## **I. The Tribunal's Legitimacy**

Individuals, organizations, communities and peoples who have been criminalized as a result of their defense of collective rights and the rights of nature have requested this People's Tribunal. They have been brought before criminal or administrative courts, or threatened with legal action, accused of various crimes, including terrorism.

The tribunal's legitimacy is premised on this request and is further based on the recognition that diverse international instruments have made of legal guarantees and the right and duty to promote and defend human rights, and the full enjoyment of legal safeguards. These include:

The *Universal Declaration of Human Rights*, which after considering that "disregard and contempt for human rights have led to barbarous acts which have outraged all humankind, and has proclaimed the advent of a world in which human beings, free from fear and misery, enjoy freedom of speech and freedom of belief as the highest aspiration of human beings," has established, among others, the following rights:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Art. 8)

No one shall be subjected to arbitrary arrest, detention or exile. (Art. 9)

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. (Art. 10)

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

according to law in a public trial at which he has had all the guarantees necessary for his defence. (Art. 11)

The *American Convention on Human Rights*, which has recognized "the ideal that every human being may live in freedom, free from fear and want, can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as their civil and political rights," has established that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. (Art. 8)

The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* has established that

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. (Art. 1)

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: a) To meet or assemble peacefully; b) To form, join and participate in non-governmental organizations, associations or groups; c) To communicate with non-governmental or intergovernmental organizations. (Art. 5)

...everyone has the right, individually and in association with others, inter alia a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay; (Art. 9)

The *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, has recognized that individuals who are criminalized and legally persecuted have been once victimized when their collective rights were violated and then re-victimized when they are punished for demanding their violated rights. This declaration states that:

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. (Art. 4)

Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims. (Art. 7)

States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. (Art. 19)

This Tribunal is also premised upon Ecuador's Constitution which states in its preamble "that nature, Pachamama, of which we are part and which is vital to our existence," expressing the will of the Ecuadorian people to bring about "a new way of peaceful coexistence in diversity and harmony with nature to realize good living, *sumak kawsay*, and a society that respects, in all its dimensions, the dignity of all people and communities," and which recognizes as rights:

Individuals, communities, peoples, nations and collectives are entitled and shall enjoy the rights guaranteed in the Constitution and in international instruments. Nature will be the subject of the rights recognized in the Constitution. (Art. 10)

The exercise of rights will be guided according to the following principles: 1. Rights may be exercised, promoted and demanded individually or collectively before the respective authorities; these authorities will guarantee their fulfillment. 2. All persons are equal and will enjoy the same rights, responsibilities and opportunities. No one can be discriminated against based on any distinction, personal or collective, temporary or permanent, which has the aim or result of undermining or annulling the recognition, enjoyment or exercise of rights. 5. With regard to rights and constitutional guarantees, public servants, whether administrative or judicial, should apply the norm and interpretation in order to best favour their effective enforcement. 8. Whatever regressive act or omission, which unjustifiably diminishes, undermines or annuls the exercise of rights, will be deemed unconstitutional. (Art. 11)

The following collective rights are recognized and will be guaranteed for indigenous communes, communities, peoples and nationalities in conformity with the Constitution and with treaties, conventions, declarations and other international human rights instruments: 1. Freely maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization. 2. To not be subject to racism or any other form of discrimination related to their origin, ethnic or cultural identity. 9. To conserve and develop their own forms of social coexistence and social organization, and of the creation and exercise of authority in their legally recognized territories and ancestrally held communal lands. 15. To construct and maintain representative organizations in the framework of respect for plurality and cultural, political and organizational diversity. The state will recognize and promote all forms of expression and organization (Art. 57).

The following rights will be recognized and guaranteed for all persons: 23. The right to present complaints, as well as individual or collective petitions, to the authorities and to receive due attention or response. 29. The rights to freedom also include that no person may be obliged to do something that is prohibited or to avoid doing something that is not prohibited by law. (Art 66)

Nature or Pachamama, where it is reproduced and maintains life, has the right to its existence, sustenance and regeneration of its essential cycles, structure, functions and evolutionary processes integrally respected. Every person, community, people or nationality may demand before public authorities the fulfillment of the rights of nature. To apply and interpret these rights, the principles established in the Constitution will be observed in the proceedings. (Art. 71)

The victims of criminal infractions will enjoy special protection, they will be protected against revictimization, particularly in the process of gathering and assessing the evidence, and they will be protected from all sorts of threats or other forms of intimidation. Mechanisms will be adopted for holistic reparations, which will include, without delay, knowledge of the truth of the acts that took place and restitution, compensation, rehabilitation, guarantee that the situation will not be repeated and fulfillment of the right that was violated. (Art. 78)

Individuals and collectives may exercise the right to protest in the face of acts or omissions of public authorities or of non-state natural or legal persons who violate or may violate their constitutional rights, and demand the recognition of new rights. (Art 98)

International instruments and the national constitution constitute necessary reference points for Ecuadorian authorities, given that it has been determined to be a primordial duty of the state “to guarantee without discrimination the effective enjoyment of rights established in the Constitution and international instruments” (Art 3), together with the principle of immediate enforcement that “the rights and guarantees established in the Constitution and in international human rights instruments will be directly and immediately enforced by and before any public servant, administrative or judicial, either by virtue of their office or at the request of a party.” (Art. 11-3)

## **II. Procedure**

In order to bring together the tribunal, the participation of men and women from different countries, noted for their work in defense of collective human and environmental rights was taken into consideration. As such, the tribunal included:

**Elsie Monge**, a pioneer in the defense of human rights in Ecuador, who was part of this country’s Truth Commission, an instrument to overcome the impunity of human rights violations that were committed during the period of dictatorship.

**Raúl Zibechi**, Uruguayan journalist and writer, who has studied social movements in Latin America in great depth and accompanied the World Social Forum process.

**María Hamlin Zúniga**, activist and member of the International Coordinating Committee of the Movement for the Health of the Peoples.

**Lía Isabel Alvear Ramírez**, a Colombian agronomist, professor in environmental studies and law at the University of Antioquia, environmental defender in her work as both teacher and essay writer.

In order to ensure technical legal expertise, the associate judges of the tribunal were:

**Raúl Moscoso**, Ecuadorian lawyer and human rights defender. He has provided legal accompaniment to Ecuadorian individuals, organizations, peoples and communities. He has also been spokesperson for the Constitutional Guarantees Tribunal and Adjunct People’s Ombudsman.

**Diana Murcia**, Colombian lawyer and human rights defender who has represented victims of human rights violations and provided legal support on issues related to the rights of nature.

In order to guarantee due process with regard to the Ecuadorian state, which is accused of violations that have been reported, the State Public Prosecutor was invited to participate with sufficient notice with the objective that it would serve in the state’s defense

according to its constitutional responsibility to provide legal representation for the state. No member of this organization, however, attended the tribunal, as a result of which the hearing took place without its participation. With the same objective of ensuring due process as per the Ecuadorian state, the Ministry of Justice, the Attorney General and the People's Ombudsman were also invited, but did not attend, nor did they send any delegates on their behalf.

With the aim of ensuring supporting criteria for the deliberations of the tribunal, expert opinions were considered including presentations from Ramiro Ávila, university professor dedicated to training administrators of judicial guarantees; Blanca Chancoso, Ecuadorian indigenous leader; Esperanza Martínez, environmentalist and participant in drafting Ecuador's new constitution; as well as Fernando Gutiérrez, chief People's Ombudsman.

The tribunal outlines the following definitions in order to contextualize and facilitate full understanding of this verdict:

**Sumak kawsay.** Part of the recognition of nature in which we recognize ourselves as part of nature and struggle such that what is left of nature is respected and allows us to sustain it with dignity for future generations. This is an achievement and recognition of the dreams for what used to be called utopia: the dream to bring an end to racism, to discrimination, to inequalities, and to replace this with collectivity. For indigenous peoples, this is the revitalization of a life plan that was cut short 500 years ago. But don't we all want a life with dignity? This is the dream of all for life with dignity for all.

**Nature or Pachamama.** This is a sacred term. If it didn't exist, we would not exist. It is necessary to consider nature as a mother that gives life to human beings, to plants and to animals, and to recognize that she's sick because her children have misbehaved and that others, those who govern, have behaved even more poorly. Some of her children are working to understand how our mother might be healed in order to heal ourselves and to defend her.

**Environmental defenders.** Those who have received the call to understand nature in a new way, recognizing that defining nature is not the exclusive domain of biologists, nor of lawyers, but rather of peoples that are capable of understanding that nature encompasses us all. They are also people who have suffered criminalization, delegitimization, humiliation and poor treatment, and who need to be recognized and receive reparations from public institutions and all of society. The defense of the environment is not an objective, but rather a way of living: is it impossible to bring about *sumak kawsay* if the opportunities for communities to continue their struggle are destroyed.

**Protest.** The complex exercise of various constitutionally protected rights, among which are included the right of association, participation, protest, petition, and resistance, which add up to the right of the freedom of expression. Protest is brought about within the context of unjust societies in which there are a few who have much and other who don't

even have access to their basic necessities, including communication media, and as a result have no other option than to protest. Protest also emerges when access to justice is unequal and is complicated by problems of distance, lack of legal assistance, shortage of financial resources, etc., such that the only channel that many communities have to demand justice is through protests. If the measures for protection and guarantee of their rights are not effective, protests arise. Democracy in practice considers minorities and dissent; formal democracy only considers majorities and consensus. Without protest there is no exercise of rights, in a real democracy public protest is a right that must be protected and its criminalization signifies state dysfunction.

**Criminalization.** When public demonstrations, protests or legitimate claims made by individuals, social groups or collectivities are deemed criminal through the assignment of serious crimes to the acts of protest. Criminalization of social protest has two moments. Primary criminalization consists of the development of the criminal code such that acts of protest are subject to criminal proceedings, as if they were serious infractions or crimes. Secondary criminalization is when, beyond the laws themselves or use of the laws, public armed forces and the justice system are used to threaten or strike fear in people or collectivities.

### **III. Background and Context**

Past governments have shared the idea of implementing, by whatever means possible, a model of economic growth and development sustained by the exploitation of non-renewable natural resources which, be they a blessing or a curse, exist in abundance in this country. The communities, peoples, and nationalities of Ecuador have come to see this model as a threat to the survival of people and nature.

The organizations that defend human rights and nature have united around this vision and in their efforts to carry out administrative, constitutional and judicial actions, as well as protests, to stop this suicide paradigm of growth that has the singular goal of extracting more and more economic benefits without considering the limitations of nature.

To impose this economic-centric growth, repression has been brought against those that oppose extractive projects, as well as the construction of mega dams or plantations that imply high social, cultural, and environmental costs, as well as irreversible and irreparable damages to nature.

Large mining, oil, and logging companies have made strategic alliances with governments. They have prompted government initiatives to eliminate obstacles that lay in the way of implementing such economic policies. These obstacles have first and last names; they refer to communities, peoples, nationalities, and human rights defenders. In the elimination of these human obstacles, government and big business allies have employed, on the one hand, police, military and paramilitary repression, and on the other hand, the stigmatization and persecution of social protest, resulting in a pattern of systematic criminalization.

The strategy to criminalize protest has paid off. It has achieved its objective of persecuting hundreds of people and depriving them of their freedom. In the context of this dramatic situation, during the government of Rafael Correa, the National Constituent Assembly met in Montecristi and issued two amnesties that ordered the shelving of all inquiries, preliminary investigations, and criminal proceedings against those who defend the rights of people and of nature. The National Constituent Assembly also issued a new Political Constitution, with lofty guarantees, that established for the first time in human history the rights of nature and the rights to political resistance. The constitution also adopted a social development model based on shared living and harmony between people and nature, or *sumak kawsay*.

Despite the Constitution of Montecristi and of the progressive discourse of the current government, political repression through the criminalization of social protest has resumed with unusual rigor, particularly targeting community leaders that oppose mining and who defend water and food sovereignty.

#### **IV. Cases considered by the Tribunal**

Given the context and cases presented, the members of the Tribunal determine the following:

1. In relationship to case N° 1, criminal charge against José Acacho, President of the Interprovincial Federation of Shuar Centres and ten members of the Shuar nationality with relation to national mobilizations against the governing administration's proposal for a new water law:

- We find that the government formulated a reckless charge in bad faith against the Shuar nationality in order to weaken their organization.

2. In relationship to case N° 2, criminal charge against community members and leaders of Echeandía and Las Naves counties, the president of FECABRUNARI, a peasant leader and environmentalist from the province of Guayas.

- The criminalization has been highly selective in which external activists sought to find out the motivations for resistance and undermine the capacity of the community to act on its own accord.

3. In relation to case N° 3, criminal charge against eight members of the MOCORAL BARCELONA community for impeding the company CECAL from operating illegally, without an environmental license, to exploit marble, adding that the community members were the object of violent displacement and the mine was under police protection.

- The treatment of CECAL contrasts with that which the government has given to small and medium sized miners in Zamora Chinchipe and Esmeraldas who have had their machinery and equipment destroyed to prevent further extraction, alleging the violation of the rights to nature.

4. In relation to case N° 4, a criminal charge against the President of the Rural Parish Government of Victoria del Portete, a leader from the community water board systems of



the province of Azuay, and three villagers, initially for sabotage and later for blocking of a public thoroughway.

- We note that acts of resistance interpreted broadly as criminal offenses, such as sabotage, are unacceptably categorized as criminal offenses.
- The obstruction of public thoroughways is a measure commonly used by social movements, and the government wants to stiffen charges for this infraction.

5. In relation to case N° 5, accusation of sabotage and terrorism against the Presidents of the CONAIE and ECUARUNARI, Marlon Santi and Delfin Tenesaca, respectively, for leading a manifestation at the ALBA summit where issues related to indigenous peoples were addressed.

- We find that this complaint had the objective of dismantling the indigenous movement, since it has not been susceptible to cooptation by the government.

6. Pertaining to case N° 6, in which the Governor of Imbabura denounced three leaders of the Indigenous and Campesino Federation of Imbabura for sabotage and terrorism during protests against the state's official proposed water law, in which the prosecutor's report determined that the crime was instead obstruction of public thoroughways.

- Again, we have another case in which there is broad interpretation of article 160-A of the Criminal Code. This broad interpretation has the effect of identifying acts of resistance in defense of water as crimes of terrorism and sabotage.

7. With respect to case N° 7, criminal and administrative complaints against leaders of the community and municipal and rural parish authorities of Salango for usurpation, robbery, theft and burglary, and crimes against the environment, with the aim of punishing those that opened access to a public beach, roads and ancestral lands that had been appropriated by businessman Patrick Bredthauer in collusion with the property registrar and permissive state authorities

- In this case, criminalization took place for the admirable act of having achieved compliance with the Ecuadorian law through legal measures and public mobilizations.

8. In relation to case N° 8, sentences that convicted seven rural parish authorities and leaders from the county of Nabón for protesting against a mining project that threatens to destroy the páramo [high wetlands] that provides water for domestic and agricultural use. The accused lost their appeals and the case was brought before the Constitutional Court through an extraordinary appeal for protection issued by the People's Ombudsman.

- A powerful businessman from the province of Azuay instigated this process of criminalization.
- This case pertains to beneficiaries of the 2008 amnesty for whom this favourable constitutional resolution has not been applied.

9. In case N° 9, a criminal complaint against community members of San Pablo de Amalí parish of San José de Tambo, province of Bolívar, for their resistance against construction of a hydroelectric project, HIDRO-TAMBO, on the part of the Army Engineers Corps.

- The criminal prosecution moves ahead despite that these people are beneficiaries of the 2008 amnesty.
- A highly repressive operation was carried out against the population in this case.

10. With respect to case N° 10, ADELCA, various people opposed to the expansion of a smelter and consequent pollution find themselves facing criminal charges pursued by the company even though they were beneficiaries of the 2008 amnesty.

- The economic power of a few continues as they utilize the state to their benefit.

11. In relationship to case N° 11, imminent threat to the militarization of the Rio Grande area in the county of Choné in order to protect a Chinese company contracted to construct a reservoir on the Rio Grande for a multi-purpose project.

- The community has employed legal measures without success.
- The National Secretariat of Water ordered repression against them.

12. With respect to case N° 12, in which a copper mining project poses a grave threat to the páramos [high wetlands] of the Yanaurco sector of Cajas National Park in the province of Azuay.

- There will surely be a process of repression and criminalization against those that oppose this violation to the intangibility of Cajas National Park.

13. Pertaining to case No. 13, legal authorities demonstrated racial discrimination against people of the Saraguro indigenous nationality, who are subjects of a criminal complaint for their defense of water and nature.

14. In relationship to case No. 14, physical and psychological aggressions, legal and administrative persecution, and eviction of a family of peasant farmers in the county of El Pangui, province of Zamora Chinchipe.

- The mining company Ecuacorriente has employed violence and harassment, administrative complaints and lawsuits in relation to land holdings against the Belezaca Vintimilla family, owners of a farm where the company is interested in developing a mining project.
- In May 2011, state authorities made favorable decisions and backed by police actions, Ecuacorriente was able to evict the family from the farm that they have worked and lived on for 14 years.

## **V. The Tribunal's Conclusions**

The Tribunal has arrived at the following conclusions through a process of deliberation:

- Various legal and police instruments are being used to try to incapacitate resistance, which according to Ecuador's constitution is a right.
- The 2006 reform of the penal code goes against the constitution in so far as it restricts forms of resistance. This code lays out acts that constitute a crime, including various etceteras that make it possible to deem any protest a crime.

- The justice system has not acted objectively in various instances where it has favoured the executive government and punished protest in the name of national interests. It is these very national interests that have led to concern and protests on the part of peoples and communities, given that they consider that natural resources are being handed over in exchange for destruction of the natural environment, leaving national sovereignty in doubt.
- An attempt is being made to silence or obstruct protest, intimidate social leaders and weaken the social fabric that enables protests and social movements using the military and police instructed to intimidate with threat of force. The disproportionate use of military intervention and that of other armed forces seeks to play a disciplinary role against any rejection of corporations and collective mobilization before the authorities.
- Failure to fully apply the 2008 amnesty and maintenance of criminal records of individuals is a way to demotivate and intimidate organizations and collective action, and to demoralize communities. It has been possible to detect this attitude of the justice system and the state particularly against social leaders, who have accumulated unresolved charges that appear to be indefinitely drawn out.
- The government and the justice system have become accustomed to blaming social protest on the intervention of “external agents” in communities as instigators of collective action. This represents a vision of society that considers indigenous peoples, peasant farmers and popular urban sectors as incapable of deciding for themselves, revealing a poorly intentioned perspective informed by racial and class prejudices. The state is acting according to a “doctrine of national security” from the 1960s, which attributed public discontentment to the infiltration of communist agents as a way of avoiding real problems afflicting the country.
- What the state called protest, disorder, sabotage and terrorism are nothing other than actions in defense of the environment and human rights as enshrined within the constitution.

## **VI. Recommendations of the Tribunal**

The tribunal makes various recommendations included below, trusting that the Ecuadorian state, media, international community and national organizations will immediately adopt them in fulfillment of their obligations and responsibilities and as an unavoidable step to ensure that *sumak kawsay* does not remain a dream on paper.

### **Recommendations for the Ecuadorian state:**

#### **Recommendations to the Executive Government**

1. That the executive government headed by the President of the Republic and other officials refrain from:
  - a) Delivering speeches that delegitimize the work of environmental defenders.
  - b) Making statements that stigmatize human rights and environmental defenders.
  - c) Interfering with decisions that should be made by officials of the judiciary,

- especially in cases regarding the prosecution of members of social organizations, NGOs and communities, or interfering with decisions outside its mandate that are issued by courts in recognition of the rights of these individuals, organizations and communities.
- d) Developing and carrying out extractive policies, practices, projects and initiatives, which, in short, should conform to faithful compliance with the Constitution.
  - e) Refrain from justifying their policies as being in *public interest*, based on the powerful interests of majorities over those of vulnerable minorities, which ignores the plurality of legitimate interests that make up the country and for which human rights and environmental defenders are struggling.
2. That the executive government headed by the President of the Republic and other officials commit to:
    - a) Correct and retract public statements that have been made and that belittle and stigmatize human rights and environmental defenders.
    - b) Orient public policies towards respecting nature – Pachamama – its structure and life cycles.
    - c) Take all necessary actions to protect human rights and environment defenders whose wellbeing could be compromised by the nature of their work.
    - d) Engage in healthy and open relationships, free from discrimination, with individuals, organizations, communities and peoples. In the specific case of organizations, repeal provisions that aim to dissolve organizations or to have influence over their statutes.

### **Recommendations to the Legislature**

1. That the legislature, represented in the National Assembly refrain from:
  - a) Issuing rules contrary to the Constitution, particularly those that affect participation and free speech, and which contradict decisions related to human rights, peoples and nature.
  - b) Interfering beyond its strictly constitutional powers with the responsibilities of other branches of authority or agencies under state control such as the Ombudsman whenever they perform tasks related to human rights and the environment.
2. That the legislature, represented in the National Assembly proceed to:
  - a) Overturn articles within the criminal code that are being used to criminalize human rights and environmental defenders, particularly the following:

Article 128. **Incitement of public mayhem.** Anyone who publicly and beyond the cases provided for in this code, (...) offends or denigrates public institutions or the public law enforcement.

Article 129. **Obstruction of public thoroughways.** Anyone who impedes the free movement of vehicles, people or goods on public thoroughways in the country.

Article 148. **Sending false information abroad.** Whoever disseminates by any means or sends overseas propaganda, news or false information, intended to disrupt public order or affect national honour (...)

Article 153. **Promotion of parades or unauthorized public demonstrations.** Whoever promotes, directs or organizes demonstrations (...) in streets, squares or other open places, provided that they are made without written permission from the respective authority, in which the purpose of the meeting is determined and the place, day and time are verified, shall be punished with imprisonment (...) Directors, promoters and organizers will also be singled out, who appear as such for the speeches they give, for the handouts which they have published or distributed, by the directions that they utter, for the symbols that they wear or for their voluntary contribution of funds to the parade or demonstration or for any other significant acts.

Article 158 **Sabotage of public and private services.** Such a person will be subject to imprisonment under maximum security (*prisión mayor*) (...) who outside of the cases referred to in this code, destroys, damages, disables, disrupts or paralyzes public services, industrial or manufacturing facilities, shopping centers, ports, canals, dams, mines, explosives depots, vehicles or any other transportation vehicle, public or private utility for electricity, water, gas or other similar facilities or radio, telephone, telegraph, television or any other transmission system; stores of merchandise, explosives, lubricants, fuels, raw materials for production or consumption, or any other similar provision, in order to produce collective alarm.

Article 218. **Rebellion.** Rebellion constitutes any attack, or resistance carried out through violence or threats made to public employees, custodians or agents of the police, tax collection agents, executors of legal decrees and judgments, customs and revenues agents, and police officers when acting in accord with laws or orders or regulations from public authorities.

Article 230. **Offenses against the President of the Republic.** Whoever, using threats, menaces or insults, offends the President of the Republic, or a person exercising the executive function, shall be punished (...)

Article 231. **Offenses against other officials.** Whoever, using threats, insults, menaces or violence, offends () a senator or deputy, minister of state, magistrate or judge, governor or any other public official that has jurisdiction or civil or military authority, when in actual performance of their duties, or by virtue of one's ministry, shall be punished (...) Likewise articles 232 and 233, offenses against authorities in fulfillment of their duties and libel against courts or public authorities, respectively.

Article 369. **Illicit association.** Any association formed to harm persons or property is a crime for the sole fact of the association having been organized.

Article 416. **Destruction of means of communication.** Shall be punished with imprisonment those who incapacitate (...) (...) in whole or in part, the means or public works intended for public communication by land, air or water or who obstruct measures taken to ensure their safety.

Article 493. **Slandorous accusation of an authority.** (...) Those who have made a slanderous accusation against an authority will be punished. If the allegations made against the authority are not slanderous, but are still serious, the penalty will be imprisonment (...)

b) Particular attention should be given to the criminal category for terrorism, given that it is an open and non-descript category fully of anti-technical and poorly intentioned etcetera's that allow the disproportionate assignment of this crime to any conduct that the complex right to social protest encompasses. Therefore, the National Assembly should undertake to repeal this criminal category and ensure that it not issue any similar regulations of this kind:

Article 161.1 **Organized Terrorism.** (According to the 1974 reform made during the period of dictatorship). Those who individually or in association be they guerrillas, organizations, gangs, militia,

terrorist groups, urban guerrillas or anything similar, armed or not, who for purposes that may be patriotic, social, economic, political, religious, revolutionary, in protest or in demand of something, proselytizing, racial, local, regional, etc., commit crimes against the common security of individuals or groups of people of any class or of their property: assaulting, violating or destroying buildings, banks, stores, warehouses, markets, offices, etc., searching or invading homes, rooms, colleges, schools, institutes, hospitals, clinics, convents, facilities belonging to the armed forces, military, police or paramilitary, etc.; extracting or seizing assets or anything of value of any amount; kidnapping persons, vehicles, boats or aircraft to demand ransom, to pressure or demand that laws, orders or legally expedited dispositions be changed or that the responsible authorities release people who have been legally prosecuted or convicted for common or political crimes, etc.; occupying by force, through the use of threat or intimidation, places or public or private services of any nature or type; erecting barricades, barriers, trenches, obstacles, etc., for the purpose of confronting the armed forces to back their intentions, plans, hypothesis or proclamations; attacking, in any form, the community, or its goods and services, shall be punished by ordinary imprisonment under conditions of maximum security (*reclusión mayor ordinario*) for four to eight years and fined between \$1,777 to \$4,418 USD.

If as a result of the criminal offenses listed above, people are injured, the perpetrators will receive the maximum penalty indicated in the preceding paragraph and if one or more persons are killed, the penalty will be special imprisonment under conditions of maximum security (*reclusión mayor especial*) from sixteen to twenty-five years and a fine of \$6,418,000 to \$8,835 USD.

If the facts referred to in the first paragraph of this article only affect assets, in addition to the penalty given, the author or authors of the crime will be ordered to compensate for harm and damages caused.

## **Recommendations to the Judicial Branch**

1. The judicial branch, represented by the High Courts and judicial officials at all levels in the constitutional and criminal courts will refrain from:
  - a) Legally prosecuting any person who is a member of communities, organizations or peoples that are asserting their collective rights and the rights of nature.
  - b) Applying any criminal norm to defenders of collective rights and the rights of nature, and instead strictly abide by the principle that criminal law should only be used as a last resort.
  - c) Limiting their work or producing irregularities as a result of pressure from other branches of government, national and international companies, and other agents representing interests that compete with the legitimate interests of communities and nature.
  - d) Keeping the violations of rights suffered by individuals, communities, organizations, people and nature in impunity.
2. The judiciary, represented by the High Courts and judicial officials at all levels of the constitutional and criminal branches
  - a) Produce jurisprudence that is respectful of collective rights and the rights of nature.
  - b) Fulfill the amnesty granted in 2008 by the Constituent Assembly.
  - c) Archive all legal proceedings initiated against defenders of the rights of individuals, communities, peoples, organizations and nature as a result of their defense of these rights.
  - d) Make due process a guiding principle of their actions.

- e) Set aside the policy of limiting their selves to sentencing and direct their efforts to legal activism aimed at the protection of rights.
- f) Order the holistic reparation of victims of criminalization, their families and social environment. This includes soliciting an apology from the President of the Republic and a clear commitment not to criminalize social organization.
- g) To ensure that this situation not take place again, to investigate all officials and individuals who sought to use the justice system for such a despicable purpose. This requires the search for truth regarding the origins, means, and economic, political or social motivations that led to the abuse, and lack of recognition of community rights and criminalization of their leaders.

### **Recommendations to Law Enforcement Officials**

1. Refrain from using violence as a method to contain legitimate social mobilization and protests.
2. Refrain from using tear gas against demonstrators. These gases contain elements that are harmful to the health of people and the wellbeing of nature.
3. Ensure the protection of communities whenever their life and integrity is threatened, as well as that of nature whenever its existence, structure or life cycles are compromised, particularly as a result of extractive industries.
4. Within its internal procedures, sanction any kind of allowance for the use of violence against environmental defenders.
5. Refrain from carrying out military operations within the ancestral territories of indigenous communities, in compliance with the constitution, article 57, section 20.

### **Recommendations to all branches of the Public Sector**

As activities that require the harmonious collaboration of all branches of the public sector, we make the following recommendations:

1. That the restructuring of the justice system have a plurinational character, that it consider and apply to collective rights and the rights of nature or Pachamama, respecting the same hierarchy as the indigenous justice system.
2. That extractive projects and any other that involves the destruction of nature, its life cycles and structure, be suspended.
3. That interventions by public authorities in communities avoid generating any type of communal division that could weaken their organization.
4. That its relationship with the indigenous justice system be developed with respect for the plurinational character of Ecuador, prohibiting racism and resisting the colonial legacy of discrimination.
5. Make the necessary arrangements to comply with the judgments, observations and recommendations made by international bodies and those of the Truth Commission.

### **Recommendations to the Media**

1. To report truthfully and impartially events relating to the defense of human rights and nature.

2. To regard as news and as a relevant event, any situation related to nature, human rights and their defenders.
3. To provide the same space that is given to authorities and corporations to communities so that they can freely express their thoughts regarding socio-environmental conflicts and the criminalization of protest.

### **Recommendations to the International Community**

1. Recall that in Ecuador the recognition of nature as a subject and the attribution of its rights has been the result of centuries of resistance and can only hope to lead to *sumak kawsay* if the organizational capacity of communities, organizations and peoples exist, if they can dissent, demonstrate and protest and say that the devastation of nature is bad, and question officials and policies that allow and encourage this to happen.
2. Monitor and demand that the Ecuadorian state to comply with and implement the recommendations and international human rights standards, as well as commitments that it has to ensure the protection of human rights.

### **Recommendations to Communities and Organizations**

1. To act according to the principles of active non-violence, to sustain and promote the Ethics of Existence and the Ethics of Resistance.
2. To not give up in the defense of their rights or those of nature.
3. To not renounce the right to access to justice, the dream of *sumak kawsay*, nor memory of the past.

Signed:

Judge Elsie Monge, Ecuador

Judge Lía Isabel Alvear, Colombia

Judge Raúl Zibechi, Uruguay

Judge María Hamlin Zuñiga, Nicaragua

Associate Judge Diana Murcia, Colombia

Associate Judge Raul Moscoso, Ecuador