

The United Nations, the International Community's and the Government of Ecuador's Responsibility to Protect the Sapara People from Genocide



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[H]ow should we respond...
to gross and systematic violations of human rights
that offend every precept of our common humanity?

-Kofi Anan¹

Introduction

By virtue of being an endangered Indigenous People resisting extinction, the Sapara People, which numbers approximately 180 - 300 persons and is threatened by systematic territorial expropriation and oil exploitation by the Ecuadorian government and Chinese oil companies; by Socio Bosque, a governmental carbon offset project; as well as by a paramilitary encampment; has specific collective and individual rights and fundamental freedoms including the right to be protected from genocide. Furthermore, these rights include the responsibility of Ecuador to fully and effectively implement all these rights, as well as the United Nations', the international community's and Ecuador's responsibility to protect,² and the obligation to act immediately to prevent genocide and crimes against humanity.

¹ Kofi Anan in the report "We the Peoples" on the role of the United Nations in the 21st Century.

http://www.un.org/en/events/pastevents/we_the_peoples.shtml

² <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>

Responsibility to Protect

The prevention of genocide goes hand in hand with the responsibility to protect which is why the UN Secretary General not only has an Adviser on the Prevention of Genocide, Adama Dieng, but and Adviser on the Responsibility to Protect, Jennifer Walsh, as well. According to the United Nations,

II. An Endangered People and Compounding Threats of Genocide

According to UNESCO, “The Sapara developed in what is one of the most bio-diverse areas in the world and are the last representatives of an ethno-linguistic group that included nearly 39 other Peoples before the Spanish conquest.”³

In 2001, UNESCO issued the Declaration of the Oral heritage and cultural manifestations of the Sapara people as Intangible Heritage of Humanity and in 2008 inscribed them on the Representative List of the Intangible Cultural Heritage of Humanity.⁴

According to UNESCO, the Sapara People are “near extinction.” “The current situation of the Sapara people is critical, and today they are in very serious danger of disappearing altogether. In 2001, their population numbered no more than 300 (200 in Ecuador and 100 in Peru), of whom only five, all aged over 70, still speak the Sapara language.”⁵

The extreme vulnerability to extinction of the Sapara People has been compounded exponentially by the granting of oil concessions by the government of Ecuador to the Chinese oil companies Sipec and Andes Petroleum earlier this year, which merged with the Chinese conglomerate PetroOriental for blocks 79 and 83. The Sapara's Peoples' territory is in these blocks.

According to the *Los Angeles Times*, “Experts and activists fear that the deal could destroy a pristine rainforest ecosystem and threaten unique, endangered cultures, including two isolated indigenous tribes”,⁶ [the Tagaeri and the Taromenane].

Prevention requires apportioning responsibility to and promoting collaboration between concerned States and the international community. The duty to prevent and halt genocide and mass atrocities lies first and foremost with the State, but the international community has a role that cannot be blocked by the invocation of sovereignty. Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility where States are accountable for the welfare of their people. This principle is enshrined in article I of the Genocide Convention and embodied in the principle of “sovereignty as responsibility” and in the concept of the Responsibility to Protect.

The three pillars of the responsibility to protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit ([A/RES/60/1, para. 138-140](#)) and formulated in the [Secretary-General's 2009 Report \(A/63/677\) on Implementing the Responsibility to Protect](#) are:

1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement
2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

R2P is first and foremost a preventive principle that emphasizes a range of measures to stem the risk of genocide, war crimes, ethnic cleansing or crimes against humanity before the crimes are threatened or occur. R2P was created to address the international community's failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity.

<http://responsibilitytoprotect.org/>

³ UNESCO Video at <http://www.unesco.org/culture/ich/en/RL/oral-heritage-and-cultural-manifestations-of-the-zapara-people-00007>

⁴ UNESCO <http://www.unesco.org/culture/ich/en/RL/oral-heritage-and-cultural-manifestations-of-the-zapara-people-00007>

and [3.COM](#)

⁵ Ibid.

⁶ LA Times, <http://www.latimes.com/world/mexico-americas/la-fg-ecuador-china-oil-20160129-story.html>

The government of Ecuador has also imposed a controversial and contested carbon offset project called Socio Bosque⁷ in Sapara territory. In addition, in recent weeks, the Sapara Women's Association Ashiñwaka has denounced the detection of a paramilitary/military encampment in Sapara territory.

However, the current danger of escalating threats is not an isolated phenomenon but part of a pattern and continuum of genocide that UNESCO describes as “[f]our centuries of history, marked by the Spanish conquest, slavery, epidemics, forced conversions, wars and deforestation, [which has] have driven the Sapara people to near extinction.”⁸

In the “State of the World’s Indigenous Peoples”, the United Nations notes in the section entitled *Indigenous cultures threatened with extinction*, that “[t]he importance of land and territories to indigenous cultural identity cannot be stressed enough. However, indigenous peoples have continued to experience loss of access to lands, territories and natural resources. The result has been that indigenous cultures today are threatened with extinction in many parts of the world. Due to the fact that they have been excluded from the decision making and policy frameworks of the nation-states in which they live and have been subjected to processes of domination and discrimination, their cultures have been viewed as being inferior, primitive, irrelevant, something to be eradicated or transformed.”⁹

Obviously the government of Ecuador is not implementing its obligations under the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003¹⁰ insofar as the government is endangering the Sapara People and the corresponding intangible heritage of humanity rather than protecting them. But there is also a vast body of international human rights instruments that enshrine the collective and individual rights of the Sapara People that the government of Ecuador has ratified, which Ecuador is also violating. (See annexed Chart of Violations of the Sapara People’s Rights enshrined in International Human Rights Instruments, committed by the Government of Ecuador.)

III. Convention on the Prevention and Punishment of the Crime of Genocide

Of these instruments, the Convention on the Prevention and Punishment of the Crime of Genocide is of paramount importance. At least two of the criteria for genocide set out in Article II of the Convention apply to the situation of the Sapara People and the Indigenous Peoples in Voluntary Isolation, the Tagaeri and Taromenane:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (b) “Causing serious bodily or mental harm to members of the group;”
- (c), “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;”

⁷ <http://www.accioneologica.org/servicios-ambientes/documentos-de-posicion-de-a-e/1782-posicionsociobosque>
Former Director of Socio Bosque admits it could include mining and oil drilling <https://www.youtube.com/watch?v=Dxf6je5GBwE>

⁸ Ibid.

⁹ <http://www.un.org/esa/socdev/unpfii/documents/SOWIP/chapter%20highlights/chapter%202/sowip-ch2-en.pdf>

¹⁰ UNESCO <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>

Both the oil concessions granted by the government of Ecuador as well as its Socio Bosque project cause “serious mental harm” and could potentially cause “bodily harm” to the Sapara People as well as “inflict on the group conditions of life,” which could “bring about [the Sapara People’s] “physical destruction in whole or part,” as the communiqués of the Sapara Women’s Association Ashiñwaka and the protests of the Indigenous Nationalities of Ecuador against the concessions have repeatedly manifested.

According to Article III,

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide”

The government of Ecuador may be found to be both attempting and complicit in genocide. Article IV identifies those actors to be held accountable for genocide including “constitutionally responsible rulers, public officials or private individuals.”

IV. Precedent of Oil Exploitation Causing Genocide

There are important precedents of oil exploration, extraction, exploitation and transportation causing genocide in Ecuador and elsewhere. Texaco’s operations in Ecuador’s Northern Amazon have caused grave destruction of the environment and the cultural survival of Indigenous Peoples. According to Kerry Kennedy, President of the Robert F. Kennedy Center for Justice and Human Rights in *Chevron and Cultural Genocide*, “Two nomadic groups that once inhabited the region, the Tetetes and Sansahuari, have been wiped out.”¹¹

Unfortunately, Ecuador is not the only country where oil exploitation has caused genocide of an Indigenous People. According to Ken Aaro-Wiwa, the Ogoni People of the Niger Delta of Nigeria suffered the combined genocidal onslaught of Shell Petroleum Development Company and military dictatorships.¹²

V. Additional Rights

The rights of the Sapara Nation also include the fundamental right to free, prior and informed consent, which has violated repeatedly. Other key rights are recognized and enshrined in Convention 169 of the ILO, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights the Convention to Eliminate all forms of Racial Discrimination against Women, Convention to Eliminate all forms of Discrimination against Women, the Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs) and the American Declaration on the Rights of Indigenous Peoples, Universal Declaration of Human Rights among other international and national instruments. The growing jurisprudence on Indigenous Peoples’ rights of

¹¹ http://www.huffingtonpost.com/kerry-kennedy/chevron-and-cultural-geno_b_346257.html

¹² Chapter 5: Introduction to GENOCIDE IN NIGERIA: THE OGONI TRAGEDY (Port Harcourt Saros, 1992; 103 pp.) Ken Saro Wiwa
<http://www.turntowardlife.org/essays/chapter5/chapter5.pdf>

United Nations Treaty Bodies is also important as well as that of regional human rights bodies such as the Organization of American States' Inter-American Commission on Human Rights and Inter-American Court of Human Rights. (See annexed Chart for citations and links.)

The United Nations Declaration on the Rights of Indigenous Peoples¹³...consecrates fundamental rights of Indigenous Peoples which are relevant to the Sapara People especially Articles 10 [Right to Not be Forcibly Removed], Article 26 [Right to Land, Territory and Resources], Article 27 [Right to Land Tenure Recognition], Article 28 [Right to Redress, Restitution and Compensation], Article 29 [Right to Conservation and Protection of the Environment], Article 30 [Military Activities will not take place in lands or territories] and Article 32 [Right to Determine Priorities and Strategies for Development; Right to Free, Prior and Informed Consent before the approval of any project affecting land, territory and resources].”

In addition, other rights which are being violated include: Article 18 [Right to Participate in Decision Making], Article 20 [Right to Own Means of Subsistence and Development], Article 2 [Right to be Free of Discrimination], Article 12 [Right to Spiritual Traditions and Sacred Sites], Article 24 [Right to Traditional Medicines], Article 25 [Right to Spiritual Relationship with Land, Territory and Resources], Article 4 [Right to Autonomy and Self- Government] and, of course, the crosscutting Article 3 [Right to Self-Determination].

Some of the additional rights violated of the Sapara People as well as the neighboring Indigenous Peoples in Voluntary Isolation, the Tagaeri and Taromenane, include Article 7 [Right to Life and Liberty], Article 8 [Right to Not be subjected to Forced Assimilation or Cultural Destruction and Right to Not be Deprived of Integrity as People or Land, Territory or Resources]; and for the Tagaeri and Taromenane all of the provisions of the UN Draft Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation.¹⁴

VI. Responsibility to Protect

The government of Ecuador is also failing in its responsibility to protect the Sapara People and isolated peoples from genocide as stipulated in paragraph 138-140 of the 2005 United Nations World Summit Outcome.¹⁵ In the section entitled *Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*, the 2005 United Nations World Summit Outcome states (emphasis added):

138. Each individual State has **the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the**

¹³ https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹⁴ Guidelines: http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/2nd/docs/A_HRC_EMRIIP_2009_6.pdf

¹⁵ A/RES/60/1 <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>

prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an **early warning capability**.

139. **The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.** In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are **manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.** We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully **support the mission of the Special Adviser of the Secretary-General** on the Prevention of Genocide.

VII. Recognition of Violations

Both the United Nations Special Rapporteur on Indigenous Peoples Victoria Tauli-Corpus as well as the UN Special Rapporteur on Human Rights Defenders Michel Forst are concerned about the situation of the Sapara People and have taken up the case of Gloria Ushigua, criminalized leader of the Sapara Women's Association Ashiñwaka, and sent communications to the government of Ecuador.

In addition, international human rights organizations including Frontline Defenders and the Fund for Urgent Action are profoundly concerned and have denounced the multiple threats to this woman human rights defender and the Sapara People. Here is Frontline Defenders case history dated June 2, 2016 <https://www.frontlinedefenders.org/en/case/case-history-gloria-ushigua>



Gloria Ushigua is Coordinator of the Sápara women's organisation Ashiñwaka, which defends Sápara people's ancestral land and environmental rights in the province of Pastaza. Since 2010, the human rights defender has been invested in the defence of her community in Llachama Cocha, primarily against private and State-owned companies seeking to exploit oil deposits in Sápara territory. As a result, she has been

threatened, intimidated, judicially harassed, discredited on national television by high public officials and assaulted by law enforcement officers, along with other members of her family.

2 June 2016

Escalating intimidation of and harassment against indigenous human rights defender Gloria Ushigua of the Sápara People and her family

Indigenous human rights defender Ms Gloria Ushigua, has been a target of increasing levels of harassment over the past month, as a result of her peaceful and legitimate work in defence of environmental rights and of her ancestral land. On 31 May 2016, five men sat outside Gloria Ushigua's home throughout the night, in what appeared to be an act of intimidation against the human rights defender. This follows another act of intimidation against her niece on 26 May 2016 and the killing of the human rights defender's sister-in-law, Anacleta Dahua Cují, on 2 May 2016.

There have been escalating acts of intimidation against Gloria Ushigua in the past month including an assassination attempt on her life, which in a case of mistaken identity, resulted in the killing of her sister-in-law, Anacleta Dahua Cují, on 2 May 2016. Anacleta Dahua Cují was brutally murdered by four men as she was working on the land in her community of Llachama Cocha, where Gloria Ushigua also lives. Due to the signs of struggle and the injuries Anacleta Dahua Cují's body sustained, her relatives strongly believe that she was raped before she was killed. Following this, on 26 May 2016, four men surrounded Gloria Ushigua's niece, Ms Casiela Grefa, and physically restrained her and interrogated her about her aunt's whereabouts and activities.

This is not the first time the human rights defender has been the subject of harassment. On 19 August 2015, three policemen broke into Gloria Ushigua's house in the city of Puyo. They shocked the human rights defender with tasers and beat her badly. The police also used tear gas inside the house causing Gloria, and those present including children, to almost suffocate. The human rights defender's office and property, including her fax and desk computer, was destroyed in the raid.

In December 2013, government-owned TV channels broadcast a programme that discredited Gloria Ushigua and other indigenous human rights defenders. This smear campaign came shortly after a demonstration by indigenous people, including Gloria Ushigua, on 28 November 2013 outside the Secretariat of Hydrocarbons, where they protested against the bidding of land for oil exploration in the Amazon. In a particularly racist remark, TV anchors referred to Gloria Ushigua's traditional Sápara clothing as a clown costume. The smear campaign lasted over two weeks. In the same month the human rights defender was notified of charges against her that included terrorism, sabotage and public obstruction, despite the fact her personal behaviour was peaceful throughout the march. She

was summoned to make a declaration about the demonstration and was called again in January 2014 to a hearing. To date, the charges against the human rights defender have not been dropped, forcing her to incur costly fees for her legal representation in what is clearly an instance of judicial harassment .

In October 2015, the human rights defender was invited along with other female indigenous leaders of Ecuador to provide information about the situation of her community in a hearing held during the 156th session of the Inter-American Commission for Human Rights (IACHR). Her testimony and that of other human rights defenders revealed a pattern of relentless persecution against indigenous peoples of the Ecuadorian Amazon, as a result of their activism to preserve their ancestral lands, language and culture. This persecution is in contravention of the United Nation's (UN) Declaration on the Rights of Indigenous Peoples, which Ecuador supported at the UN General Assembly on 13 September 2007.

Front Line Defenders is deeply concerned about the safety of Gloria Ushigua, particularly considering the direct targeting of her family members and the increasing levels of violence being used against her. Front Line Defenders expresses further concern about recent and increasing persecution and intimidation against indigenous and environmental rights defenders, particularly those participating in peaceful demonstrations in Ecuador.

Front Line Defenders urges the authorities in Ecuador to:

1. Immediately cease all further harassment of Gloria Ushigua and her family, and take all necessary measures to guarantee their physical and psychological security and integrity;
2. Carry out an immediate, thorough and impartial investigation into the murder of Anacleta Dahua Cují on 2 May 2016, and into the police assault of 19 August 2015 against Gloria Ushigua, with a view to publishing the results and bringing those responsible to justice in accordance with international standards;
3. Immediately drop all charges against Gloria Ushigua as it is believed that they are solely motivated by her legitimate and peaceful work in defence of human rights;
4. Take measures to ensure that government officials or other public figures refrain from making statements or declarations stigmatising the legitimate work of indigenous human rights defenders such as Gloria Ushigua;
5. Guarantee in all circumstances that all human rights defenders in Ecuador are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions, including judicial harassment.

VIII. Paramilitary/Military Encampment

On June 14, 2016, Ms. Ushigua and Ashiñwaka sent out a communiqué informing that a military/paramilitary camp had been detected in their territory and that Gloria Ushigua Santi, Andres Ushigua and Bartolo Ushigua continue to be endangered by former military personnel whom they believe have been contracted to assassinate them. Ms. Yolanda Najar was also attacked. Sapara are reported to be fleeing their territory in search of safety. The Fund for Urgent Action considers the level of risk very high.

The militarization of an indigenous territory and the introduction of fire arms to the territory is a grave issue, which violates the rights of Indigenous Peoples enshrined in international instruments which have been ratified by Ecuador as the annexed chart shows. It is noteworthy that both the UN Declaration on the Rights of Indigenous Peoples as well as the American Declaration on the Rights of Indigenous Peoples expressly prohibits the militarization of indigenous lands and territories. Both Article 30 of the UN Declaration and Article XXX of the American Declaration clearly state that “military activities shall not take place in the lands or territories of indigenous peoples.” In addition, the American Declaration stipulates that “indigenous peoples have the right to peace and security.” Both peace and security are absent from the Sapara territory.

Furthermore, given the small number of Saporas, any armed incident could profoundly undermine the possibilities of survival of the Sapara as a people. An armed incident could cause “killing members of the group” or “serious bodily or mental harm to members of the group” or constitute “acts committed with intent to destroy, in whole or in part, a[n]... ethnical...group” In short, the encampment and the militarization of Sapara territory fulfill the key criteria of genocide codified in the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁶ In fact, the paramilitary/ military camp may be part of an effort of the government of Ecuador or the oil companies to “deliberately inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part.” Immediate action is required to avoid this denouement.

IX. Required Action

In light of the escalation of the threats, the militarization and the lack of effective remedies, it is urgent for the UN and the international community not to fail to act to safeguard the survival of the Sapara People and the Indigenous Peoples in Voluntary Isolation. In this regard, all the mechanisms to prevent genocide as well as the Special Advisers on Genocide and the Responsibility to Protect and the Human Rights Upfront Initiative must be immediately engaged.

In addition, the government of Ecuador must:

1. Immediately and permanently cancel all oil concessions in Sapara territory and the territory of the Indigenous Peoples in Voluntary Isolation;

¹⁶ <http://www.ohchr.org/SP/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>

2. Ensure the military/paramilitary encampment is removed and that there is no further military/paramilitary activity or militarization in Sapara territory nor in the territories of the Indigenous Peoples in Voluntary Isolation;
3. Stop all formal and illicit natural resource exploration, exploitation and extraction and colonization in Sapara territory and the territory of the Indigenous Peoples in Voluntary Isolation;
4. Immediately and permanently cancel the Socio Project project in Sapara territory and not use the territories of Indigenous Peoples in Voluntary Isolation for carbon credits.
5. Fully implement the collective and individual rights of the Sapara People and Indigenous Peoples in Voluntary Isolation enshrined in national and international law including allocating the necessary budget for their implementation, as indicated by the Sapara People themselves through their legitimate organizations such as the Sapara Women's Association Ashiñwaka.