UNIVERSITÀ DEGLI STUDI Dl PADOVA
Department of Political Science, Law, and International Studies

UNIVERSITÉ CATHOLIQUE DE LYON
Institut des Droits de l'Homme de Lyon

UNIVERSITÉ GRENOBLE ALPES
Faculté de Droit, Sciences Économiques et Sociales

**Double Master's Degree**

Human Rights and Multi-Level Governance
and
Droit des Libertés - Pratiques du droit international et régional des droits de l'Homme

# THE EMPOWERMENT OF INDIGENOUS WOMEN IN ECUADOR

## A LEGAL AND POLITICAL ANALYSIS OF THEIR RIGHTS TO LAND AND TO FOOD

*Supervisor*: Dr. Olivier FERRANDO

*Candidate*: Rebecca MANNI

Matriculation No. 2022 005118

A.Y. 2022/2023

# Acknowledgments

I would like to thank Sara Miante and Bruno Selvestrel: if it had not been for the internship I conducted at NINA APS and their encouragement and availability to come with me to Ecuador, I would not have written this thesis and seen with my own eyes the real situation of Indigenous peoples in South America, together with all the beautiful experiences I had the chance to live there.

I extend my thanks to the people I met and interviewed during my stay in Ecuador: Estela and the members of the Mishki Runa Association; Mamá Olga, Mamá Ophelia, Gisela with Giacomo, and the other Mamás from Amupakin. Their testimonies and wisdom have been fundamental for my research and have motivated me even more in continuing along the path I started in the protection of human rights.

I would also like to thank Nathaly Yépez Pulles from Amazon Watch, Angel Gonzalez with Ylenia Torricelli from Amazon Frontlines, and Lucya Rodriguez from AMJUPRE. Their expertise and constant militancy made me better understand the difficult dynamics and shortcomings in the Ecuadorian context for the protection of Indigenous rights and gave me examples of projects and strategies for the empowerment of Indigenous women.

I want to thank prof. Olivier Ferrando for his guidance and constant support in the writing of this thesis. The inputs and suggestions I received have been essential for putting in words the ideas I had in my mind and solving the doubts I faced during this research.

Finally, I feel very grateful for all the people who have supported and accompanied me in this academic and personal journey, as without them I would not be here today concluding my Master's Degree.

# Abstract

The present thesis aims at finding strategies for the empowerment of Ecuadorian Indigenous women in the battle against intersectional discrimination through the promotion and protection of their rights to land and to food. This objective is reached by analysing the state of the art of the recognition and enjoyment of these rights, starting from the international and regional level to the national context.

In Ecuador, Indigenous women's gardens represent not only a source of food diversity, but also a tool for agency, building community, imparting traditional knowledge, voicing cultural identity, empowering women, and protecting the environment. Despite their fundamental role within their communities and society, Ecuadorian Indigenous women are marginalized as stakeholders in political and economic dynamics affecting Indigenous land for the recognition of collective land titles and the protection of natural resources because of the colonial legacy of sexism and racism fuelled by extractivism.

As their right to food is entwined with land rights, the lack of access to their traditional territories and their resources exposes them to precarious living conditions with regards to food and basic services access. Additionally, due to intertwined power structures based on race, gender, and social class, they struggle with domestic violence, machismo, unpaid labour, rape, illiteracy, low levels of school enrolment, and higher infant and maternal mortality rates.

Using secondary sources together with interviews and personal direct experience, this study argues that – despite many initiatives that have been put in place by CSOs, international actors and the Ecuadorian government – many challenges are still pending. It sustains that it is possible to empower Indigenous women in Ecuador by protecting and promoting their rights to land and to food through the adoption of an integrated approach to economic, environmental, and social development within a human rights legal and political framework.



Keywords: Indigenous women, Ecuador, land, food, empowerment, discrimination, Indigenous rights, human rights

# Résumé

Le présent mémoire vise à trouver des stratégies pour l'autonomisation des femmes autochtones équatoriennes dans la lutte contre la discrimination intersectionnelle par la promotion et la protection de leurs droits à la terre et à l'alimentation. Cet objectif est atteint en analysant l'état de l'art de la reconnaissance et la jouissance de ces droits, à partir du niveau international et régional jusqu'au contexte national.

En Équateur, les jardins des femmes autochtones représentent une source de diversité alimentaire, un outil pour leur action, le renforcement de la communauté, la transmission du savoir traditionnel, l'expression de l'identité culturelle, l'autonomisation des femmes et la protection de l'environnement. Malgré leur rôle fondamental, les femmes autochtones équatoriennes sont marginalisées dans la reconnaissance des titres fonciers collectifs et la protection des ressources naturelles en raison de l'héritage colonial du sexisme et du racisme alimenté par l'extractivisme.

Le manque d'accès à leurs territoires traditionnels et à leurs ressources les expose à des conditions de vie précaires en ce qui concerne l'accès à la nourriture et aux services de base. De plus, en raison des structures de pouvoir interreliées fondées sur la race, le sexe et la classe sociale, elles sont aux prises avec la violence familiale, le machisme, le travail non rémunéré, le viol, l'analphabétisme, le faible taux d'inscription à l'école et des taux de mortalité infantile et maternelle plus élevés.

En utilisant des sources secondaires, des entrevues et une expérience personnelle directe, cette étude fait valoir que – malgré les nombreuses initiatives mises en place – de nombreux défis sont encore à relever. Elle soutient qu'il est possible d'autonomiser les femmes autochtones en Équateur en protégeant et en promouvant leurs droits à la terre et à l'alimentation par l'adoption d'une approche intégrée de développement économique, environnemental et social dans un cadre juridique et politique des droits de l'Homme.



Mots-clés : Femmes autochtones, Équateur, terre, alimentation, autonomisation, discrimination, droits autochtones, droits de l'Homme

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# Acronyms and Abbreviations

| | |
|---|---|
| ACHR | American Convention on Human Rights |
| ADRDM | American Declaration of the Rights and Duties of Man |
| ADRIP | American Declaration on the Rights of Indigenous Peoples |
| AIWN | Asian Indigenous Women's Network |
| AMJUPRE | *Asociación de Mujeres de Juntas Parroquiales Rurales de Ecuador* (Association of Women of Rural Parish Boards of Ecuador) |
| CCPR | Human Rights Committee |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CEE | *Comité Empresarial Ecuatoriano* (Ecuadorian Business Committee) |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CONAICE | *Confederación de Nacionalidades y Pueblos Indígenas de la Costa Ecuatoriana*, Confederation of Nationalities and Indigenous Peoples of the Ecuadorian Coast |
| CONAIE | *Confederación de Nacionalidades Indígenas del Ecuador*, Confederation of Indigenous Nationalities of Ecuador |
| CONFENIAE | *Confederación de las Nacionalidades Indígenas de la Amazonia Ecuatoriana*, Confederation of Indigenous Nationalities of the Ecuadorian Amazon |
| COPISA | *Conferencia Plurinacional e Intercultural de Soberanía Alimentaria* (Plurinational and Intercultural Conference on Food Sovereignty) |
| CRC | Convention on the Rights of the Child |
| CSW | Commission on the Status of Women |
| ECLAC | Economic Commission for Latin America and the Caribbean |
| ECOSOC | United Nations Economic and Social Council |
| ECUARUNARI | *Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador*, Confederation of Peoples of the Kichwa Nationality of Ecuador |
| EZLN | Zapatista Army for National Liberation |
| FAO | Food and Agriculture Organization |
| FEI | *Federación Ecuatoriana de Indios* (Federation of Ecuadorian Indians) |

| | |
|---|---|
| FEINCE | *Federación Indígena de la Nacionalidad Cofán del Ecuador*, Indigenous Federation of the Cofan Nationality of Ecuador |
| FIMI | International Indigenous Women's Forum |
| GEF | Global Environment Facility |
| HRC | Human Rights Council |
| IACHR | Inter-American Commission of Human Rights |
| IACtHR | Inter-American Court of Human Rights |
| IASG | Inter-Agency Support Group on Indigenous Issues |
| ICC | Indian Claims Commission |
| ICCPR | International Covenant on Civil and Political Rights |
| IESCR | International Covenant on Economic, Social, and Cultural Rights |
| IFAD | International Fund for Agricultural Development |
| IKP | Indigenous Knowledge Programme |
| ILO | International Labour Organization |
| INEC | (Ecuadorian) National Institute of Statistics and Census |
| IP | Indigenous Peoples |
| IPAF | Indigenous Peoples' Assistance Facility |
| IRD | Institut de Recherche pour le Développement |
| IWGIA | International Work Group for Indigenous Affairs |
| LOIPEVM | *Ley Orgánica Integral para Prevenir y Erradicar la Violencia Contra las Mujeres* (Comprehensive Organic Law to Prevent and Eradicate Violence against Women) |
| LORSA | *Ley Orgánica del Régimen de la Soberanía Alimentaria* (Organic Law of the Food Sovereignty Regime) |
| MMDDHH | *Ministerio de la Mujer y Derechos Humanos* (Ministry for the Woman and Human Rights) |
| NGOs | Non-governmental organizations |
| OAS | Organization of the American States |
| PONAKICSC | *Pueblo Originario de la Nacionalidad Kichwa del Cantón Santa Clara*, Native People of Kichwa Nationality of the Santa Clara Canton |
| SDGs | Sustainable Development Goals |
| SISAN | *Sistema de Soberanía Alimentaria y Nutricional* (Food and Nutrition Sovereignty System) |

| | |
|---|---|
| TEEIPAM | Territorial Economic Empowerment for the Indigenous, Afro-Ecuadorians and Montubian Peoples and Nationalities project |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations Organization |
| UNDP | United Nations Development Programme |
| UNDRIP | Declaration on the Rights of Indigenous Peoples |
| UNEP | United Nations Environment Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNFSS | United Nations Food Systems Summit |
| (UN)PFII | Permanent Forum on Indigenous Issues |
| UPR | Universal Periodic Review |
| VGGT | Voluntary Guidelines for the Responsible Governance of Tenure Land, Fisheries and Forests in the Context of National Food Security |
| WFP | World Food Programme |
| WGIP | United Nations Working Group on Indigenous Population |

# Introduction

Despite representing around half of the world's 476.6 million Indigenous peoples, Indigenous women have not always been recognized as independent rights-holders, as their rights have rather been incorporated within the largest "Indigenous peoples" category. Their knowledge and experience have remained largely "invisible" because of the power relations in social, political, and historical structures shaping their existences. It was only thanks to the recent attention towards climate change and Indigenous issues – as well as their own mobilization – in the 1990s and 2000s that Indigenous women's rights started to be distinctly considered in the human rights system.

It has been exactly for these reasons that before my internship at NINA APS I knew little to nothing about Indigenous peoples, and most specifically about Indigenous women in Ecuador. My strong passion for the protection of women's rights motivated me towards a better understanding of the situation of women living in disadvantages contexts, experiencing different forms of intersectional discrimination from those that I have always seen and known. Careless of the language barriers and cultural shocks I might have had to overcome, this vocation brought me directly on the field in Ecuador where I had the chance to see with my own eyes the challenges, shortcomings, and societal pressures that Indigenous women face in their lives.

In the recent years, Indigenous women's indispensable contribution to the survival of their families and communities has been largely recognised at the international level, especially in the protection of resources and the environment, the procurement of food and subsistence materials, as well as in taking care of others through healing and health activities. Particularly in the Ecuadorian context, I candidly observed how farming and harvesting remain intimately tied to Indigenous women, and that their gardens represent not only a source of food diversity, but also a tool for agency, building community, imparting traditional knowledge, voicing cultural identity, empowering women, protecting the environment, and preserving spiritual wellness.

Because of the colonial legacy of sexism and racism fuelled by extractivism, Ecuadorian Indigenous women embody the most vulnerable individuals in society. More than their male counterparts, they have been marginalized as stakeholders in political and economic dynamics affecting Indigenous land for the recognition of collective land titles and the protection of natural resources, due to bias and intertwined power structures based on

race, gender, and social class oppressing them. As their right to food is entwined with land rights, the lack of access to their traditional territories and their resources exposes Indigenous women and their communities to precarious living conditions with regards to food and basic services access.

To contrast these difficulties, I collected many initiatives that have been put in place by civil society organizations, national and international non-governmental organizations, together with intergovernmental organizations and the Ecuadorian national government; however, many challenges are still pending for Indigenous women's access to basic health and education services, food, decent and quality employment, and their full participation in public and political life.

Using primary and secondary sources – as interviews and personal direct experience, reviews and reports – I will sustain that through the adoption of an integrated approach to economic, environmental, and social development within a human rights legal and political framework, it is possible to protect and promote the rights to land and to food of Indigenous women in Ecuador, and as such empower them in the battle against intersectional discrimination and gender-based violence.

The following chapters explore the state of the art in the recognition and enjoyment of Indigenous women's land and food rights, starting from the broader category of Indigenous peoples and women's peculiar conditions at the international and regional level, to a complete and intersectional study of the Ecuadorian context regarding Indigenous women and their communities' rights to land and to food.

In Part I, the international legal framework of Indigenous peoples' economic and social rights will be analysed. Chapter 1 examines the international institutions and instruments protecting Indigenous peoples' rights, as well as international agencies and their policies. Chapter 2 analyses Inter-American instruments and regional caselaw that have been relevant within the Ecuadorian context. Chapter 3 describes the global situation of Indigenous women, and the evolution in the protection of their land and food rights at the international and regional level.

In Part II, the focus will be on the threats and solutions to the enjoyment of the rights to land and to food of Indigenous women in Ecuador. Chapter 1 portrays the situation of Indigenous peoples in the Ecuadorian context, their history of mobilization, and the relevant legislation and caselaw. Chapter 2 discusses Indigenous women's perception on

land and food, their societal and economic role, the discrimination they face in the enjoyment and protection of their land and food rights, as well as national initiatives trying to protect them. Chapter 3 shows the projects adopted by international entities, non-governmental organizations, and civil society organizations aimed at preserving Indigenous women's rights to land and to food, and the strategies and good practices that can be deducted for their empowerment.

# Part I – The international legal framework of Indigenous peoples' economic and social rights

## Chapter 1 – International institutions and instruments protecting Indigenous peoples' rights

### 1.1. The United Nations system

Until the first session of the Permanent Forum on Indigenous Issues (PFII) – created as an advisory body to the Economic and Social Council (ECOSOC) – in May 2002, Indigenous peoples' concerns were not given attention nor were they discernible within the United Nations system. The beginnings of Indigenous peoples' presence at the United Nations (UN) can be dated to August 9, 1982, when the first UN meeting entirely dedicated to their concerns took place in Geneva: the UN Working Group on Indigenous Populations (WGIP). This date was subsequently declared by the General Assembly as the International Day of the World's Indigenous peoples by Resolution 49/214 of December 23, 1994, to recognize "the belated entry of this group into the work programme of the organization" (Burger 2016, 315).

#### *1.1.1. The United Nations Working Group on Indigenous Populations (WGIP) and the Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)*

The first UN action related to Indigenous Peoples consisted in a full study on discriminations against Indigenous populations authorized in 1972 by the UN Commission on Human Rights, based on a study on racial discrimination made by Hérnan Santa Cruz. These actions were complemented by the General Assembly through the proclamation of a first *International Decade of Action to Combat Racism and Racial Discrimination* from 1973 to 1982 (Ibid. p. 316-317). The comprehensive study on Indigenous populations – named *Cobo report*, after the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities from Ecuador, José Martinez Cobo – dealt with a wide range of issues, and recommended the establishment of a working group of experts on Indigenous peoples, a proposal that was later endorsed by the Commission on Human Rights and approved by the ECOSOC (Ibid. p. 317).

The Working Group on Indigenous Populations (WGIP)

Working from 1982 to 2005, the Working Group on Indigenous Populations (WGIP) was composed by five independent experts representing the UN's geopolitical regions, and had a two-fold mandate: firstly, "to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of Indigenous populations", and secondly, "to give special attention to the evolution of standards concerning the rights of Indigenous populations" (Ibid.). Observers from Governments, non-governmental organizations (NGOs), UN agencies and Indigenous peoples themselves participated in the WGIP; the latter's participation was of fundamental importance for bringing awareness to their concerns, cultures, expectations and to the human rights violations affecting them (Ibid.).

The participation in the WGIP grew rapidly from a dozen or so representatives in the first year of meetings to over a thousand, and its consideration shifted too: if at the beginning it was seen as a space for Indigenous peoples to denounce the problems touching their communities, with a sense of common identity and purpose despite their great diversity and living conditions, it was later recognized also as a tool to foster an international political programme by setting the agenda, influence the recommendations and propose UN action (Ibid. p. 318).

The WGIP was later abolished in 2006 as part of the reorganization of UN human rights institutions, and it was substituted with the *Expert Mechanism on the Rights of Indigenous Peoples*: created by the new Human Rights Council (HRC) much in line with the old entity, from its first meeting in 2008 it contributes to "an effective Indigenous presence" at the UN as a forum of Indigenous experts with direct access to Governments within the HRC itself (Ibid. p. 328).

The terminological shift from *populations* to *peoples* at the UN level has a ground-breaking legal and conceptual value: as many States were, and still are, afraid of possible separatist and secessionist uprisings within their territories, the recognition of groups' rights – as in the case of Indigenous peoples' self-determination – has been limited to hinder legal and political claims both at the local and international level (Odello 2016, 54). Until the 1990s, governments referred to Indigenous communities with the term *populations*, as to exclude the possibility that "they might have any claim to self-determination as distinct peoples" (Burger 2016, 316). For Indigenous delegates, the WGIP has represented a space and an opportunity to forge "an international identity", and to give meaning to the term *peoples* for the reclamation of collective rights such as self-determination (Ibid. p. 317).

The Declaration on the Rights of Indigenous Peoples (UNDRIP)

The proclamation of 1993 as *UN International Year of Indigenous People* and of 1995-2003 as the *International Decade of the World's Indigenous People*, and the institution of an *UN Special Rapporteur on the human rights of Indigenous Peoples* after the 1993 Vienna World Conference on Human Rights, set in motion a series of major progresses urged by the WGIP at the international level that led to the adoption of the *Declaration on the Rights of Indigenous Peoples* (UNDRIP) on September 13, 2007 (Ibid. p. 320-325). Over 23 years, the Declaration was elaborated through the stories and suggestions of delegates in the WGIP rather than formal proposals of a text, making it "one of the very few UN legal documents that has been elaborated in consultation with the victims of human rights abuses and with those who are to be the beneficiaries" (Ibid. p. 322).

The text was adopted by the General Assembly by Resolution 61/295 with 144 votes in favour, 11 abstentions and 4 States against (Australia, Canada, New Zealand, and the United States), which reversed their positions in the subsequent years (Barrie 2013, 292). Despite its nature of non-binding agreement, the UNDRIP can be considered as the "primary international instrument explicitly addressing the rights of Indigenous peoples", rights that have been historically denied to them (Ibid. p. 295). The UNDRIP affirms that: firstly, Indigenous peoples are *peoples*, with the right to self-determination (Article 3); and secondly, Indigenous peoples have the right to the full enjoyment of all the human rights and fundamental freedoms recognized by the UN Charter, the Universal Declaration of Human Rights (UDHR) and the international law of human rights, both as a collective or as individuals (Ibid.). The rights contained in the UNDRIP refer to those recognized by the major international human rights conventions, and as a whole constitute "the minimum standard for the survival, dignity and well-being of Indigenous peoples" (Ibid. p. 296).

In addition to the right of Indigenous peoples to self-determination, the UNDRIP also recognizes the right to protection and preservation of their lands, territories and resources (Article 26), the right to determine and develop priorities for the latter's development and use (Article 32), and the right to maintain and protect their cultural heritage and expressions (Article 31) (Morgan 2011, 17).

The right to land is "indispensable for the effective exercise of human rights and fundamental freedoms" of Indigenous peoples (Thornberry 2002, 392), and can be

declined as: (a) a subjective legal position within the right to property, and representative of Indigenous peoples' identity; (b) a constitutive element to the right to food, or as an instrumental mean to the realization of that right (Nino 2016, 195). Because of the fact that their historical-cultural identity, the transmission of their traditions, the protection of present and future generations, their physical and cultural survival are inevitably and indissolubly linked to the territory in which they live, land rights must be recognized to Indigenous peoples in order to preserve the spiritual bond that they have with their ancestral lands (Ibid. p. 195-196). The traditional land is the natural resource they depend on for fulfilling all levels of their existence, and growing food on their ancestral territory is both an act of survival and, mostly, a moral and cultural affirmation (FIAN 2016). The UNDRIP appeals the States' support to enable Indigenous peoples to actively protect their traditional lands, by establishing and implementing assistance programmes for such conservation and protection, without discrimination (Article 29.1) (Heinämäki 2022, 174).

An important challenge that remains for the UNDRIP is to receive domestic recognition by States through Government policy, judicial interpretation, and legislation (Barrie 2013, 297), but also application as a legal source, as already done by several institutions like human rights monitoring bodies and national courts (Heinämäki 2022, 175). It is also currently argued that many UNDRIP provisions, including those on self-determination, self-government, and autonomy, already represent customary international law (Ibid. p. 174), especially regarding the recognition of the right to land, the scope of which has been defined both by regional case-law practice and by national courts (Nino 2016, 195).

### *1.1.2. The United Nations human rights treaties and their treaty bodies*

Though not considering Indigenous issues as the main subject matter, the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social, and Cultural Rights* (IESCR), the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (see Chapter 3), and the *Convention on the Rights of the Child* (CRC) have been all considered relevant to Indigenous concerns by their corresponding committees, leading to the creation of a UN treaty body jurisprudence on Indigenous peoples' rights (Morgan 2011, 114).

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the only universally applicable human rights treaty that includes a particular provision on the rights of minorities, and specifically their members: Article 27 addresses the negative obligation of States not to deny members of minorities the right to enjoy their culture, to profess and practice their religion or to use their own language. This article embodies a broad understanding of minorities and minority rights, and although it does not employ the notion of "Indigenous peoples", much of the case law developed under the provision has been related to claims by such groups; the Article has been considered indeed applicable in respect of Indigenous peoples by the Human Rights Committee (CCPR) in its *General Comment No. 23* (Scheinin 2005, 4).

The International Covenant on Economic, Social, and Cultural Rights (IESCR)

Differently from the ICCPR, the IESCR does not contain any provision on minority rights but, as it applies for all persons, it is a valuable tool for Indigenous peoples, especially since they are often those most in need of enjoying economic, social, and cultural rights (Swepston 2005, 60). In its *General Comment No. 26 (2022) on land and economic, social and cultural rights*, the Committee on Economic, Social and Cultural Rights (CESCR) recalls the importance of land and territory for Indigenous peoples: firstly, when land is "related to the enjoyment of the right to take part in cultural life owing to the particular spiritual or religious significance of land to many communities" (CESCR 2023, 3); secondly, through the land in which they can exercise their self-determination, Indigenous peoples can "freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends" (Ibid.). The CESCR affirms that Indigenous peoples constitute one of the categories deserving special attention when eliminating all forms of discrimination aimed at ensure substantive equality (Ibid. p. 4). By citing the ILO Convention No. 169 and the UNDRIP, the Committee evokes the States' obligation to demarcate, to protect and to respect Indigenous peoples' territories, while considering that their spiritual relationship to land is linked to every activity that can be practiced on it, "such as hunting, fishing, herding and gathering plants, medicines and foods" (Ibid. p. 5).

The Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Even though it might seem a particularly unpromising instrument for the vindication of

Indigenous rights, the CERD refers itself to discrimination on grounds of "race, colour, descent, or national or ethnic origin", and has affirmed Indigenous peoples' claims although it does not specify Indigenous or caste groups in this formula (Thornberry 2005, 18). The Committee on the Elimination of Racial Discrimination has devoted attention to a wide range of human groups, including Indigenous peoples through the adoption of two General Recommendations: *No. 23 on Indigenous Peoples*, and *No. 29 on descent-based discrimination* (Ibid.). General Recommendation No. 23, in particular, calls upon States "to recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources and, or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories" (Morgan 2011, 26).

The Convention on the Rights of the Child (CRC)

The CRC is the only general human rights convention that contains a specific provision on Indigenous rights, Article 30, that affirms that "in those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language" (Swepston 2005, 60).

It is possible to notice the difference between the ICCPR reference to "persons belonging to minorities" in Article 27 and the CRC reference to "the child" as highlighting "the individual nature of the rights" in Article 30, even if they are to be enjoyed "in community" (Thornberry 2002, 234). Nevertheless, Article 27 of the ICCPR is still an article on individual rights, while the CRC as a whole is full of references and respect for communities, heritage and the family, thus elaborating "the essential communal dimensions of human rights more thoroughly than the ICCPR" (Ibid.).

The Committee on the Rights of the Child has made reasonable use of Article 30 in its Concluding observations, and through references also to other articles it has discussed the undermining of Indigenous children rights by an uneven intercommunal distribution of wealth and of land, and environmental degradation (Ibid. p. 237). The Committee later better analysed the rights of Indigenous children under the Convention in its *General Comment No. 11* of 2009, with a specific reference to the importance of the use of traditional land for their development and enjoyment of culture when their communities

retain a traditional lifestyle (CRC 2009, 8). The Committee stressed the obligation upon States to "closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible" (Ibid.).

### *1.1.3. United Nations cases and achievements on Indigenous peoples' rights*

Case laws of the Human Rights Committee

In the case law by the Human Rights Committee under the Optional Protocol to the ICCPR (1976), many communications related to the protection of Indigenous peoples rights, especially the right to land and other natural resources, have been brought to the Committee based on alleged violations of Article 27 ICCPR (Thornberry 2002, 151).

According to the Committee in the *Kitok v Sweden* case (1988), Article 27 entails "the recognition of traditional or otherwise typical economic activities as "culture", particularly in regard to Indigenous peoples" (Scheinin 2005, 6). This dimension was then developed in the *Bernard Ominayak, Chief of the Lubicon Lake Band v Canada* case (1990) – where the notion of "culture" in the treaty provision was linked to the traditional forms of Indigenous peoples' economic life – and confirmed in the Committee's subsequent case law with the case *Länsman et al. v Finland No. 1* (1994) (Ibid. p. 7).

In the *Bernard Ominayak, Chief of the Lubicon Lake Band v Canada* case (or *Ominayak* case), the communication by Chief Ominayak claimed a violation under Article 1 of the Covenant of the right to self-determination of the Lubicon Lake Band, a people Indigenous to Canada: the victim claimed that the Canadian State allowed the Provincial Government of Alberta to expropriate Band's territory for the benefit of private corporate interests through leases for the exploitation of oil, gas and timber resources (Thornberry 2002, 128). According to the victim, energy exploration in that territory – used by the Lubicon Lake Band for hunting and fishing – violated their right to dispose of their natural wealth and resources, and deprived them of its means of subsistence (Ibid.). The legal questions encompassed whether the ICCPR provided protection or not of Indigenous land rights (OHCHR 2015, 9).

The author's claim of self-determination was reformulated by the Committee to one under Article 27 (the right of ethnic, religious or linguistic minorities to enjoy their culture), as a consequence of the refuse to pronounce itself on the implication of "peoples" as

contained in the ICCPR (Thornberry 2002, 129). The CCPR considered that the cumulated effect of these forms of hostile use of land and resources over a long period of time had "effectively destroyed the resource basis of traditional hunting and fishing for the Lubicon Lake Band" and threatened their way of life and culture, thus constituting a violation by Canada of Article 27 (Scheinin 2005, 3-16). Through this reasoning, the Committee implicitly affirmed the existence of a relationship between Indigenous communities' right to lands and the right to life of their members (Barume 2005), and to this day the *Ominayak* case is the sole one where the CCPR has found a violation of Article 27 "because of competing use of land and resources interfering with the economy and life of an Indigenous community" (Scheinin 2005, 6).

In *Länsman e al. v Finland No. 1*, Indigenous Saami herders claimed that the stone extracting activity of a private company – with a permit from the Finnish government – interfered with their traditional livelihoods and therefore their cultural rights (OHCHR 2015, 10): the private company's quarrying activity in a reindeer herding area would disturb that practice, and violate Article 27 affirming their right to enjoy their own culture, which, for this Indigenous community, "has traditionally been and remains essentially based on reindeer husbandry" (Thornberry 2002, 168). The legal questions included whether the scope of Article 27 covers the protection of ethnic minorities' right to enjoy their own culture, including a customary relationship to land (OHCHR 2015, 10).

Finland did not contest that "culture" as contained in Article 27 covered reindeer herding, nor that this was an essential aspect of Saami culture; it also declared that the Article can "be deemed to cover livelihood and related conditions in as far as they are essential for the culture and necessary for its survival" (Thornberry 2002, 169). While the Committee was unable to find a violation, it still made important observations on how to read the Article: firstly, it reaffirmed that economic activities or means of livelihood come under the scope of Article 27; and secondly, that the Article protects access to or control over land when constituting a base for traditional economic activities or cultural life (OHCHR 2015, 10). This case represents one of the few cases before the CCPR in which Indigenous peoples have raised the right of minorities to enjoy their own culture in order to protect also their right to food (Golay 2009, 35).

Case laws of the Committee on Economic, Social and Cultural Rights

Even though the Optional Protocol to the ICESCR has been adopted back in 2008 and

authorizes the CESCR to receive and consider individual communications, no complaint by Indigenous People on alleged violations of the ICESCR has yet been analysed by the Committee.[1] Communication No. 289/2022 against Finland about mining explorations in the reservation area of an Indigenous People constituting a violation of Articles 1 (right to self-determination), 6 (right to work), 11 (right to an adequate standard of living, including adequate food, clothing, and housing), and 12 (right to health), has been presented to the Committee, but it is still pending at the time of writing.[2]

Nonetheless, the CESCR has tried to protect access to land, wealth and natural resources of local communities and Indigenous peoples in several of its concluding observations addressed to States parties, for example to Guatemala in 2003 and to Madagascar in 2009, through the critic of agrarian reforms and laws favourable to the acquisition of immense expense of land in contempt of the right to land and natural resources of Indigenous peoples (Özden and Golay 2008, 56).

Case laws of the Committee on the Elimination of Racial Discrimination

From its creation, the Committee on the Elimination of Racial Discrimination has received initial reports and responses to its promptings from States that sometimes denied the existence of Indigenous groups as separate entities. From the 1970s, the Committee examined States' policies concerning Indigenous peoples, and its interest on discrimination against these communities has grown more and more to become a pervasive concern: taking only the reports for 1996 and 1997 as examples, the Committee analysed Indigenous issues in the cases of Argentina, Brazil, Colombia, Denmark, Finland, Guatemala, India, Mexico, Norway, Pakistan, Philippines, Russian Federation and Sweden. Moreover, the Committee has regularly engaged with land rights issues both in concrete and abstract terms, especially regarding specific threats to Indigenous lands such as invasions, evictions, displacements, denial by force of returning lands, mining activities and tourism, and failure to deliver an appropriate or promised legal regime to lands (Thornberry 2002, 210).

Thanks to Article 14 of the CERD, the Committee has been able to receive individual communications from Indigenous peoples and has pronounced itself on their rights to

[1] https://juris.ohchr.org consulted on April 4, 2023.
[2] www.ohchr.org/en/treaty-bodies/cescr/table-pending-cases consulted on April 4, 2023.

land and natural resources in 2020 in the communication No. 54/2013, the *Lars-Anders Ågren et al. v Sweden* case. The applicants, all members of the Indigenous Saami people, claimed that Sweden had breached articles 5 (a) (right to equal treatment before tribunals) and (d) (v) (right to own property), and 6 (right to an effective jurisdiction) of the CERD because of having granted exploitation concessions to a private mining company in the community's traditional territory, land on which the Indigenous community has established a property right through traditional use under national and international law. According to the petitioners, the mining system would cause negative effects on reindeer herding as it would both damage lichen pasture – which is a crucial part of reindeers' nutrition – and cut off migration routes between pasture areas. Because of the mining activity and approved future industrial projects, the community's traditional territory for reindeer herding and migration routes are constantly decreasing, and constitute a real threat to the practice, thus to their traditional livelihood (CERD 2020, 2).

While there was no issue on the legal determination of Saami property rights under national law, the legal questions concerned whether mining concessions raise a violation of Article 5 (d) (v) (Ibid. p. 3). Recalling its General recommendation No. 23 (1997), the Committee affirms that "to ignore the inherent right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer free, prior and informed consent whenever their rights may be affected by projects carried out in their traditional territories constitutes a form of discrimination" (Ibid. p. 11). The discrimination towards Indigenous peoples results from nullifying or impairing the recognition, enjoyment, or exercise of their rights to their traditional territories, natural resources and, consequently, their identity; as such, the Swedish state had the obligation to respect and protect in practice Saami communities' land and reindeer husbandry rights (Ibid.). According to the Committee, Sweden did not consider the applicants' land rights and previous standards when granting mining concessions, thus violating Article 5 (d) (v) of the CERD (Ibid. p. 16).

<u>Case laws of the Committee on the Rights of the Child</u>

No views have yet been adopted by the Committee on the Rights of the Child on communications presented by Indigenous peoples, therefore it is not possible at the time of writing to analyse its concrete approach on the protection of Indigenous children's rights as affirmed in the CRC.

## 1.2. The Specialized Agencies: their international instruments and programmes

Over the years, Indigenous peoples rights have been increasingly recognized and promoted at the UN level through the adoption of international instruments and policy papers, but also through the creation of global institutional mechanisms and *ad hoc* institutions. The 2030 Agenda for Sustainable Development underlines indeed "the need to promote the rights of Indigenous peoples to lands, territories and resources through an integrated approach to economic, environmental and social development within a human rights framework" (IFAD 2022a, 2), and as such calls for in line actions by all the UN Specialized Agencies.

### *1.2.1. The International Labour Organization (ILO)*

The International Labour Organization (ILO) affirmed itself as the principal organization of the UN system in carrying forward Indigenous peoples' interests after the Second World War: through studies and reports, a first step in legislating rights for Indigenous Tribal populations was made through the draft of regulations and conventions (Burger 2016, 316). The situation of "native workers" in the colonies under European control was one of the motivating factors behind the adoption of the first ILO's fundamental human rights instrument, the *Forced Labour Convention* of 1930 (Swepston 2005, 54). All the now-outdated ILO conventions from the 1930s relating to Indigenous workers focused on labour contracting issues and working conditions in plantations, constituting as a whole a valuable reference about Indigenous rights (Thornberry 2002, 321).

During the Fourth Conference of American States Members of the ILO in 1948, a resolution was adopted recognizing Indigenous populations as "important manpower resources", whose effective deployment would contribute to both their own good and the national economy (Ibid. p. 322). The resolution stated that the problems of Indigenous peoples were of social and economic character, and to solve them it would have been necessary to adopt actions of the same nature (Ibid.).

Following these developments in the recognition of Indigenous workers' rights, the ILO set up a Committee of Experts on Indigenous Labour, which held its first session in January 1951. The Committee adopted many resolutions on Indigenous populations living in forests, raising standards of living, social protection and integration, land issues, and ways and means of international technical assistance. It also distinguished *integration*

from *artificial assimilation*, concluding that "the cultural autonomy of each social unit involved should be respected as the best guarantee of the contribution it may make to the welfare of the "great society"" (Ibid.).

Thanks to the Committee's recommendations that led to the publication of the 1953 ILO report *Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries* and the establishment of the Andean Indian Programme – an integrated programme for regional development (Swepston 2005, 54) – in 1952, it was possible to draft and adopt in 1957 the *ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* (Burger 2016, 316). Together with its replacement, the *ILO Indigenous and Tribal Peoples Convention No. 169* (1989), these two Conventions are "the only comprehensive international binding instruments of the rights of Indigenous peoples and of States' obligations towards them" (Swepston 2005, 55).

The ILO Convention No. 107 (1957)

As described in its title, Convention No. 107 relates to the "protection" and "integration" of Indigenous and Tribal and semi-Tribal "populations", and has been ratified by 27 States, 14 of them from the Americas and the Caribbeans (Thornberry 2002, 327).

The Convention as a whole is characterized by a balance between the populations in questions and the State parties: any action under it not only benefits the Indigenous individuals but is in the "interests of the countries concerned" (Ibid.). Convention No. 107 recognized the right of these categories of people to maintain "distinct identities within the States in which they lived" by encompassing basic policy and administration, protecting customary laws, containing vital protections for land rights, and providing for special measures in issues concerning labour, social security, health, vocational training and general education in order to achieve equal treatment (Swepston 2005, 55).

Even if in its Article 11 Convention No. 107 states that "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized", all provisions on land rights contained in it are basic and with gaps, and do not permit revisionist interpretations (Thornberry 2002, 333). In fact, Article 12.1 authorizes the removal of these populations from their habitual territories "in the interest of national economic development", and customary procedures for the transmission of ownership and use of land can be limited

when it is considered that they hinder a State's economic and social development according to Article 13.1. The Convention does not have any provisions on the Indigenous spiritual value of land, environmental protection, land demarcation, sub-surface resources, resources management, and the right to return for populations that have been removed from ancestral territories (Ibid. p. 334).

A fundamental flaws that became increasingly evident after the UN started working on the subject was the Convention's "patronizing attitude towards Indigenous and Tribal peoples" (Swepston 2005, 55); furthermore, it presumed that, thanks to integration – participation in national society and economic development – Indigenous and Tribal peoples would eventually disappear as separate groups, hence resolving all related States' problems (Ibid.). Despite its weaknesses and limited guidance, Convention No. 107 and ILO's supervisory machinery had a positive influence in many countries that ratified it by redressing serious abuses against Indigenous peoples and setting the stage for future programmes (Ibid. p. 56). The Convention is now closed to ratifications as it has been replaced by Convention No. 169, but it still remains in force for some countries which have not ratified this latter, for example India and Bangladesh.

The ILO Convention No. 169 (1989)

In response to all criticisms towards Convention No. 107, the ILO Governing Body organized a Meeting of Experts in Geneva in September 1986, where all participants agreed on its revision towards a more dignified and respectful language. Solutions to some problems were debated at the ILO Conference in 1988 and 1989 during the formal drafting process of the future Convention No. 169 (Ibid.); the final text was adopted with 328 votes in favour, 1 against and 49 abstentions. The Convention came into force on September 5, 1991 and has been ratified by twenty-four countries, the majority of which from the Americas and the Caribbeans (Thornberry 2002, 340).

Convention No. 169 adopts a broad approach for the protection of Indigenous and Tribal peoples' rights: the need to respect their continued existence and ways of life, and to involve them fully when taking decisions that affect them, both constitute essential provisions of the treaty. According to the Convention, Indigenous peoples not only have rights to lands traditionally occupied by them, but also – for the first time in international law – to natural resources connected with those lands; moreover, it aims at guaranteeing "the greatest degree of autonomy and self-government attainable" for Indigenous peoples

(Swepston 2005, 57).

In its second part on land (Articles 13-19), the Convention affirms the right to land as to protect areas owned or traditionally occupied by Indigenous peoples, and recognizes upon them special rights on renewable and non-renewable resources associated with their lands (Article 15). When applying the Convention, government needs to respect "the special importance for the cultures and spiritual values" of Indigenous and Tribal peoples' relationship with land and territories (Article 13): as such, the special Indigenous relationship with land should have prevalence in any interpretative or applicative contest with State authorities when all the other considerations are evenly balanced (Thornberry 2002, 351).

Through ILO's representation procedure under Article 24 of its Constitution, Indigenous peoples' organizations from different countries have used the Convention to present complaints concerning the lack of consultation by Governments when granting licenses for natural resources exploitation on lands occupied or owned by them; when examining these petitions, ILO bodies systemically found deficient, misused, and insufficient procedures, and called upon States to give real effect to the principles of Convention No. 169 (Swepston 2005, 58).

### *1.2.2. The United Nations Educational Scientific and Cultural Organization (UNESCO)*

The United Nations Educational Scientific and Cultural Organization (UNESCO) has been involved with Indigenous peoples to varying degrees since its early phases of work, carrying out, on one hand, a "discursive consolidation and normative constitution of ethnic, religious, and cultural minorities" and, on the other, an expansion of different concepts, such as education, culture, and religion as a subcategory of this latter (Stimac 2022, 1).

From the 2000s to present days, Indigenous peoples have been included by UNESCO in many conventions, declarations, policy papers, and strategies regarding culture, religion and education as in the *Universal Declaration on Cultural Diversity* (2001), the *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003), and the *UNESCO Policy on Engaging with Indigenous Peoples* (2018). Through these international instruments, UNESCO has safeguarded the culture, cultural diversity, and cultural heritage of Indigenous peoples by extensively reinterpreting traditional human

rights guarantees and recognizing collective and group rights in global governance, hence in standard-setting: as proved by the jurisprudence of the Human Rights Committee, the enjoyment of culture, the practice of a religion, or the use of language "can be can only be meaningfully exercised 'in a community i.e., as a group" (Wiessner 2018, 349).

The Universal Declaration on Cultural Diversity (2001)

The Universal Declaration on Cultural Diversity (2001) links cultural diversity – in particular the minority and ethnic one like Indigenous peoples' – to human dignity, and includes in this concept diverse knowledge systems; however, Indigenous peoples are not defined by the Declaration as part of cultural diversity itself, but as an important part of diversity at large (Stimac 2022, 4).

In its Article 4 titled "Human rights as guarantees of cultural diversity", the Declaration implies "a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of Indigenous peoples". The infringement or the limitation of the scope of human rights guaranteed by international law cannot be justified by the invocation of cultural diversity. According to this article, Indigenous peoples' fundamental freedoms cannot be either infringed or limited on the basis of cultural diversity because they are protected by the international law of human rights (Ibid.).

Indigenous knowledge is considered by the Declaration as an "overarching category" that includes also Indigenous peoples' spirituality and education (Ibid.). Their culture and religion has been later considered as "intangible heritage" by the Convention for the Safeguarding of Intangible Cultural Heritage (2003), where UNESCO addresses the heritage of communities and groups, and also recognizes and protects the intangible dimension of Indigenous peoples' spiritual life (Stimac 2022, 6).

The UNESCO Policy on Engaging with Indigenous peoples (2018)

The UNESCO Policy on Engaging with Indigenous peoples (2018) represents the practical application of the UNDRIP by UNESCO in certain areas of engagement that are of "specific relevance" to the Organization's mandated work domain – such as education system, natural sciences, the ocean and human sciences, culture, communication and gender equality (Ibid. p. 7) – and constitutes a long-term duty based on constant and ongoing consultation with Indigenous peoples (Thornberry 2002, 28).

The Policy recognizes that the preservation and the integrity of Indigenous peoples' culture is highly challenged, especially when talking about natural and cultural heritage sites: many of these latter "constitute home or are located within land managed by Indigenous peoples" (Stimac 2022, 8). On these sites, Indigenous peoples have the right to traditional lands, territories and resources, and take active part in conservation and protection activities as traditional management systems are considered part of new management approaches (Ibid.). The Policy recalls the right of Indigenous peoples to the conservation and protection of their environment affirmed in Articles 29 and 25 of the UNDRIP and, based on Article 26, affirms UNESCO's opposition towards the removal of Indigenous peoples from their lands and territories in any project or programme in which it is involved.

Because these communities experience discrimination or unfair treatment related to their cultural identity, expressions and heritage, or the use of traditional lands, territories and cultural and natural resources, UNESCO ensures that its actions do not negatively affect and uphold Indigenous peoples' rights (UNESCO 2018, 24).

### *1.2.3. The Food and Agriculture Organization (FAO)*

The Food and Agriculture Organization (FAO) has adopted a progressive and inclusive work with Indigenous peoples over time, starting from 2004 when the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)* highlighted the importance of Indigenous peoples' access to their lands and resources in order to guarantee their right to food (Guidelines 8.1 and 8.10). These Guidelines provide policy instructions concerning, among others, the access to resources and assets, and vulnerable groups and disaggregation of data, that can be used by Indigenous peoples as a tool for advocacy (IFAD 2022a, 4-5).

FAO Policy on Indigenous and Tribal Peoples (2010)

In 2010 FAO adopted its *Policy on Indigenous and Tribal Peoples* to have a framework to guide its work on Indigenous peoples' issues, and to help Indigenous peoples' themselves in communicating and clarifying what they expect from the Organization.

As result of a series of consultations with leaders of Indigenous peoples, the UN Permanent Forum on Indigenous Issues (UNPFII), the Inter-Agency Support Group on

Indigenous Issues (IASG) and members of FAO's professional body, the Policy identifies key areas covered by FAO's mandate and addresses a diverse set of outlooks and feasible opportunities for future work (FAO 2010, 3). The Policy has been reformulated in 2015 to ensure that FAO will make all due efforts to respect, include, and promote Indigenous issues in its relevant work and to consider them as fundamental stakeholders and partners in development (FAO, n.d.).

Within the framework of the UNDRIP and its Policy, FAO has identified in 2015 six pillars and two focus areas – Indigenous youth and Indigenous women – for its work with Indigenous peoples, thanks to a collaboration with Indigenous leaders and youth: (1) Coordination; (2) Advocacy and Capacity Development; (3) Free, Prior, and Informed Consent; (4) Indigenous Food Systems; (5) Indicators and Statistics for Food Security; and (6) Voluntary Guidelines of Tenure (FAO 2020, 8).

The Indigenous Peoples Unit

Section 9 of the *Voluntary Guidelines for the Responsible Governance of Tenure Land, Fisheries and Forests in the Context of National Food Security* (VGGT) – endorsed by the members of the World Committee on Food Security in 2012 – indicates the importance of land rights for Indigenous peoples and pastoralists; this led, for the first time, to the creation in 2014 of a dedicated Indigenous Peoples Team (IFAD 2022a, 6).

In 2019 the Team became the Indigenous Peoples Unit that works with Indigenous peoples and their representatives and FAO's technical divisions for the fulfilment of three main objectives: (1) implementing FAO Policy on Indigenous and Tribal Peoples through joint work programmes; (2) advocating and assisting FAO technical divisions for the integration of Indigenous peoples in their work; (3) favouring policy processes and open spaces of dialogues between decision-makers and Indigenous peoples (FAO 2020, 10).

The Indigenous Peoples Unit implements FAO's Policy safeguarding Indigenous peoples' food and knowledge systems by bringing together the normative and technical capacity to generate knowledge and technical evidence (FAO, IFAD, and WFP 2023, 2). In order to provide strategic advices, to support the relationship with Indigenous peoples, and to favour changes at global, regional and national levels, the Indigenous Peoples Unit plays a fundamental role by bridging the gap between evidence gathering and policy making (Ibid.).

The Indigenous Peoples Unit manages three key initiatives to influence normative work,

policies, and decision-making: (1) the *Coalition on Indigenous Peoples' Food Systems*, created to ensure understanding, respect, recognition, inclusion and protection of Indigenous peoples' food and knowledge systems, through the provision of evidence about their "game-changing and systemic" aspects; (2) the *Rome Group of Friends of Indigenous Peoples*, an informal yet meaningful space for FAO Members, Indigenous leaders, and academics to interact, with the aim of sharing information and advocating about Indigenous peoples' issues; and (3) the *Global-Hub on Indigenous Peoples' Food Systems*, a knowledge platform that constitute a tool to preserve Indigenous peoples' food systems, and to leverage ancestral and scientific knowledge to inform the transformation towards more sustainable food systems (Ibid. p. 2-3).

The International Treaty on Plant Generic Resources for Foods and Agriculture (2001)

Concerning binding international instruments, FAO adopted on November 3, 2001 the *International Treaty on Plant Generic Resources for Foods and Agriculture* aiming at: the recognition of farmers' contribution to crops diversity; the establishment of a global system to provide access to plant genetic materials to farmers, plant breeders and scientists; and the guarantee that benefits derived from the use of these genetic materials are shared with the countries where they have been originated.[3]

In its Article 5.1(d), the Treaty affirms the obligation of each Contracting Party of promoting "an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture", especially in the conservation of wild crops relatives and wild plants for food production through the support of Indigenous and local communities' efforts (Calderón Gamboa 2008, 139).

### *1.2.4. The International Fund for Agricultural Development (IFAD)*

The International Fund for Agricultural Development (IFAD) is an international financial institution and specialized UN agency with a mandate to fight rural poverty and food insecurity through agricultural development and rural transformation (FAO, IFAD, and WFP 2023, 4). In line with the UN Agenda for Sustainable Development and its commitment to "Leave no one behind", IFAD supports Indigenous peoples' development through self-driven projects aimed at reinforcing their knowledge, culture, identity,

[3] www.fao.org/plant-treaty/overview/en/ consulted on March 30, 2023.

natural resources, and human rights (IFAD 2022b, 2).

In 2009, IFAD approved its *Policy on Engagement with Indigenous Peoples* – designed to empower Indigenous peoples through a "development approach that builds on their culture and identity" – setting out the engagement principles that IFAD will follow in its work with Indigenous peoples (Ibid.). The Policy has been updated in December 2022, with the aim of enhancing Indigenous peoples representation concerning relevant items in IFAD's governance bodies agenda (FAO, IFAD, and WFP 2023, 4). According to the Policy, 37% of IFAD's current initiatives supports areas where Indigenous peoples live, with 83 IFAD-funded projects that touch about 9 million peoples in 46 different countries, for an estimated investment amounting to US$1 billion (IFAD 2022a, 5).

In 2021, the International Fund released *Good Practices in IFAD's Engagement with Indigenous Peoples*, sharing practical examples from its investment and small projects supported by the Indigenous Peoples' Assistance Facility (IPAF) – a facility created in 2007 that provides small grants of up to US$50,000 for projects fostering self-driven development and improving Indigenous peoples' well-being (FAO, IFAD, and WFP 2023, 5). Thanks to the IPAF, IFAD has learnt that not only every small amounts can make a difference for small communities, but also that entrusting Indigenous peoples' communities with direct resources management can significantly improve capacity-building and self-determined development (IFAD 2022a, 5).

Moreover, in order to favour dialogue and consultation between Indigenous peoples' organizations, IFAD staff and Member States, IFAD has established an Indigenous Peoples' Forum, where Indigenous peoples can convey their concerns, requests and recommendations, leading to the creation of strong partnerships with other like-minded organizations such as the UNPFII (FAO, IFAD, and WFP 2023, 4).

As affirmed in the Policy on Engagement with Indigenous peoples, it is fundamental to secure Indigenous peoples' rights to their lands and territories and resources; to this end, throughout the years IFAD has elaborated approaches and tools – such as implementation plans, participatory mapping, learning routes, participatory project design and implementation processes – that have proved to be successful, especially in safeguarding legal recognition of their customary land tenure rights, the collective management of natural resources, and participation in decision-making processes (IFAD 2022a, 6).

Because Indigenous peoples' land rights are inseparable from their right to food as they

rely on lands for their food security and livelihoods, and their food systems are strongly intertwined with their cultural, social and spiritual well-being, IFAD has given a high importance to Indigenous peoples' food and nutrition security in its operations (IFAD 2022a, 8). In line with the recommendations of the Food System Summit and its partnership with Slow Food, IFAD has supported the innovation, production diversification and marketing improvement of Indigenous youth's food products through participatory guarantee systems for labelling (Ibid. p. 4).

### *1.2.5. The United Nations Development Programme (UNDP)*

The United Nations Development Programme (UNDP) can play an important role in the facilitation of dialogue and the advancement of Indigenous peoples' concerns, since they constitute often the most marginalized populations in society, deprived of the right to development (UNDP 2000, 1). On the basis of these considerations, many UNDP's regional, national and small grants programmes have involved Indigenous peoples' communities since 1993, the year of the inauguration of the UN International Year of Indigenous peoples (OHCHR n.d., 1).

This led UNDP to the adoption in 2001 of a precise policy on Indigenous peoples called *UNDP and Indigenous Peoples: a Policy of Engagement*: this policy demonstrates UNDP's awareness on the fact that development projects need to be carried out in a way that recognizes the cultural specificity of the people affected by them (Swepston 2005, 63). In addition to international conventions, declarations and programmes of actions protecting Indigenous peoples' rights and their fundamental role in development and environmental management, the UNDP Policy sets out the legal framework and the guiding principles for the engagement with Indigenous peoples (UNDP 2000, 1).

The Policy is driven and sustained not only by the framework of international human rights law, but also by another policy paper named *Integrating Human Rights with Sustainable Human Development* (*Human Rights Policy*) of 1998. This latter recognizes the right to self-determined development and control of ancestral lands of distinct peoples living in distinct regions, thus embracing a concept of development that includes Indigenous peoples' aspirations, spirituality, culture, and social and economic aims (Ibid. p. 2).

Attention has been placed on Indigenous peoples particularly for their sustainable

development practices – especially their ways of life, cultures, sciences, land and resource management, governance, political and justice systems, knowledge and healing practices – as UNDP's main objective is pursuing a sustainable human development (Ibid. p. 3). National and international development can benefit from Indigenous peoples' assets and traditional knowledge, and as such UNDP promotes Indigenous peoples participation in development processes and their perspectives in development planning and decision-making by incorporating the right to development in its work (Ibid.). Representatives from Indigenous peoples' organizations identified certain areas that could use UNDP's assistance: participation, self-determination, conflict prevention and peace-building, environment and sustainable development, globalization (Ibid. p. 4).

UNDP promotes the profound relationship that Indigenous peoples have with their environment, land, and resources, and acknowledges that Indigenous lands are increasingly under threat by the elaboration and adoption of laws that do not consider Indigenous customary rights (Ibid. p. 9). In order to combat this issue, UNDP works with governments, civil society organizations and Indigenous peoples' organizations for the recognition of their rights to lands, territories and resources through the support of the adoption of laws protecting Indigenous lands and their inclusion in key legislative processes (Ibid. p. 7). Moreover, UNDP supports a multilateral trade system sensitive to Indigenous peoples' rights, especially with regard to food security, in their Indigenous sustainable agriculture activities, resource management practices, and traditional livelihoods (Ibid. p. 9).

Between UNDP grant programmes, Indigenous peoples can seek funding through the *Global Environment Facility (GEF) Small Grants Programme*, which supports small-scale activities addressing environmental problems conducted by NGOs and community groups (OHCHR n.d., 1). UNDP regional and national development programme activities support Indigenous peoples in the improvement of living standards, economic and technological development, the preservation of natural resources and environmental conservation, and cultural revitalization (Ibid. p. 3).

### *1.2.6. The World Bank*

The World Bank's actions related to Indigenous peoples are guided by the *Indigenous Peoples Policy* (Operational Directive 4.20) adopted in 1991 and designed to "(a) ensure

that Indigenous People benefit from development projects, and (b) avoid or mitigate potentially adverse effects on Indigenous People caused by bank-assisted activities" (Swepston 2005, 62-63). Since investments and large-scale development projects affect – often negatively – Indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to affirm their needs and rights regarding land and other productive resources, the World Bank calls for special attention, and wants to ensure that the development process promotes "the dignity, human rights and cultural uniqueness of Indigenous peoples" through this Directive and its Inspection Panel (Thornberry 2002, 28).

The World Bank addresses Indigenous peoples' issues through: (a) an economic and sector work in involved countries; (b) technical assistance; (c) investment project components or provisions (World Bank 1991, 2). Furthermore, the Bank is involved in research for the popular participation, management of natural resources and conservation of biological diversity by Indigenous peoples towards the adoption of a "cultural sustainability" approach (Thornberry 2002, 29).

In the elaboration of Indigenous peoples development plans and their components, the Policy affirms that "particular attention should be given to the rights of Indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wild-life, and water) vital to their subsistence and reproduction" (World Bank 1991, 4). Concerning land tenure, the Bank should offer its assistance in the strengthening of local legal recognition of Indigenous peoples' customary or traditional land tenure systems, and should propose alternative arrangements when traditional rights are converted in those of legal ownership in order to grant "long-term, renewable rights of custodianship and use" to Indigenous peoples (Ibid.).

# Chapter 2 – Regional instruments and relevant Indigenous peoples caselaw

## 2.1. The Inter-American region and the Organization of American States (OAS)

Contrary to other regions of the world, most countries of the Inter-American region have been accepting the existence of Indigenous populations within their territories and have slowly recognized – in theory at least – their exercise of some degree of "internal self-determination" (Sieder 2016, 414).

The outlook on the constitutional recognition of Indigenous peoples across the Inter-American region, in particular Latin America, is fairly fragmented with different degrees of endorsement: some constitutions have little or no recognition (like Uruguay), while others embrace multi- and interculturalism on the basis of indigeneity (as Bolivia). Indigenous rights were stalled in the region for three decades because nearly all countries experienced military dictatorships between the 1960s and the 1980s, which advanced the idea of egalitarian societies as a rule, thus refusing every difference based on identity. These constitutions have generally experienced significant changes over the years, with the most recent ones affirming noteworthy degrees of engagement with Indigenous peoples and their claims (Lixinski 2022, 12).

However, the consolidation of an economic model based on direct foreign investments in the recent years has raised a competition between domestic and transitional economic actors for the "control and benefit from the surface and subsoil natural resources on ancestral Indigenous lands" (Sieder 2016, 414); this competition has been endorsed by Governments through licenses, concessions and approvals for projects of natural resources exploitation, while every effort to protect Indigenous lands have been met with violent backlash and unwillingness to concretely uphold Indigenous peoples' territorial and autonomy rights (Ibid.).

The role of the Organization of American States (OAS) in historical discourses on Indigenous peoples is of much importance as many of the world's Indigenous communities are found within the jurisdictions of its Member States (Thornberry 2002, 265). In 1972 the protection of Indigenous populations has been defined as a "sacred commitment of OAS Member States" by the Inter-American Commission of Human Rights (IACHR) (Ibid. p. 273), and in its jurisprudence during the 2000s, the

Inter-American Court of Human Rights (IACtHR) has defined Members States' obligations on how to uphold in practice Indigenous collective rights – to administer, distribute and effectively control their ancestral lands – through decisions conforming to the principles set out in the UNDRIP (Sieder 2016, 418).

### *2.1.1. Inter-American human rights provisions protecting Indigenous peoples' rights*

The OAS Charter makes limited but significant references to human rights of general nature, constituting disparate indications for Indigenous peoples which are not specifically mentioned (Thornberry 2002, 266). Some prescriptions are broad enough to respect Indigenous culture and society, as Article 3(m) that cherishes and preserves the cultural values and heritage of American countries and their peoples both individually and jointly. Other provisions, instead, are double-edged, meaning that according to how text meanings are abstracted and policies pursued, they can potentially undermine or sustain Indigenous cultures – such as Article 45(f), according to which Member States dedicate themselves to increase the participation of "the marginal sectors of the population, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community" (Ibid. p. 267).

Together with the adoption of the OAS Charter in 1948, other documents were adopted: the *American Declaration of the Rights and Duties of Man* (*American Declaration*, or ADRDM), and the *Inter-American Charter of Social Guarantees*. In line with the post-1945 approaches towards Indigenous peoples, the Charter on Guarantees contains a paternalistic, protective and integrationist provision on Indigenous groups by identifying the nature of the threats to Indigenous existence, but at the same time encouraging the exploitation of resources on Indigenous territories as a way to "emancipate" them (Ibid.).

Concerning the other Inter-American human rights instruments, Indigenous peoples' territorial rights are protected within the recognition of the right to property: Article XXIII of the American Declaration, and Article 21 of the *American Convention on Human Rights* (*American Convention* or ACHR, 1969) (OAS 2010, 2).

When examining complaints concerning Indigenous land rights under the American Declaration, the IACHR interprets and applies its pertinent provisions "in light of current developments in the field of international human rights law", thus including "the developing norms and principles governing the human rights of Indigenous peoples"

(Ibid.). As a reflection of "the general international legal principles developing out of and applicable inside and outside of the Inter-American system", the principles of the international law of human rights that govern the individual and collective interests of Indigenous peoples protect their traditional forms of ownership and cultural survival on their right to lands, territories and natural resources, and therefore must be considered when interpreting and applying the American Declaration in the context of Indigenous peoples (Ibid. 4).

Because of the fact that in Article 21 of the American Convention there is no explicit reference to Indigenous and Tribal peoples, the IACHR and the IACtHR have interpreted its content through the general rules of interpretation affirmed in Article 31 of *the Vienna Convention on the Law of the Treaties*, and Article 29 of the American Convention prohibiting restrictive interpretations. As a result, Article 21 has been interpreted considering the normative developments of international human rights law regarding Indigenous peoples' rights, such as the ILO Convention No. 169, the UNDRIP and the UN treaty bodies' jurisprudence (Ibid.).

From Article XXIII of the American Declaration and Article 21 of the American Convention and their interpretation on the individual right to property, the jurisprudence of the Inter-American Human Rights organs have defined an articulated system of protection of Indigenous and Tribal ancestral lands recognizing that Indigenous peoples not only have property rights on ancestral land, but also that the exercise of this right is regulated by a collective property system (Caligiuri 2015, 435). This collective property system on ancestral lands is established on Indigenous juridical traditions and ancestral property systems, regardless of a State acknowledgment, and as such Indigenous peoples' property rights on lands have their foundation and recognition on ancestral usage and occupation, and not in an official State act (Ibid. p. 435-436).

Another instrument that has been used in cases involving Indigenous peoples and interference with their land rights is the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (or *Protocol of San Salvador*), adopted in 1988 and entered into force in 1999. The Protocol includes economic, social, and cultural rights in order to complete Article 26 (right to progressive development) of the ACHR, the only general provision concerning these rights. It protects the right to work (Article 6), the right to health (Article 10), the right to a healthy

environment (Article 11), the right to food (Article 12), and the right to education (Article 13). To this date, it has been ratified by 18 States: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela; Haiti and the Dominican Republic have signed the Protocol but not ratified it, therefore they do not have obligations on its basis (Galindo, Kambel, and Couillard 2015, 4).

### *2.1.2. The American Declaration on the Rights of Indigenous Peoples (ADRIP, 2016)*

The *American Declaration on the Rights of Indigenous Peoples* (ADRIP) has been adopted in 2016 after nearly 30 years of negotiations (Indian Law Resource Centre n.d., 1). Like its UN counterpart (the UNDRIP), it was considered a very controversial document by States for its way of guaranteeing too many rights, since it enjoyed a wide Indigenous participation in its drafting process (Lixinski 2022, 22). Regardless of its non-binding nature, the Declaration sets the rules for States' conduct and obligations towards Indigenous peoples and individuals, and guides countries' laws, policies and practices as a "moral and political tool" (Indian Law Resource Centre n.d., 1).

The first step towards the development of a Declaration was made in 1989 by the OAS General Assembly, which requested to the IACHR the preparation of a preliminary draft for "a juridical instrument relative to the rights of the Indian peoples" (Crippa 2022, 26). After difficult times of cooperation between Member States and Indigenous peoples' representatives and organizations, the General Assembly adopted the Declaration in 2016 by consensus, as no Member State objected to such resolution (Ibid. p. 27-28). Nevertheless, some States reversed its endorsement: the United States renowned its persistent objector status to the Declaration; Canada declared its non-position on the document; and Colombia issued "interpretative notes and footnotes" to the articles concerning free, prior, and informed consent and military activities on Indigenous lands, affirming that the ADRIP went beyond the Colombian domestic law with regards to State decisions affecting Indigenous peoples' rights (Indian Law Resource Centre n.d., 2).

The ADRIP recalls in some ways the UNDRIP – as for the provision on the right to self-determination – and the rights affirmed in it constitute "the minimum standards for the survival, dignity, and well-being of the Indigenous peoples of the Americas" (Giacomini 2022, 182). A *fil rouge* of the ADRIP is self-determination and autonomy, unsupervised

or without "granting" by States (Lixinski 2022, 24); as a result, it contains clauses on consultation and free, prior, and informed consent, the right to land, territories, resources and the protection of the environment, treaty and agreements rights (Giacomini 2022, 182).

In its Article VI, the ADRIP recognizes Indigenous collective rights "that are indispensable for their existence, well-being, and integral development as peoples" considering, among others, the right of Indigenous peoples to their lands, territories, and resources. Even if in the UNDRIP there is no equivalent specific provision to this Article, in its Article 1 and the Preambular Provision No. 22 it recognizes too Indigenous peoples' right to fully enjoy all human rights and freedoms, as their indispensable collective rights. The ADRIP explicitly states land rights in Article XIX (right to protection of a healthy environment) and Article XXV (traditional forms of property and cultural survival; right to land, territory, and resources). Recalling Article 29 of the UNDRIP, Article XIX of the ADRIP states that Indigenous peoples have the right to conserve, restore, protect, and manage the environment and the productive capacity of their lands or territories and resources, especially in a sustainable way, and that States "shall establish and implement assistance programmes […] for such conservation and protection, without discrimination". Article XXV of the ADRIP unites Articles 25, 26, 27, 28 but also 32, 8 and 10 of the UNDRIP, by affirming that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired", and to own, use, develop and control them (Indian Law Resource Centre n.d., 14-15). The legal recognition and protection of these lands, territories and resources shall be given by States through the establishment of special regimes for their effective demarcation, and shall be carried out "with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned" (Ibid. p. 15).

With no equivalent in the UNDRIP, the ADRIP also includes new provisions regarding the Indigenous peoples "in voluntary isolation or initial contact" (Article XXVI): for these latter, the ADRIP acknowledges that the exercise of some Indigenous peoples' autonomy may mean not to engage with the settler State at all, hence States must respect their will (Lixinski 2022, 23).

One of the advancements that the ADRIP has when confronted with the UNDRIP is its "language on the recognition, observance and enforcement of treaties" (Ibid.): the

ADRIP, indeed, adds an "interpretation rule", meaning that all treaties are to be interpreted "in accordance with their true spirit and intent in good faith and to have States honor and respect the same" (Art XXIV.1); as such, due consideration must be given by States to the understanding of Indigenous peoples regarding treaties, agreements and other arrangements (Lixinski 2022, 23). In view of its references to binding elements of customary international law and its nature of evolving instrument, the ADRIP can be used to interpret other relevant international tools and to influence the development of international law thanks to its interpretation, implementation and application by Indigenous peoples themselves, the IACHR and the IACtHR (Indian Law Resource Centre n.d., 1).

After the adoption of the ADRIP in 2016 – though the aim was to re-include Indigenous issues into the organization's agenda – no working group in collaboration with Indigenous peoples was created to implement it because of OAS' financial constraints (Crippa 2022, 40). Only a year later, in April 2017, an implementation plan was proposed, and contributions from Indigenous peoples were obtained: the draft of the *Plan of Action* was approved by the OAS General Assembly 3 months later in June 2017, with the US and Venezuela not joining the consensus (Ibid. p. 41). The adoption of the Plan of Action reinforces the hope that fair legal rules and good faith will guide the relationship between Indigenous peoples and Member States, and its dynamics will be seen in the years to come (Ibid. p. 42).

### 2.2. Indigenous peoples' litigation in regional and national courts

Indigenous peoples' human rights have always been most systemically denied and violated throughout the history of Latin America, leading Indigenous issues and serious allegations against Governments – up to and including genocide – to be arisen especially in the context of individual complaints in the Inter-American system of protection of human rights (Sieder 2016, 414).

According to the IACHR, Indigenous and Tribal peoples in the Amazon region are victims of an ongoing process of dispossession of their lands and blockings in the recognition of their ownership, which includes: excessive delays or obstacles in Indigenous lands demarcation; the adoption of regulations limiting previously recognized communal property guarantees; the partial recognition of territory or, concerning

ownership requirements, the imposition of stricter conditions; the unlawful appropriation by States or third parties of Indigenous lands; dominant pressures in the economic sectors connected with extractive industries; the adoption of farming laws and provisions hostile to Amazonian Indigenous peoples (IACHR 2019, 13).

Thanks to the reports that the IACHR receives, the Commission has been able to state that in the Amazon region Indigenous peoples' enjoyment of the right to food is undermined by environmental impacts – such as contamination by mercury, use of toxic chemicals for agriculture, oil spills – whose substances are transmitted through drinking water and contaminated animals as fish that could even prompt a food crisis (Ibid. p. 134-135). Moreover, the right to food of Indigenous peoples has been imperilled by certain culturally inappropriate food measures taken by States (for instance, when industrialized food are distributed), and by the impairment of traditional hunting and gathering practices caused by deforestation and the loss of biodiversity (Ibid. p. 135). Indigenous peoples' right to food is entwined with land rights, therefore the lack of access to their traditional territories and their resources exposes Indigenous communities to "precarious or infra-human living conditions" with regards to food and basic services access; this causes high mortality and child malnutrition rates, and high vulnerability to diseases and pandemics among Indigenous peoples (Ibid. p. 138).

Because of the limitations of approved constitutional changes and the lack of an official political will, concretely guaranteeing Indigenous peoples' rights produced different comebacks: in some countries, Indigenous peoples' organizations strengthened *de facto* forms of territorial, political, and legal autonomy; in others, legal appeals in defence of collective rights have been difficult to present because of weak or imprecise constitutional provisions, the questioned status of international law in respect to domestic law, the absence of effective support structures of legal mobilization, and the restriction of mechanisms for presenting constitutional complaints or actions. As a result of these difficulties, Indigenous peoples have presented their claims to extra-national forums as the ILO, the IACHR and the IACtHR which were able to uphold States' obligations in practice (Sieder 2016, 417-418).

### *2.2.1. Cases concerning the protection of right to land*

*Yanomami v Brazil* (1985)

One of the most important cases concerning the protection of Indigenous peoples' right to land is the IACHR *Yanomami v Brazil* case of 1985, concerning an Indigenous community with a population of more than 10,000 people living in the Amazon region (Golay 2009, 42-43).

In their petition, the Yanomami peoples of Brazil affirmed that the construction in 1973 of a highway on their ancestral territories, without "prior and adequate protection" for their safety and health, caused: a considerable number of deaths due to epidemics of various nature (influenza, tuberculosis, measles, venereal diseases, etc.); the forced displacement of Yanomami peoples from the area, which were later constrained in turning into beggars and prostitutes; and the increase of violence between miners and Indigenous peoples after the discovery of ores of tin and other metals in 1976 (IACHR 2010, 101-102). The petitioners asked the IACHR which was the scope of the protections under the American Declaration provided to Indigenous peoples' rights – particularly land rights – and the States' obligations that would ensue, as well as whether the ADRDM could be interpreted using other international law instruments (OHCHR 2015, 39).

According to the IACHR, the Brazilian government failed "to take timely and effective measures to protect the human rights of the Yanomamis", and such failure harmfully impacted the community's way of life (IACHR 2010, 102). By making reference to international human rights law, in particular Article 27 ICCPR, the IACHR affirmed the rights of Indigenous peoples to the protection of their culture and traditional way of life, including the access to and the control over their traditional lands (OHCHR 2015, 39). Brazil's shortcomings amounted to a violation of the Yanomami peoples' rights granted by the ACHR: to life, liberty, and personal security (Article I); to residence and movement (Article VIII); and to the preservation of health and to well-being (Article XI) (IACHR 2010, 102). The IACHR recommended Brazil "to take preventive and curative health measures to protect the lives and health" of Yanomamis exposed to diseases, to set and demarcate Yanomamis' territories, and to carry out programmes of education, medical protection, and social integration in consultation with the affected Indigenous communities (Ibid.).

*Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2000)

The IACtHR has dealt with Indigenous peoples' lands rights in the context of Articles 21 (right to property) of the ACHR and recognized – through the consideration of recent

international normative developments – that this Article also protects "the right of the members of Indigenous groups to collectively own their ancestral lands" (Barelli 2016, 73). Stemming from the preliminary recognition of the special relationship between Indigenous peoples and their lands, this pioneering approach was introduced for the first time in the *Mayagna (Sumo) Awas Tingni Community v Nicaragua* case of 2000, and confirmed in other consequent cases (Ibid.).

The Awas Tingni Community is an Indigenous community located in the Atlantic Coast of Nicaragua, whose subsistence is based on communal agriculture, fruit gathering, hunting, and fishing.[4] After the Government concession to a third party for road constructions and forest exploitation in the region the community was located in, these Indigenous populations sought an effective national remedy for the protection of their communal land with a request not to carry out any further steps without their consultation (Strydom 2022, para. 33).

After alleging that the Nicaraguan State did not ensure an effective remedy for the Indigenous community's requests, they filed an application to the IACHR claiming that it did not comply with its obligations descending from the ACHR. The Commission decided to bring the case before the IACtHR, which followed an "evolutionary approach" for the interpretation of human rights treaties: the Court affirmed that Article 21 of the Convention "protects private property in a sense which also covers the rights of Indigenous communities within a framework of communal property" (Ibid.). The Court considered "communal property" the lands, waters, and forests that have traditionally belonged to the Indigenous communities of the Atlantic Coast, and declared that such properties are inalienable and inextinguishable, therefore the State had "no right to grant concessions to third parties with respect to Indigenous land" (Ibid.). According to Articles 1 and 2 of the Convention, the State has the obligation to respect and to give domestic legal effect to conventional rights, and therefore in the present case to properly delimit, demarcate and legally titling Indigenous lands (Ibid.).

Since Nicaragua did not compel with these obligations through the adoption of adequate domestic legal measures, the Court declared its violation of Articles 25 (right to judicial

[4] https://leap.unep.org/countries/ni/national-case-law/case-mayagna-sumo-awas-tingni-community-v-nicaragua consulted on April 6, 2023.

protection) and 21 of the Convention. As a reparation for non-material damages, the IACtHR ruled that the Nicaraguan State should invest the amount of US$50,000 in "works or services of collective interest for the benefit of the community", and to delimit, demarcate, and recognize Yanomamis' land titles with their full participation and in accordance with their values (Golay 2009, 43).

*Yakye Axa v Paraguay* (2005)

Another case before the IACtHR concerning Indigenous land rights is the *Yakye Axa v Paraguay* case of 2005, regarding the Indigenous community of Yakye Axa of Enxet ethnicity and language, living in the Chaco region – an area shared between Paraguay, Brazil, and Argentina, rich of natural resources and minerals.

At the end of the XIX century, non-Indigenous colons acquired the private property of the Yakye Axa peoples' ancestral lands and settled in the area; the Indigenous community continuously lived on their ancestral lands, and between 1986 and 1993 started claiming its possession. The Paraguayan State did not recognize the communal ownership and possession of Yakye Axa peoples' traditional land and transferred them with the use of armed forces. Because of the precarious hygienic conditions in which it happened, the forced displacement favoured the spread of diseases, causing the death of sixteen children, and left the Community to live in extreme poverty with no access to food, water, and electricity. To contrast the State's decision, some Yakye Axa members decided to occupy the bordering area of their ancestral territory and to block streets leading to it, causing heavy economic repercussions (Nocera 2018, 805).

The Indigenous community presented many petitions before national jurisdictions throughout the years for the alleged violation of their communal property land rights, but they proved to be unsuccessful; as a consequence, the Yakye Axa peoples complained a violation of their land rights before the IACHR, which recognized the admissibility of their request and transferred the case to the IACtHR (Ibid.). The Court recognized Paraguay's liability for the violation of: the right to life (Article 4 ACHR); the right to physical, mental, and moral integrity (Article 5 ACHR) and to personal liberty (Article 7 ACHR); the right to health (Article 10, Additional Protocol to the ACHR); the right to a healthy environment (Article 11, Additional Protocol); the right to food (Article 12, Additional Protocol); the right to education (Article 13, Additional Protocol); and the right to the benefits of culture (Article 14, Additional Protocol) (Ibid. p. 806).

According to the IACtHR, the Paraguayan State did not adopt adequate measures for the acquisition by Indigenous communities of ancestral lands, while ensuring the enforceability and speed of administrative procedures in place, as well as procedural protection and judicial guarantees; these obligations stem from Article 14.3 (land ownership and possession rights) of the ILO Convention No. 169, in connection with Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention (Ibid.). On the basis of the State's duties to respect the rights contained in the Convention (Article 1 ACHR) and to adopt legislative or other measures to give them concrete effect (Article 2 ACHR), Paraguay was considered internationally responsible for its shortcomings towards the Indigenous community's effective use and enjoyment of their traditional land, thus "threatening the free development and transmission of its culture and traditional practices" (Ibid.).

Moreover, as Indigenous communal property rights cannot be limited if not for imperative public interests while following proportionality criteria, the Court condemned the Paraguayan State to repair the Indigenous community through economic compensations or the allocation of new territories; since there was no imperative public interest justifying the Indigenous peoples land deprivation, the State's unrecognition of Indigenous land rights constituted a violation of Article 21 ACHR (right to property) (Ibid. p. 807). Additionally, the Court ordered Paraguay to adopt all necessary measures to effectively allocate traditional land to Indigenous communities, to guarantee their judicial protection, and to provide "basic goods and services necessary for the community to survive until they recovered their land" (OHCHR 2015, 52).

*Kichwa Indigenous People of Sarayaku v Ecuador* (2012) [5]

In the case of *Kichwa Indigenous People of Sarayaku v Ecuador*, the Ecuadorian State granted concessions to a private oil company to carry out oil exploitation and exploration activities on the ancestral lands of the Kichwa Indigenous communities of Sarayaku, located in the Amazonian province of Pastaza in the middle of the Bobonaza river basin (OHCHR 2015, 62).

The Community filed multiples complaints to national authorities and succeeded in delaying the extractive activities for several years until 2002, when members of the oil

[5] For more details, check out www.sarayaku.org/caso-sarayaku/.

company – guarded by Ecuador's military and private security forces – forcibly entered the Sarayaku territory.[6] Between 2002 and 2003, the company built roads, installed high-powered explosives in several parts of the territory (about 1.400 kilos of pentolite explosive), deforested lands and destructed trees and plants of sacred and cultural value for the community, thus "depriving the people from subsistence activities and cultural practices" and putting their life at serious risk (Ibid.). The extractive activities were suspended after new complaints were presented to local authorities and to the Ombudsman of the Pastaza Province; nonetheless, the case was brought before the IACtHR, which ruled against Ecuador in 2012 (Ibid.).

The Court held that the Ecuadorian States violated the Sarayaku People's rights to consultation, communal property, cultural identity, to physical integrity and to life, as well as their right to a fair trial and to judicial protection. The Court elaborated on criteria and standards for prior and informed consultation, stressing the State obligations to adopt good faith principles, culturally adequate procedures, an informed conduct, and to attempt reaching an agreement; the State duty to consult cannot be delegated to third parties, and requires an effective State organization of its standards and institutions in order to effectively consult Indigenous, Native or Tribal communities (Ibid.).

*Ecuador v Arco Oriente* (2000)

About domestic case law, in the *Ecuador v Arco Oriente* case of 2000, the Ecuadorian Constitutional Court held that the private company Arco Oriente's occupation of Indigenous lands was incompatible with the Ecuadorian Constitution and the ILO Convention No. 169, since it had negotiated land deals with private individuals to bypass the consultation with the Indigenous communities (Ibid. p. 78).

Both the Constitution and the ILO Convention No. 169 protect the Indigenous peoples' rights: (1) to be consulted and to participate in the design, implementation and evaluation of national and regional development plans and programmes potentially affecting them directly; (2) to preserve their individual customs and institutions, and their cultural identity; and (3) to use and enjoy property and possession of ancestral land. Through the domestic enforcement of the ILO Convention No. 169, the Ecuadorian Constitutional Court legally protected the traditional political organization of Indigenous communities,

[6] www.cejil.org/en/case/community-of-sarayaku/ consulted on April 6, 2023.

and affirmed the need of consultation between the private company and the representatives of the Community prior any action that could concern them (Ibid.).

### *2.2.2. Cases concerning the protection of right to food*

In the context of the Inter-American human rights system, the IACHR found that the right to food descending from Article XI ADRDM (right to the preservation of health and to well-being) has been violated in the case *Yanomami v Brazil* (precited).

As the Brazilian government's agricultural projected intended to ensure access to food for displaced persons – as Yanomamis were considered – has proved ineffective, and it did not demarcate and protect the community's lands, the IACHR concluded that Brazil breached the right to food, among other rights, since it had failed "to take the necessary measures to protect the Yanomami community" (Golay 2009, 42-43).

*Enxet-Lamenxay and Kayleyphapopyet (Riachito) v Paraguay* (1996)

In the *Enxet-Lamenxay and Kayleyphapopyet (Riachito)* case of 1996, for the first time the IACHR authorized the conclusion of an amicable settlement to protect the Indigenous communities' rights to property and to food by reclaiming their ancestral lands and receiving food assistance for as long as they could not return to their lands. Located in the Chaco region of Paraguay, the Lemenxay and Riachito communities are both part of the Enxet peoples, an Indigenous group of 16,000 members; for decades, nearly 6,000 of them have depended on fishing, hunting, gathering, agriculture, and livestock raising for their sustenance (Ibid. p. 43).

From 1885, the Paraguayan State has been selling off their ancestral lands to third parties, and by 1950 all the Lamenxay and Riachito territories had been acquired. Despite a new Constitution adopted in 1992 recognizing the Indigenous communities' right to their lands, the recovery that these communities tried to seek was unsuccessful, therefore in 1996 they deposited a petition before the IACHR claiming that Paraguay had breached various rights contained in the ACHR, including the right to property. In 1998 the parties reached an amicable settlement: the Government would repurchase the land and give it back to the Indigenous communities free of charge, and would also guarantee their access to food and medicine until their return to their lands (Ibid.). In late July 1998 the land was returned, and by November 1998 the whole Indigenous population had settled down in

their regained land.[7]

During the on-site visit in Paraguay of an IACHR delegation in 1999, it was noted that the State only repurchased the land but did not grant land titles to the communities, a step that was later taken by the Paraguayan President on the occasion of a IACHR visit; by November 2000 it was reported to the IACHR that food and medical assistance has been sporadic and not covering all concerned communities (Ibid. p. 44).

*Sawhoyamaxa Indigenous Community v Paraguay* (2006)

In another case against Paraguay, *Sawhoyamaxa Indigenous Community v Paraguay* of 2006, the IACtHR safeguarded the rights to ownership, to life and to food of the Sawhoyamaxa Indigenous community, a population part of the Enxet peoples located in the Chaco region of Paraguay (Nocera 2018, 808). From the 1930s, this Indigenous community had been deprived of its ancestral land as a result of an expropriation process put in place by the Paraguayan State, which later sold the land to third parties for the creation of latifundia for soy cultivation (Ibid.).

In 1991, around 190 *Sawhoyamaxa* families revendicated the property of this land as "intrinsically attached to the culture and to the survival of the Community itself" (Ibid.). To contrast the State's decision to ban their access to the territory, they settled at the borders of the reclaimed land, waiting for the Paraguayan State to recognize, demarcate and allocate the land property rights to the Indigenous community (Ibid.). During that time, because of the Government's refusal to recognize their ancestral lands and to provide food assistance, the *Sawhoyamaxa* peoples were living in degrading conditions: they had lost access to their traditional means of subsistence, to food, to water and electricity, causing a shortage and a high risk of diseases, that lead to the death of 31 members of the community, including several children, between 1991 and 2003 (Ibid.).

By recalling its earlier jurisprudence and its progressive interpretation on the right to life based on the CESCR General Comment No. 12, the IACtHR affirmed that, in order to protect the right to life of the Community members, Paraguay should recognize their right to ancestral lands (Golay 2009, 45). Not recognizing the Indigenous community's property rights – different from the European liberal private property, as it is based on

[7] www.escr-net.org/caselaw/2006/lansman-et-al-v-finland-communication-no-5111992-un-gaor-52nd-session-un-doc-ccpr-c-52d consulted on April 6, 2023.

traditional ways to use and to enjoy their goods – would constitute a violation of both Article 21 ACHR (right to property) and of the ILO Convention No. 169 (Nocera 2018, 809). According to the Court, the Government did not take all the reasonable measures to remedy the situation, thus breaching its international customary and conventional obligations to make up for any harm caused (Golay 2009, 45).

The IACtHR ordered Paraguay to adopt significant reparations and compensations both for the community and its members individually, in the form of legislative, administrative and other measures "to ensure formal and physical usufruct by the Community members of their ancestral lands within a period of three years" (Ibid. p. 46). The Paraguayan State should also create a US$1 million development fund for the community to implement agricultural, health, potable water, education, and housing projects, and ensure the Indigenous community's access to adequate food (Ibid.).

*Defensor del Pueblo de la Nación v Estado Nacional y otra* (2007)

Considering domestic case law, in *Defensor del Pueblo de la Nación v Estado Nacional y otra*, the Argentinian's Ombudsman filed a case before the Supreme Court through an *amparo* action against the Chaco Province and the national Government, in order to provide medical and food assistance to the Indigenous communities living in the Province territories. As a consequence of degrading living conditions, a total of 11 Indigenous persons had died, leading the mediator to invoke the violation by these State entities of the rights to life and to food contained in the Argentinian Constitution, and other international and regional instruments as the ACHR, the ADRDM, the UDHR, the ICESCR, and the CEDAW – which, according to the Argentinian domestic law, have direct applicability in national jurisdictions (Ibid. p. 53).

In its decision of 2007, the Argentinian Supreme Court reiterated the direct applicability of these international instruments protecting the right to food and ordered the National and the Chaco Province governments to adopt: (a) "emergency measures through the distribution of food and potable water to Indigenous communities" in order to prevent imminent and irreparable harm; (b) structural measures to uphold Indigenous communities' right to food in the area (Ibid.). Indigenous peoples living in the area should have been identified, and reports on the implementation of assistance programmes for food, health, sanitary assistance, potable water, and education should be submitted to the Court, with the corresponding budget allocations (Ibid. p. 54).

# Chapter 3 – The protection of Indigenous women's rights

## 3.1. Indigenous women and the barriers to the enjoyment of their rights

Indigenous women represent around 238.4 million of the world's 476.6 million Indigenous peoples (IWGIA and ILO 2020, 13). They contribute to the survival of their families and communities in indispensable ways, especially in the protection of resources and the environment, the procurement of food and subsistence materials, as well as in taking care of others through healing and health activities (Kuokkanen 2011, 227). Thanks to their wisdom and practical experience, they have sustained human societies over generations by nurturing linkages and embodying active sources of continuity and positive change, in their qualities of mothers, life givers, culture bearers and economic providers (Xanthaki 2018, 376).

Gender roles within Indigenous communities and societies

Gender roles and responsibilities in Indigenous societies "stem from and are part of a broader relationship": they are defined through customary conventions based on social interactions and the survival needs of the collective (Kermoal and Altamirano-Jiménez 2016, 9-10). The literature on Indigenous peoples and their knowledge frequently identifies a binary division of tasks and spheres of activities between men and women, according to four principles: differentiation, complementarity, transfer, and integration (Lévesque, Geoffroy and Polèse 2016, 69).

A clear division of tasks between Indigenous men and women is usually emphasized: men would be mainly hunting, while women would process and prepare the game, maintain camps and lands, and look after the children (Ibid.). Nonetheless, for the execution of certain tasks, the two spheres of activity would also complement in the implementation by one gender of the knowledge and skills associated with the other: concerning caribou hunting and Naskapi Women in Canada, for example, women's tasks were important for the success of the hunt, but it was men who organized and carried out the activities; on the contrary, during childbirth men performed supportive tasks as gathering wood or bringing food, while the midwives were the ones in charge (Ibid. p. 70). Especially in environments with severe conditions, the knowledge held by one gender would be transferred to the other as a backup measure, to cope and manage any circumstance – as in case of hunting, where women would learn how to hunt in order to

survive in the event of absence or death of the males, or of teaching medicinal plants knowledge to men. Men and women's skills would also integrate one and the other – in more or less equal measure – for the implementation of activities or the creation of objects that required several types of techniques (Ibid. p. 71).

Indigenous women's invisible knowledge

Despite its persistence and importance in guiding their lives, Indigenous women's knowledge has remained largely "invisible", as a consequence of the power relations in social, political and historical structures that shape their realities and their challenges (Kermoal and Altamirano-Jiménez 2016, 12). The recognition of the "simultaneous existence of the male and female spheres" in Indigenous societies is not enough to capture the complexity of the social dynamics underneath it and the resulting personal responsibilities and social roles (Lévesque, Geoffroy and Polèse 2016, 72). We have a scarce understanding of the role that Indigenous women have since much attention has been given to male-dominated activities rather than Indigenous women's knowledge, especially in the field of resource management or land use – including how and what to harvest in specific seasons and how to produce, prepare, and preserve food (Kermoal and Altamirano-Jiménez 2016, 12).

Indigenous women hold different knowledge and skills from those held by man, because of gender differentiation and specialization affecting the access, use, and control of land and resources: as men often have privileged access to resources, Indigenous women's knowledge is composed by the "Indigenous processes of observing and understanding and the protocol for being and participating in the world", thus creating different perceptions of landscapes and priorities, as the survival of the household (Ibid. p. 10). Ignoring how domination systems work obscures Indigenous women's interests and concerns, and undermines them as "active producers of knowledge" in complex socio-environmental community processes (Ibid. p. 4).

Indigenous women's intersectional discrimination

Indigenous women embody the union between being a woman and having an ancestral culture (Xanthaki 2018, 369): the ways in which they are *Indigenous* and *women* are shaped according to their relationship established with "place", spiritual beings, humans and the environment (Kermoal and Altamirano-Jiménez 2016, 9). Since such aspects are

very intertwined and cannot be separated, through the adoption of an intersectional perspective it is possible to notice that Indigenous women suffer two types of discrimination: gender discrimination, and the colonial (or Western) perceptions of their cultures (Xanthaki 2018, 369). A human rights framework addressing gender-specific human rights violations of Indigenous women that does not ignore the continued practices and effects of colonialism, has been long advocated by Indigenous women themselves (Kuokkanen 2016, 136).

In the context of the intersectional discrimination experienced by Indigenous women, they "often lack access to education, health care and ancestral lands, face disproportionately high rates of poverty" (Xanthaki 2018, 375). According to the Economic Commission for Latin America and the Caribbean (ECLAC), in Latin America the illiteracy rate among Indigenous women aged 15-24 is alarmingly high, and in rural areas of certain countries in the region this rate is above 15% (IWGIA and ILO 2020, 13). Low levels of education or educational attainment – in particular – determine the type of work performed by Indigenous women, and therefore their incomes: 53% of Indigenous women in employment have no formal education, therefore they are more employed in informal economy than non-Indigenous women (Ibid.). Discussions on Indigenous women's rights to education and to be free from poverty are necessary to produce any consideration on their rights at large and to eliminate violence against them (Kuokkanen 2016, 139). Violence, as domestic violence and sexual abuse, occupies a relevant place by hindering the enjoyment of their rights, especially in the context of trafficking and armed conflict (Xanthaki 2018, 375): Indigenous women are more likely to be raped than non-Indigenous women, and it is estimated that one in three Indigenous women has been raped during her lifetime (CEDAW Committee 2022, 13).

While they share the same concerns and discriminations based on gender as other women, Indigenous women have very specific needs as they have continuously suffered from colonial perceptions and related stereotypes (IWGIA and ILO 2020, 12). The global market economy is pressuring Indigenous communities towards profit-driven development projects as logging, mining, hydro, and oil and gas development, leading them "to shift from subsistence to other forms of production" (Kuokkanen 2011, 217). Even though in general they continue to live in rural areas, more Indigenous peoples settle in urban areas, especially in Latin America and the Caribbean where they represent the

52% (IWGIA and ILO 2020, 13). Because of the search for better income-generating opportunities, the pursuit of an improved quality life, but most importantly of restrictions on accessing land, land degradation and climate change, Indigenous women are particularly vulnerable and are forced to move to urban centres where they end up living in poverty and/or facing incidents of violence and sexual abuse (Kuokkanen 2011, 217). Since places are connected to broader social and power relations, the representation of women in the field of natural resources management has been obscured by stereotypes of the past through colonialism and a Western understanding of land and resources: mapping and selling lands not only rests on a "frozen understanding of Indigenous traditional economic activities", but also – as we have already seen – it benefits only certain groups of people at the expenses of Indigenous communities (Kermoal and Altamirano-Jiménez 2016, 12).

Indigenous women's mobilization and struggles at the international level

With the aim of advancing their own aspirations as women and as Indigenous peoples, a discourse harmonizing women's rights with respect for Indigenous collective rights has been framed in the recent years by international Indigenous women's movements – as the *International Indigenous Women's Forum* (FIMI), the *Enlace Continental de Mujeres Indígenas de las Américas* (Continental Network of Indigenous Women of the Americas), the *African Indigenous Women's Organization*, the *Asian Indigenous Women's Network* (AIWN), the *National Indigenous Disabled Women Association* in Nepal and the *Pastoral Women's Council* in Tanzania (IWGIA and ILO 2020, 12).

At large, there are three means in which Indigenous women have an "inferior status" in international human rights law, and that have been considered when promoting Indigenous women's rights: (1) international frameworks require them to choose between being considered on the basis of their gender, women, or of their culture, Indigenous peoples; (2) the application of equality jurisprudence and legislation does not take into account either the colonial law context or gender discrimination experiences; (3) competing political agendas can force women to address their issues indirectly, or divide social movements (Xanthaki 2018, 369).

The problem is two-faceted: improving Indigenous women's situation by focusing on their rights as women will include in some ways remains of colonialism; concentrating on direct and indirect attacks to their rights as Indigenous peoples while ignoring their

gender will continue their oppression (Ibid.). International instruments fail to analyse the multiple ways in which Indigeneity and gender interact in Indigenous women's experiences: even the reports of the former UN Special Rapporteur on the rights of Indigenous peoples, Rodolfo Stavenhagen, contained occasional references to women but not a consistent gender analysis (Kuokkanen 2016, 132).

States have an important role to play in the improvement of Indigenous women's socio-economic rights: by doing it in a culturally sensitive way, women are empowered to act on illiberal practices; on the contrary, through the undermining of Indigenous peoples' rights, Indigenous women's identities are undermined too and disempowered, thus harming any real change (Xanthaki 2018, 375). As in the case of Indigenous women in Latin America and their commitment to politics, Indigenous women's empowerment in fundamental in order to hear their own voice, and to allow them to make their own path according to their strategies and priorities, without the need – like in the past – for an outside voice to protect their rights as vulnerable individuals (Ibid. p. 376).

### 3.2. Indigenous women's rights in the United Nations system

Despite the recent growing attention towards Indigenous issues in the UN and regional systems, Indigenous women have not been recognized as independent rights-holders until the adoption of the UNDRIP, but their rights were rather incorporated within the "Indigenous peoples" category (Sinclair-Blakemore 2019, 24). As such, specific provisions on Indigenous women are not contained in UN human rights treaties, but treaty bodies have been monitoring their situation in the exercise of their monitoring functions (IWGIA and ILO 2020, 11).

#### *3.2.1. United Nations international instruments protecting Indigenous women's rights*

As previously stated, an intersectional approach taking in consideration both a gender and an Indigenous peoples' perspective is needed to address Indigenous women's situation; in this regard, international instruments protecting Indigenous peoples, as the ILO Convention No. 169 and the UNDRIP, need to be taken into account (Ibid.).

The ILO Convention No. 169, in its Article 20, obliges governments to adopt measures ensuring equal treatment in the employment process for Indigenous women and men, and protecting them from sexual harassment (Ibid. p. 12). Special attention to Indigenous

women has been paid by the ILO Committee of experts on the Application of Convention and Recommendation in the context of their employment, vocational training, and access to reproductive health services, considering the implementation not only of this Convention but also of the *ILO Convention No. 111 on discrimination (employment and occupation)* and the *ILO Convention No. 190 on violence and harassment* (Ibid.).

UNDRIP specific provisions on Indigenous women

Out of 46 articles, the UNDRIP includes only three specific provisions on Indigenous women: Article 21 on the improvement of economic and social conditions; Article 22 on the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities; and Article 44 on the equal enjoyment of rights and freedom between Indigenous men and women (Ibid.).

In Article 21.2, the UNDRIP obliges States to take effective and/or special measures "to ensure continuing improvement of [Indigenous peoples'] economic and social conditions" by paying attention to the rights and special needs of Indigenous women, among others (Xanthaki 2018, 370). Article 22.2 requires States to "take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination" (Ibid.). According to Article 44, the rights and freedoms contained in the Declaration must be guaranteed equally to "male and female Indigenous individuals" (Ibid.).

A general tendency of the UNDRIP is to portray Indigenous women as vulnerable individuals, "victims who cannot defends themselves or cater for their needs", by categorizing them together with children, elders and disabled persons (Ibid.). According to the former UN Special Rapporteur on violence against women, Yakin Ertürk, the UNDRIP fails to address Indigenous women's issues concerning their communities, in particular the "alarming degrees of gender inequality, patriarchal oppression, and violence" (Kuokkanen 2016, 131). The UNDRIP's shortcomings may represent a step-back from the important advancement that its adoption represents, and "proves to be counterproductive for Indigenous peoples' rights in the long run" (Ibid.). The UNDRIP would have been a more strong and "ground-breaking instrument within international law" if it had identified and included rights specific to Indigenous women and their obstacles (Ibid. p. 136).

UN human rights treaties and Indigenous women

In addition to these two instruments, other general human rights conventions – as the ICCPR, the ICESCR, the CERD, and the CEDAW – are relevant for the protection of Indigenous women's rights as their issues have been dealt by many treaty bodies in their General Recommendations (IWGIA and ILO 2020, 11).

The CEDAW neither address Indigenous women's collective and individual rights nor recognizes the intersectional discrimination that they face; the individual complain procedure contained in its Optional Protocol, in particular, does not take into account the collective dimension of Indigenous women's rights (Sinclair-Blakemore 2019, 24). In its *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, the CEDAW Committee affirms the need for special attention to "the health, needs and rights of women belonging to vulnerable and disadvantaged groups" as Indigenous women (IWGIA and ILO 2020, 11). Since the majority of Indigenous women are rural workers, the CEDAW Committee has specifically recognized their fundamental role in the economic survival of their families in its *General Recommendation No. 34 on the Rights of Rural Women* (2016), by setting out State parties' obligations in the adoption of measures ensuring the participation and the benefits of women in rural development (Sinclair-Blakemore 2019, 25). In another recent General Recommendation, the *No. 37 on the Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change* (2018), more references have been made to Indigenous women's rights, nonetheless they still remain an underrepresented distinct rights-holders category in the CEDAW Committee's jurisprudence (Ibid.).

The Committee on the Elimination of Racial Discrimination has called for the adoption of national laws and measures addressing Indigenous women's specific needs, and has been concerned with cases about their systematic abuse, violence and abduction (IWGIA and ILO 2020, 11). Nevertheless, in its *General Recommendation No. 23 on Indigenous Peoples* (1997), the Committee reinforces a "homogenous conception of Indigenous peoples" by ignoring intersecting identity characteristics as gender that shape Indigenous women's experiences (Sinclair-Blakemore 2019, 25). The gender aspect has been recognized by the Committee in the *General Recommendation No. 25 on Gender-related Dimensions of Racial Discrimination* (2000) by stating that "racial discrimination does not always affect women and men equally", but no reference was made to the specific

challenges faced by Indigenous women (Ibid.).

Among other international instruments, the *Beijing Declaration and its Platform for Action* (1995) recognizes the "diversity of women and their roles and circumstances", and compels States to intensify their efforts for ensuring "the equal enjoyment of all human rights and fundamental freedoms for all women and girls" facing multiple barriers because of many factors, including their being Indigenous peoples (IWGIA and ILO 2020, 8).

UNPFII and Indigenous women

Specific recommendation and guidelines on Indigenous women directed to States and the UN system have been made by the UNPFII, recalling that they "represent a wide variety of cultures with different needs and concerns" and not a homogenous category (Ibid. p. 12). In the context of post-conflict reconstruction, the UNPFII has urged States to "intensify efforts at the national level to implement Security Council resolution 1325 (2000) on women and peace and security, including through national action plans that pay special attention to Indigenous women" and that support local women's peace initiatives and Indigenous processes for conflict resolution (Ibid.). Addressing Indigenous women's concerns is fundamental for the realization of the Sustainable Development Goals (SDGs), especially Goals No. 5 (gender quality), 8 (decent work and economic growth), 10 (reduced inequalities), and 15 (life on land) entailing their empowerment and the respect of their cultural identities (Ibid. p. 12-13). Indigenous women have been actively participating in the follow-up of the SDGs through the International Indigenous Women's Forum for the implementation of the 2030 Agenda for Sustainable Development and the assurance of a future that works for them (Ibid. p. 13).

### *3.2.2. The Committee on the Elimination of Discrimination against Women's General Recommendation No. 39 on the rights of Indigenous women and girls (2022)*

In October 2022 the CEDAW Committee adopted its *General Recommendation No. 39 on the rights of Indigenous women and girls* "to provide guidance to State parties on legislative, policy and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous women and girls" under the CEDAW (CEDAW Committee 2022, 2). The General Recommendation considers Indigenous women and girls as "driving actors and leaders" inside and outside their communities, as

well as knowledge-bearers and transmitters of culture, and considers their voices in the identification and addressing of the different forms of intersectional discrimination that they face (Ibid.).

The CEDAW Committee derives Indigenous women and girls' rights from the articles contained in the CEDAW, its own General Recommendations, and specific international instruments protecting Indigenous peoples' rights as the UNDRIP and the ILO Convention No. 169 (Ibid. p. 5). It also takes into consideration other international human rights treaties containing relevant protections for the rights of Indigenous women and girls, as the CRC and the *General comment No. 11 on Indigenous children and their rights* (2009) of the Committee on the Rights of the Child, as well as non-binding instruments like the Beijing Declaration and Platform for Action and the resolutions related to Indigenous women adopted by the Commission on the Status of Women (CSW) (Ibid. p. 6).

States' obligations regarding Indigenous women based on the CEDAW

The General Recommendation firstly recalls States parties' general obligations in relation to Indigenous women and girls' rights to equality and non-discrimination under Articles 1 and 2 of the Convention, the intersecting forms of discrimination that they face, and their access to justice and plural legal systems (Ibid.). Secondly, the Committee evokes the obligations of States parties in relation to specific dimensions of Indigenous women and girls' rights as: (a) the prevention of and protection from gender-based violence (Articles 3, 5, 6, 10.c, 11, 12, 14 and 16); (b) the right to effective participation in political and public life (Articles 7, 8 and 14); (c) the right to education (Articles 5 and 10); (d) the right to work (Articles 11 and 14); (e) the right to health (Articles 10 and 12); (f) the right to culture (Articles 3, 5, 13 and 14); (g) the rights to land, territories and natural resources (Articles 13 and 14); (h) the rights to food, water and seeds (Articles 12 and 14); and (i) the right to a clean, healthy and sustainable environment (Articles 12 and 14).

According to the Committee, States parties need to consider the "challenging context in which Indigenous women and girls exercise and defend their human rights": their lives are heavily affected by climate change, environmental degradation, the loss of biodiversity, extracting activities, and barriers in gaining access to food and water security (Ibid. p. 3). The Committee recognizes the vital link between Indigenous women and their lands, as it constitutes the basis of their culture, identity, spirituality, ancestral knowledge,

and survival; as such, Indigenous women are at the forefront of local, national, and international demands and actions for a clean, safe, healthy, and sustainable environment (Ibid.).

The prohibition of discrimination against Indigenous women

In respect to the prohibition of discrimination contained in Articles 1 and 2 of the Convention, the CEDAW Committee recalls that "State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls" as they have an "inextricable link and relation to their peoples, lands, territories, natural resources and culture" (Ibid. p. 2). The intersectional discrimination that they suffer is present inside and outside their territories: *inside*, as it can be perpetuated in the name of ideology, tradition, culture, religious and customary laws, and practices; *outside*, since intersectional discrimination is also structural, embedded in constitutions, laws, and policies, as well as government programmes, actions, and services (Ibid. p. 3).

The lack of effective implementation of the right to self-determination is one of the root causes of discrimination against Indigenous women and girls; this can be seen in the unrecognition of their land rights in the form of continued dispossession of their lands, territories, and natural resources, as well as in the gaps in the application of existing laws for the protection of their collective rights (Ibid. p. 5). The violation of Indigenous women's rights to self-determination, collective security of tenure over ancestral lands and resources, and their effective participation and consent in all matters affecting them constitute discrimination not only against Indigenous women, but also their communities (Ibid. p. 7). The prohibition of discrimination must be upheld by States also in the protection of the rights of Indigenous women and girls living in voluntary isolation or initial contact, especially their rights to self-determination and to access to and the integrity of their lands, territories and resources, culture, and environment (Ibid. p. 3).

The Committee recalls that gender stereotypes and forms of racism fuelled by colonialism and militarization – reflected directly and indirectly in laws and policies – both perpetuate discrimination against Indigenous women and girls by impeding: their access to land use and ownership; the exercise of their rights over territories, natural and economic resources; their access to credit, financial services, and income-generating opportunities; as well as, the recognition and protection of and support for collective and cooperative forms of land ownership and use (Ibid. p. 7). Weak legal protection for Indigenous

women's land rights – up to the complete lack of legal title to ancestral territories because of the legal incapacity to conclude contracts and administer property independent of their husband or a male guardian – exposes them to dispossession, forced displacement, confinement, expropriation, exploitation, illegal incursions, thus threatening their life plans, culture, food and water security and their health (Ibid. p. 23). These consequences can lead not only to poverty but also create unsafe conditions giving rise to gender-based violence against Indigenous women and girls (Ibid.).

Indigenous women's rights to land and to food

Indigenous women and girls have a fundamental role in securing food, water and other forms of livelihood and survival in their communities; the capacity of obtaining and managing these resources is limited because of the dispossession, forced displacement and lack of recognition of their ancestral territories, of climate change, of the implementation of extractive and other economic activities causing food and water contamination, disruption, and degradation (Ibid. p. 23-24). The Committee expresses its concern over the commercialization of seeds and the proliferation of transgenic or genetically modified crops, which often occurs without Indigenous women participation and benefit-sharing (Ibid. p. 24).

In the General Recommendation, the Committee recommends State parties to "fully ensure the rights of Indigenous women and girls to land, water and other natural resources" with an adequate access to food and nutrition (Ibid. p. 9). Concerning the ownership, title, possession and control of land, water, forests, fisheries, aquaculture and other owned, occupied, used, or acquired resources, Indigenous women's equality before the law must be recognized and respected through their protection against discrimination and dispossession (Ibid.). State parties must "recognize, prevent, address, sanction and eradicate all forms of gender-based violence against Indigenous women and girls", which can be environmental, spiritual, political, structural, institutional, cultural but also attributable to extractive industries (Ibid. p. 15).

The rights of Indigenous women to individual and collective ownership and control over lands, territories, and natural resources must be recognized by States through adequate policies and laws, as well as treaties and constitutions (Ibid. p. 23). Any economic, development, extractive and climate mitigation and adaptation project requires the free, prior, and informed consent of Indigenous women and girls when affecting their

territories and national resources, and States must ensure their adequate access to sufficient food, water, and seeds (Ibid. p. 23-24). States need to acknowledge Indigenous women's contribution to food production, sovereignty, and sustainable development, and as such the protection of their ancestral forms of farming and sources of livelihood must be upheld through their participation in the design, adoption and implementation of agrarian reforms schemes and management and control of natural resources (Ibid. p. 24).

### 3.3. Indigenous women in the Inter-American System of Human Rights

As previously seen, the recognition and protection of Indigenous peoples' rights has been contemplated by many instruments adopted by the OAS and its organs, but it was only in the 1990s that Indigenous women's rights started to be considered as a distinct category in the Inter-American system (Sinclair-Blakemore 2019, 28).

In addition to the jurisprudence of the IACHR and the IACtHR, the constitutional reforms in several Latin American States as well as the *Women's Revolutionary Law of 1994* developed by the Zapatista women within the Zapatista Army for National Liberation (EZLN) – affirming the rights to political participation, healthcare, education and be free from violence – laid the basis for the recognition of Indigenous women's rights in the ADRIP (Ibid.).

Both the IACHR and the IACtHR have acknowledged the effects that intersectional forms of discrimination have on Indigenous women, as the increased vulnerability to violence, the repetition of discrimination, and the impunity for human rights violations (IACHR 2017, 40). Nonetheless, discrimination raises significant barriers for the access to basic health and education services, food, decent and quality employment, and for the full participation in public and political life of Indigenous women (Ibid. p. 39). To better analyse and contrast Indigenous women's struggles to equality and non-discrimination, the Inter-American system has put forward some principles and standards using international and regional instruments and legal precedents (Ibid. p. 14).

#### *3.3.1. The protection of Indigenous women's rights in the American Declaration on the Rights of Indigenous Peoples*

The adoption of the ADRIP has been welcomed for its "unique emphasis on gender equality" – considered an added value to the UNDRIP; however, in the American

Declaration itself there is little elaboration on what "gender quality" means (Sinclair-Blakemore 2019, 29).

In its Article XXXII, the ADRIP affirms that all recognized rights and freedoms must be equally guaranteed to Indigenous men and women; nevertheless, it explicitly talks about Indigenous women only in Section 2 on Indigenous collective rights, in particular Article VII titled "Gender equality". According to this article, "Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from discrimination of any kind". States must recognize the hindering and nullifying trait on the enjoyment of all human rights and fundamental freedoms that violence against Indigenous peoples has; to contrast it, States shall adopt "the necessary measure to prevent and eradicate all forms of violence and discrimination" against Indigenous women (Article VII).

By looking at the composition of the ADRIP's provisions on collective rights and gender equality, it states that Indigenous women's rights are inseparable from the collective rights of Indigenous peoples at large (Sinclair-Blakemore 2019, 37). In Section 2, Article V affirms Indigenous peoples' right to the enjoyment of all human rights recognized in international law, and later Article VI recognizes "the indispensability of collective rights to the integral development and welfare of Indigenous peoples"; these two provisions together reinforce the compatibility of individual human rights and collective rights (Ibid.).

Through the positioning of Article VII within the collective rights paradigm, the ADRIP wants to symbolize its intention to consider gender equality at the forefront of its rights framework, and thanks to the recognized combability with human and collective rights, it debunks the arguments that women's rights are incompatible with collective rights (Ibid. p. 38). The expressed compatibility between gender equality and collective rights represents "a progressive step in the recognition that women's rights and collective rights are indivisible", thus affirming that gender does not constitute a separate aspect of Indigenous women's identities (Ibid.).

The ADRIP talks about Indigenous women – together with other categories of people as elders and children – in Article XXVII (Labor rights), concerning the adoption by States of "immediate effective measures to eliminate exploitative labor practices", and in Article XXX (Right to peace, security, and protection), affirming that States shall take special

and effective measures guaranteeing their right to live free from all forms of violence – especially sexual violence – and their right of access to justice, protection, and effective reparation for harm caused to the victims.

### *3.3.2. The Inter-American case law on Indigenous women*

Using its different mechanisms, the IACHR has consistently received reports and petitions concerning the violations of a range of Indigenous women's human rights, thus reflecting a critical situation throughout the Americas (IACHR 2017, 17). Most of the individual communications received by both the IACHR and the IACtHR on Indigenous women's rights relate to gender-based violence and forced disappearances. One relevant case which addressing the right to quality, fair trail and to property of ancestral land of Indigenous women is the *Mary and Carrie Dann v United States* IACHR case of 2002 (Ibid. p. 19).

After almost three decades fighting for protecting their livelihood, their culture, and their environment, the Dann sisters of the Western Shoshone tribe – living in the Great Basin between Idaho and Wyoming – argued before the IACHR that the United States "had interfered with their use and occupation of their ancestral lands" by appropriating them as federal property (Ibid.).

In 1946 the United States Congress created the Indian Claims Commission (ICC), an administrative body aimed at compensating Indian tribes for lands and resources taken from them (Schaaf and Fishel 2002, 178). A claimed was filed before the ICC in 1951 by few Western Shoshone tribal and traditional leaders, including the Dann sisters, to obtain "an evidentiary hearing" and determine whether Western Shoshone land rights were extinguished or not (Ibid. p. 179). The ICC found in 1962 that their titles had been extinguished in 1872 because of the "gradual encroachment" of non-Indians, therefore the funds corresponding to the valuation price of the land were deposited by the Government in the U.S. Treasury (Ibid.).

Before the final decision of the ICC, in 1974 the U.S. Bureau of Land Management filed suit against the Dann sisters claiming that they were trespassing by grazing livestock on federal lands without a permit (Ibid.). On the basis of what the ICC ruled, the U.S. Supreme Court declared that "the Western Shoshone were "paid" when the Government, acting as their "trustee", deposited the money in a U.S. Treasury account for their benefit"

– thus stopping the Western Shoshone to assert their ancestral land rights (Ibid. p. 180). After the U.S. Supreme Court decision, the Federal government initiated many enforcement actions against the Dann's, demanding the removal of their livestock from the disputed lands, and opened Western Shoshone lands for gold prospecting and large-scale intensive mining, causing catastrophic hydrologic effects on rivers and contaminating ground waters (Ibid. p. 181).

Before the IACHR in 1993, the Dann sisters claimed that their rights under the ADRDM has been violated since the United States threatened to remove – and then physically removed – their livestock, and permitted gold prospecting activities on their lands (IACHR 2017, 19). In 2002 the IACHR concluded that the U.S. Government had violated several rights of the Dann sisters as their rights: to equality before the law; to judicial protection and due process; and to property (Schaaf and Fishel 2002, 181). The assertion of title by the U.S. to lands claimed by the Western Shoshone was considered a violation of international human rights law due to the lack of adequate process protections and their discriminatory nature (Ibid.). According to the IACHR, "the Dann's were not afforded resort to the Courts to protect their property rights in conditions of equality" by taking in consideration the collective and individual nature of their property claim (IACHR 2017, 19).

The Commission's decision upheld Indigenous peoples – and women – rights to their ancestral lands by questioning the absence of due process of law and compensation in the procedure for extinguishing Indian land titles laid down in the U.S. Indian Law (Schaaf and Fishel 2002, 176). Additionally, the IACHR affirmed the necessity of a process of free, prior, and informed consent by the Indigenous community as a whole in respect of Articles XVIII (right to judicial protection) and XXIII (right to property) of the American Declaration. Finally, the Commission recommended the United States to provide the petitioners with a remedy to protect their ancestral lands, and to modify its national laws regarding Indigenous peoples' property rights in conformity with international human rights standards (Ibid. p. 184).

# Part II – Threats and solutions to the enjoyment of the rights to land and to food of Indigenous women in Ecuador

## Chapter 1 – Indigenous peoples of Ecuador

### 1.1. Overview of the Ecuadorian Indigenous context

Named after the Equator, Ecuador is a representative democratic republic in north-western South America, bordered by Colombia on the north, Peru on the east and south, and the Pacific Ocean to the west. It has an extension of 256,370 km$^2$ and includes within its territory the Galapagos Islands in the Pacific. Even if it constitutes one of the smallest countries of South America, Ecuador is one of seventeen megadiverse countries in the world, with the most species diversity per unit area. Its continental territory is divided by the Andes in three different regions with specific climatic, topographical and ecological characteristics: the Coast, the *Sierra* (the highlands), and the Amazon region (FAO 2001, 5).

Ecuador's current population stands at more than 18 million persons, and it is estimated that Indigenous peoples constitute between 6 and 45% of the total population (Special Rapporteur on the rights of Indigenous Peoples 2019, 3): according to the National Institute of Statistics and Census (INEC), in 2010 they represented around 7% with 1,018,176 individuals considering themselves as Indigenous (IFAD 2017, 2). Estimates of their numbers vary greatly because of the "situational ethnicity" phenomenon, created by the vagueness of the boundaries between "Indigenous" and *mestizo* (a person of cultural or racial mixing) categories: an individual could identify himself as a *mestizo* when speaking Spanish, wearing Western clothes, attending Catholic mass, etc. but at the same time, he may speak an Indigenous language and return to a native village where he can embrace his fully Indigenous identity (Becker 2002, 72). The proportion of people considering themselves as "Indigenous" – based on language, religion, dress, culture, and geographic locale – has declined due to migration and assimilation, as well as a personal uninterest in identifying themselves as such (Ibid.).

Inside its Constitution of 2008, Ecuador declares itself as a "plurinational and intercultural country"; currently, fourteen Indigenous nationalities (*nacionalidades indígenas*) are officially recognized and are considered able to self-identity: Achuares, Andoa, Awá-Kwaiker, Chachi, Cofán, Épera, Kichwa, Secoya, Shiwiar, Shuar, Siona,

Tsáchila, Waorani and Zápara (IFAD 2017, 2). Indigenous peoples live mainly in the Sierra (68%), followed by the Amazon region (24%) and the Coast (8%); they are grouped in national, regional and local organizations (Ibid.). With nearly 800,000 individuals, the Kichwa nationality constitutes the greatest percentage of Indigenous peoples in Ecuador (86%) (Ibid.).

Ecuador has ratified all the main international human rights law instruments concerning Indigenous peoples – as the *ILO Convention No. 169* in 1998 – and the optional protocols regarding individual complaints procedures; it also voted in favour for the adoption of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). It has been part of the Organization of American States (OAS) since its foundation in 1948 and has even ratified the *American Convention on Human Rights* (*American Convention* or ACHR) in 1977, with subsequent acceptance of the Inter-American Court of Human Rights' competence in 1984.

Despite the recognition of the direct application of international human rights instruments in the domestic law (Article 417 of the 2008 Constitution), there is not any specific or clear public and legislative policy protecting and fully guaranteeing Indigenous peoples' rights aligned with the Constitution and international law (IWGIA 2023, 356). Consequently, many challenges are still pending as Indigenous peoples' rights over their lands and natural resources – like food – and their exploitation, and the situation of Indigenous women (Special Rapporteur on the rights of Indigenous Peoples 2019, 4).

### *1.1.1. The Colonization of Indigenous peoples in Ecuador*

After having conquered Panama at the beginning of the XVI century, the Spanish were made aware of a rich country in the South, and in 1524 decided to organise a private mission of conquest and colonisation (Ayala Mora 2008, 13). With the defeat of the Inca soldiers, the Spanish Crown conquered Quito in 1534 (Ibid.) and organized many expeditions in the Eastern region of Ecuador (the *Oriente*) – contrasted by Indigenous Quijos peoples, which were later defeated – on a quest to find gold (*Dorado*) and cinnamon (*Canela*) (Muratorio 1998b, 18).

This conquest led to the implementation of the Spanish colonial administration process over Indigenous peoples between 1559 and 1563 using *encomiendas* (Ayala Mora 2008, 14), administrative institutions that centralized the political and economic

management of colonies by appointing an Indigenous group to a Spanish settler (Muratorio 1998b, 18). *Encomiendas* were awarded to worthy Spanish *colones* (colons) by the Crown: settlers would hire an ecclesiastic for the evangelization of Indigenous peoples, and in return – as a payment for the benefit of Christianization – natives had to pay a tribute to the Crown and either serve the *encomendero* or give him money in forms of gold and cotton (Ibid. p. 19). Through this system, the Spanish crown established both a mechanism of surplus extraction in forms of labour and taxes, and an instrument of ideological control of Indigenous communities, as they were catechized by ecclesiastics (Ayala Mora 2008, 15).

Indigenous peoples soon learned the Old Continent's agricultural techniques, plants cultivation and animal domestication, and had been influenced by missionaries in using Quichua – which began to be spread by the Incas – as common language (Ibid. p. 16). From being used for subjugation, religion was assimilated by Indigenous peoples as a form of identity and expression of their resistance: together with cultural forms, religion was more effective in the endurance of Indigenous traditions than mass escapes or violent uprisings since the Church was the institution with the most resources to promote cultural activities destined for evangelization (Ibid. p. 17-18).

The Spanish colonial administration – through its *Legislación de Indias* (Legislation of the Indies) – attempted to simplify the Ecuadorian ethnic landscape with a division between the *República de blancos* (Republic of whites), composed by the settlers, and the *República de indios* (Republic of Indians), with its own constituent community elements and ethnic authorities, which was assimilated to the Spanish bureaucracy for government and tax collection purposes (Ibid. p. 16).

A highly discriminated social structure based on inequality had been defined in Ecuador after the first century of Spanish colonization: at the top of the social pyramid there were the whites, which controlled the main centres of economic production, as well as the circulation of goods and the political power at the national and local level; at the base, there were Indigenous peoples, exclusively engaged in manual labour, struggling with the conservation of their lands (Ibid. p. 16-17). Within this society based on disparities, a reality of discrimination against women was also created, since they were the ones bearing the burden of family work at all levels (Ibid. p. 17).

The Spanish conquest has represented an attempt to expel Indigenous peoples from the

general scenario: since then until present time, Indigenous peoples – especially Indigenous women – have been discriminated and are not considered in Ecuador's official history, when instead they have been important actors in the country's life for more than four centuries. The Indigenous resistance did not end with the establishment of the Spanish power since it has been considered by the "conquered" as a new moment in their history rather than their elimination. Through uprisings and non-violent mechanisms – as the defence of their customs, community structure, land claims, festivals, languages and other forms of identity – Indigenous peoples' presence was maintained (Ayala Mora 2008, 14).

### *1.1.2. Distribution and struggles of Indigenous peoples in Ecuador*

Before the Inca and Spanish conquest, twenty-four Indigenous groups existed in Ecuador; their number has decreased throughout the years to ten in the 1980s, with a heavy drop on the Coast (from twelve to three) (Becker 2002, 71). Currently within the Ecuadorian territory, there are fourteen *nacionalidades indígenas* (Indigenous nationalities) and eighteen *pueblos indígenas* (Indigenous peoples) (see Annexes 1, 2 and 4) (CARE Ecuador 2016, 13).

To better understand the dynamics behind their struggles as well as their traditions and cultures, it is important to define these two terms: *nacionalidades* and *pueblos*. According to Ecuadorian Indigenous individuals, a nationality is "a group of primordial persons and constitutive of the Ecuadorian State, who define themselves as such, who have a common historical identity, language, and culture, living in a given territory through its institutions and traditional forms of social, economic, legal, political and authority organization" (Ibid.). Indigenous peoples, instead, are "the original collectives, formed by communities or centres with cultural identities that distinguish them from other sectors of Equatorial society, governed by their own systems of social, economic, political and legal organization" (Ibid.).

In the Coastal region, there are four small Indigenous groups who speak similar languages and have struggled to preserve their own ethnic identity: the Awá, the Chachi, the Épera, and the Tsáchila (or Tsa'chila) (Becker 2002, 72). This area – of which these communities have legal title – is one of the most biologically diverse in the world; therefore, they are threatened by the interests of loggers and oil palm companies (IFAD 2017, 7).

Ecuadorian Indigenous peoples live mainly in the *Sierra* (see Annex 3), and are often grouped under the Kichwa category, as they are members of the larger Quichua ethnolinguistic group (Becker 2002, 72). In South America, Kichwas are the only Indigenous peoples who emigrated to the Andes in the South, and in the Amazons in the East; because of this early division in migration routes, there are different Kichwa identities and cultures in the mountains and in the forest distinguished according to their wardrobe, geographical location, social organisation, and dialect. Every Kichwa *pueblo* is politically organised in federations or organizations (IFAD 2017, 10).

The Indigenous communities living in the *Sierra* struggle with their access to land, water, basic services, credit for agricultural production, and the right to education. In addition to discrimination, massification, cultural aggression and migration inside and outside the country, they are also threatened by large-scale mining initiatives. Many Kichwa communities living in the highlands do not have legal recognitions of their lands: for some, their lands have been divided into lots of family properties; others are land tenants of large farms or have legal recognition of the majority of their lands (Ibid.).

The Amazon region is the vastest but least populated area of Ecuador, where eight different Quicha-speaking groups still persist (Ibid. p. 11). The Kichwas living in the forest are often divided into Quijos Kichwa of the Napo province, and the Canelos Kichwa of the Pastaza province. The second largest group living in the region is the Shuar peoples, who speak a similar language and share the same area and some customs and traditions with another Indigenous group, the Achuares. Other smaller communities living in the Amazons are the Sionas, the Secoyas, the Cofáns (or Kofáns), and the Waoranis (or Huaoranis). The smallest group living in the area is the Zápara peoples, whose numbers collapsed from about 200.000 members before the Spanish conquest to 450/200 now (Becker 2002, 73).

Numerous Amazonian Indigenous groups have collectively earned legal title to their lands; however, there are still controversies on rights and jurisdiction over the subsoil. Within their territories, these groups have been victims of intensive petroleum explorations by oil companies, with devastating consequences as the spread of diseases, the construction of roads and pipelines, and economic and cultural changes (Ibid.). The integrity of ancestral lands is also threatened by the establishment of national parks and their borders inside Indigenous territories (IFAD 2017, 11).

### *1.1.3. The current situation of Indigenous communities in Ecuador*

According to Cultural Survival's "Observations on the State of Indigenous Human Rights in Ecuador" for the 2016 UN Human Rights Council Universal Period Review, the mechanisms of "social capitalism" and wealth redistribution policies adopted by the Ecuadorian government do not guarantee Indigenous peoples' territorial, civil, and political rights. National development plans implemented in Ecuador after the 2008 Constitution have been designed and adopted without Indigenous peoples' participation, consequently imposing a developmental form prioritizing productivity, resource extraction and economic growth (CONAIE et al. 2022, 11). Indigenous peoples constitute the poorest persons of the country on a consumption and needs dissatisfaction level, as they maintain low development indicators than the rest of the country in education, nutrition and basic health services (IFAD 2017, 18).

Ecuador's political and judicial systems are highly influenced by corruption and politics, as well as private agreements and deals made with multinational oil and mining companies (Ibid.). During the year 2022, the promotion of extractive projects and concessions scaled up, as illegal mining activities threatening Indigenous territories intensified under the protection of contracts and demarcated areas. According to NGOs and environmental groups, there are currently 700 illegal mining sites in Ecuador, 64% of them on the northern and southern border (IWGIA 2023, 358-359).

As some community members are bribed with offers up to US$4,000 by concession-holding companies to lease their land for illicit activities, Indigenous peoples are divided between those who choose to exploit the resources and those who do not. These bribing mechanisms lead some communities not to rebel themselves against illegal activities (Ibid.). Regardless of national and international judgments obliging the Ecuadorian State to adopt reparations, the continuous lack of adequate and effective mechanisms for Indigenous participation in the design of public policies, regulations, and authorization of extractive plans, as well as of property titles, constitutes a systematic violation of their right to free, prior, and informed consent (CONAIE et al. 2022, 26 and 39).

In being the cause and consequence of human rights violations, poverty is in itself an urgent human rights problem. Nine out of ten (89.9%) Indigenous peoples in Ecuador are poor and cannot meet their basic needs; this percentage is even higher between Indigenous women with 90%, representing the poorest segment of society (IFAD

2017, 19). According to the authors of the World Bank report on "Indigenous peoples, poverty, and human development in Latin America" (2005), it is estimated that being an Indigenous person increases the probability of being poor to 16%, and their average income reaches 55% of the same figure for non-Indigenous workers. This disparity is mainly due to differences in the education levels and their working field – as Indigenous peoples are engaged in agriculture and the informal sector – as well as discrimination in the labour market (Ibid. p. 18). The elimination of subsidies, inflation and the rise of input, transport and fuel costs, as well as the absence of support in technical assistance and production credits by the government, have furtherly worsened Indigenous families' conditions towards poverty (IWGIA 2023, 357). There are no disaggregated indicators about Indigenous peoples' situation and their multi-dimensional poverty, making them basically invisible in the eyes of the State (CONAIE et al. 2022, 11).

Indigenous peoples' nutrition is lacking as Indigenous families are among those most severely affected by poverty, extreme poverty and unemployment (IWGIA 2023, 357). Because of the lack of public policies assuring their right to an adequate nutrition and of quality according to the terms in the Ecuadorian Constitution and in the Convention on the Rights of the Child, Indigenous children are the most affected by malnutrition: 41% of Indigenous children under 5 suffer chronic malnutrition (CONAIE et al. 2022, 31). To respond to the economic and social factors that have characterized the development of Ecuador in the recent decades, consumption patterns of the population have followed the global trend of globalization of Western diets: much importance has been given to rice, potatoes, yucca, vegetables, sugars, and fats (FAO 2001, 19). It is common for families living in rural areas to buy food with a low nutritional content due to their lack of income, or to economize what little they can produce by selling small animals as chickens or guinea pigs (CONAIE et al. 2022, 34). For Indigenous peoples, changes in food consumption constitute a cultural problem, as a consequence of Christian evangelization promoting bread consumption (FAO 2001, 19). Moreover, their right to food is harmed by land erosion and water scarcity, making Indigenous families unable to harvest plants and be self-sufficient (CONAIE et al. 2022, 34).

These rights – to land and to natural resources, to be free from poverty, to food and to water – are all interrelated, and cannot be assured without public policies guaranteeing their right to live a decent life (Ibid. p. 35).

## 1.2. National legislation and case law concerning Indigenous peoples

As previously stated, Ecuador has ratified all international instruments protecting Indigenous peoples' human rights, which – according to the Constitution – have direct applicability in the national legal framework. The 2008 Constitution recognizes twenty-one collective rights for Indigenous peoples, as well as the Indigenous justice system and the rights of Nature (*Pachamama*) (Special Rapporteur on the rights of Indigenous Peoples 2019, 5). After being used as an abstract weapon to defend Indigenous territories, the Quichua concept of *Sumak Kawsay* has been integrated within the Ecuadorian highest law as a new way of understanding the economy, and an alternative to capitalist development, hence an overall goal for all public actions (Altmann 2014, 1). However, during the past decades, both legislation and public policies have not been in line with the Constitution and international human rights law, as the existing legal framework is not consistent with Indigenous peoples' rights (Special Rapporteur on the rights of Indigenous Peoples 2019, 5). Indigenous peoples have not been consulted in the adoption of legislative, institutional and policy measures; as such, Indigenous organizations have challenged several adopted laws as unconstitutional (Ibid.).

### *1.2.1. The Constitution and the Sumak Kawsay philosophy*

The current Constitution of Ecuador was approved by a referendum held on September 28, 2008, with 64% favourable votes versus 28% against. Article 1.1 of the Constitution states that "Ecuador is a constitutional State of rights and justice, a social, democratic, sovereign, independent, unitary, intercultural, multinational and secular State". The solemn text had been prepared and negotiated by a Constituent Assembly, with the aim to find a national agreement, some sort of "social pact" for the construction of the *Sumak Kawsay* (IFAD 2017, 19-20). An intercultural and plurinational State as Ecuador, where peoples and nationalities maintain their own cultural forms and traditions, breaks with the traditional vision of the colonial, single-nation and/or monocultural State (CODENPE 2012, 16).

Interculturality

As its relevance is contained within the Constitution, interculturality (*interculturalidad*) can be considered an "axiological approach across every sector of institutions and public

life", hence the cornerstone principle of Ecuador's orderly architecture. Interculturality is defined by the *Confederación de Nacionalidades Indígenas del Ecuador* (Confederation of Indigenous Nationalities of Ecuador, CONAIE) as the basis of a political projects aspiring "at the transformation of current structures, institutions and social relations, with the intention of forging alternative local powers within the framework of the multinational state" (Baldin and De Vido 2019, 1315).

Through policies aimed at cultural and personal enrichment resulting from the contact between groups, as well as plurinational and intercultural-consistent legal interpretations, society must be transformed pursuant to an inclusive and anti-segregationist key. To these purposes, interculturality is declined as the principle behind the provision of health services and the national health system, the democratic participation of citizenship, the electoral function, the Indigenous and Afro-Ecuadorian territorial districts, the national system of social inclusion and equity, and the right to housing. Moreover, it must be considered in the areas of language and communication, education, and Indigenous peoples' rights, the adoption of border policies, the development regime, the national cultural system, international relations and in Latin American integration (Ibid.).

Plurinationality

A plurinational State is "the constitutional recognition of the coexistence of several nations, nationalities, peoples or cultures, as millenary or ancestral entities, within the same State, with their own systems of life, forms of social organization and coexistence, in accordance with their own or customary law, recognized by the Constitution" (CODENPE 2012, 16). Defining Ecuador as a plurinational State is the result of the struggles, protests and proposals of Indigenous peoples and nationalities: the State is based on a different form of relationship between the central government and the governments of Indigenous nations, nationalities, and peoples (Ibid.).

The plurinational State represents a new form of "civic coexistence in diversity and harmony" (Ibid.), where national unity is consolidated by diversity itself: the different cultures, knowledge, and wisdom are shared by peoples and nationalities – between themselves and for themselves – under the principle of respect and tolerance in equity and equality of conditions. The recognition of original nations does not mean the formation of small States within another State, but rather the creation of a political framework of unity in diversity (Ibid.).

Within legally recognized or ancestral lands and territories, Indigenous nationalities, peoples, or communities may maintain or create their own forms of coexistence and social organization, according to their uses, practices and needs (Article 57.9 of the Constitution). The collective rights of Indigenous peoples can be realized indeed through the establishment and strengthening of the right to create and maintain their own organizations, as well as the right to create autonomous entities in those areas where Indigenous populations are the majority (Ibid. p. 24).

The *Sumak Kawsay* philosophy

*Sumak Kawsay* is a Kichwa concept, a term of the *runa shimi* (the language of Kichwa peoples, also known as Quichua): *Sumak* could be translated as fullness, completeness, realization, beauty, excellence; *Kawsay* as life, existence. Etymologically speaking, *Sumak Kawsay* means "life or full existence" or "fullness of life" (Maldonado 2010, 199). The principle of *Sumak Kawsay* was proposed in Ecuador at the end of the XX century by Carlos Viteri Gualinga, an anthropologist belonging to the Kichwa peoples of Sarayaku. He understood the concept as "a way of living that tries to adapt to its environment": it represents the basic condition for the administration at the local level of the ecological and spiritual bases of subsistence – as the special relationship between man and nature – and autonomous decision of the necessities. It is a principle that transcends the sole satisfaction of basic needs and the access to services, as it reconstructs Indigenous principles to adopt them to actual and future realities, with the local community and its autonomy as main basis (Altmann 2014, 86-87).

The principle has been defined in the preamble and 99 articles of the Constitution both as a social purpose and a responsibility and duty of the State (Ibid. p. 89). In the supreme law, *Sumak Kawsay* has been translated in *Buen Vivir*, but this translation is lacking correspondence to its etymological meaning: in the Quichua language there is another term to designate "the good", *alli* or *ali* – making it *Alli Kawsay* in Quichua – usually used to the welfare of the human community, in the context of social, material, and ethical life. *Sumak Kawsay* transcends the *Alli Kawsay*, as it refers to the ethical, aesthetic, cosmological field. *Sumak Kawsay* does not relate only to the human sphere, but also to the quality of relations with its surroundings, with nature, and with the ancestors (Maldonado 2010, 199).

In its Constitution, Ecuador commits itself to guarantee the participation of discriminated

sectors of the population through the adoption of affirmative action measures. By making a reference to the *Sumak Kawsay*, the State recognizes in Article 3 the promotion of sustainable development and equitable redistribution of resources and wealth as one of its fundamental obligations. This reference not only represents the recognition of Indigenous peoples by the Ecuadorian State and its society, but also an opportunity for Indigenous groups to contribute towards that aim, meaning *Sumak Kawsay* itself (IFAD 2017, 20).

Constitutional rights of Indigenous peoples and nationalities

Article 10 of the Ecuadorian Constitution recognizes that individuals, communities, peoples, nationalities, and collectives are holders of the rights guaranteed in the Constitution and in international instruments (Ibid.). Any recognized right is fully actionable, and their infringement or ignorance, the dismissal of consequent proceedings, together with the denial of their recognition, cannot be justified by the absence of a legal regulatory framework. Where violated, these rights can be directly and immediately enforced individually or collectively by and before any civil, administrative, or judicial court of law (Article 11.3).

According to Article 11.8, "the contents of rights shall be developed progressively by means of standards, case law, and public policies"; as explained by Angel Gonzalez, a junior attorney at Amazon Frontlines, during an interview conducted in Tena, Ecuador on April 28, 2023, the Constitutional Court has affirmed that the Constitution – including its Article 57 – must be interpreted in harmony or complementarity with international treaties, in particular the ILO Convention No. 169.

Within its prime duties (Article 3), the Ecuadorian State has the obligation of guaranteeing the rights to education, health, food, social security, and water for all its inhabitants, including Indigenous men and women – as they are "are citizens and shall enjoy the rights set forth in the Constitution" (Article 6).

The Ecuadorian Constitution recognizes the right of every person and community group to a safe and permanent access to healthy, sufficient, and nutritional food, respecting the various identities and cultural traditions (Article 13). As one of the first countries to incorporate it, Ecuador also promotes food sovereignty, which is defined in the homonymous Chapter 3: it is considered as a strategic objective and an obligation of the State, aimed at ensuring that "persons, communities, peoples and nations achieve self-

sufficiency with respect to healthy and culturally appropriate food on a permanent basis" (Article 281).

The inclusion of the food sovereignty principles within the Constitution has been the result of a participatory and decentralized process by peasants and Indigenous movements. These latter have gained support from other social groups and sectors by increasing the scope of land use and territorial issues, and by framing food sovereignty as the necessary condition for the attainment of *Sumak Kawsay*: thanks to this exact representation of food sovereignty and the consequent creation of multiscale alliances and coalitions, peasant and Indigenous movements have gained resources and organizational capacity to engage with the State in the policy-making process (Peña 2016, 223).

To Indigenous communes, communities, peoples and nations, the Constitution recognizes and guarantees some collectives rights – without any discrimination, in conditions of equality and equity between men and women – as: the right to keep the unalienable, immune-from-seizure and indivisible ownership of their community lands, without being subjected to a statute of limitations (Article 57.4); the right to keep ownership of ancestral lands and territories (Article 57.5); the right to participate in the use, usufruct, administration and conversation of natural renewable resources on their lands (Article 57.6); the right to free, prior, and informed consent and to participate in the profits earned from projects prospecting, producing, and marketing non-renewable resources located on their lands, triggering a possible environmental or cultural impact on them (Article 57.7); the right not to be displaced from their ancestral lands (Article 57.11); the right to uphold, protect and develop collective knowledge, as well as their science, technologies, ancestral wisdom about the resources and properties of flora and fauna (Article 57.12).

### *1.2.2. Indigenous Peoples and the national organs*

In the Ecuadorian State framework, Indigenous peoples and nationalities do not have ministries specifically dedicated to them; however, a number of State institutions have been established to address their situation, creating opportunities for them to participate in the implementation of governmental policies (IFAD 2017, 21-22).

One of these institutions is the *Consejo Nacional para la Igualdad de Pueblos y Nacionalidades* (National Council for Equality of Peoples and Nationalities, CNIPN):

created on the basis of the 2014 *Ley Orgánica de Consejos de Igualdad* (Organic Law of Councils for Equality) and the 2010 *Ley Nacional de Participación* (National Law of Participation). The CNIPN is composed by 10 representatives (5 from civil society and 5 from the State) chosen freely and voluntarily by citizens, constituting a central mechanism for the application of the new concept of participation – as introduced in the 2008 Constitution. It represents a deliberative and consultative body for Indigenous peoples at the national level; its aim is to facilitate and guide the development and integration of policies guaranteeing the full exercise of rights, equality and non-discrimination of persons belonging to communes, communities, peoples, and nationalities living in Ecuador, while respecting the constitutional principle of pluralism. According to the CNIPN, it is only through a co-responsibility approach between the State, community, and family that the *Buen Vivir* of the persons belonging to *pueblos* and *nacionalidades* can be reached (Pogrebinschi 2017).

In order to recognize the legal personality of Indigenous communities and organizations, Ecuador created the *Secretaría de Gestión y Desarrollo de Pueblos y Nacionalidades* (Secretariat for the Management and Development of Peoples and Nationalities, SGDPN). Its mission is to promote and strengthen the well-being of Indigenous communes, communities, peoples, and nationalities – as well as Afro-Ecuadorians and the Montubio peoples (Coastal back-country people) – through strategies, dynamic mechanisms, and other means, as the obtainment of public and private resources and international cooperation. Thanks to these finances, the Secretariat seeks to implement and execute productive projects, community, cultural, formative, and social undertakings, with the aim of improving their quality of life, guaranteeing their collective rights, and facilitating the creation of new opportunities for family and community economy.[8]

Within the ministerial institution, the Ecuadorian government has created sections specifically dealing with Indigenous peoples' issue as the Ministry of Health's *Dirección Nacional de Salud Intercultural y Equidad* (National Directorate for Intercultural Health and Equity), and the INEC's *Comisión para Pueblos y Nacionalidades Indígenas, Afroecuatoriano y Montubio* (Commission for Indigenous, Afro-Ecuadorian and Montubio Peoples and Nationalities, CEE-PIAM). The mission of the Ministry of

[8] www.secretariapueblosynacionalidades.gob.ec consulted on June 7, 2023.

Health's National Directorate is the formulation and coordination of interculturally-relevant policies, plans, programmes, and other instruments in the National Health System, to guarantee the access, recognition and respect of peoples and nationalities' diversity while promoting the articulation and incorporation of ancestral-traditional medicine and alternative-complementary medicine.[9] The INEC Commission, instead, aims at ensuring the visibility of Indigenous, Afro-Ecuadorian and Montubio peoples and nationalities by establishing a synergy between institutions and strategic partners in the production process, analysis, and dissemination of statistical information.[10]

According to the Special Rapporteur on the Rights of Indigenous Peoples, the establishment of these equality councils and institutions in Ecuador to mainstream Indigenous peoples' rights – together with gender equality and interculturality – as enshrined in the Constitution are positive developments but insufficient. The adoption of a plurinational and intercultural approach requires procedures for joint decision-making and direct representation in those Government agencies whose activities have a significant impact on the fundamental rights of Indigenous peoples, which for the moment are missing (Special Rapporteur on the rights of Indigenous Peoples 2019, 5).

### *1.2.3. National case law brought by Indigenous peoples*

In its report of 2019, the Special Rapporteur on the rights of Indigenous Peoples denounced the concern of Ecuadorian Indigenous peoples in the lack of results from discussions on substantive issues as: their rights to their lands, territories, and natural resources; the proper operationalization of consultation and free, prior, and informed consent; the intercultural implementation of their economic, social, and cultural rights. Moreover, previous mining and oil concessions have been activated and new ones tendered without proper consultation and consent of the Indigenous peoples concerned, causing serious impacts on the enjoyment of their fundamental rights (Special Rapporteur on the rights of Indigenous Peoples 2019, 5).

Because of the conflicts and serious human rights violations caused by these

[9] www.salud.gob.ec/direccion-nacional-de-salud-intercultural-y-equidad/ consulted on June 7, 2023.

[10] www.ecuadorencifras.gob.ec/comision-especial-de-estadistica-para-pueblos-y-nacionalidades-indigenas-afroecuatoriano-y-montubio/ consulted on June 7, 2023.

shortcomings, many Indigenous communities have recourse to national justice to enforce their rights recognized in the Ecuadorian Constitution.

Sinangoe case (2018)

In the exercise of their right to self-determination guaranteed in Article 57.9 of the Constitution of Ecuador, the A'l Cofan Community of Sinangoe of the Sucumbíos province elaborated in 2017 the *Ley propia de control y protección de territorio ancestral A'l Cofan de Sinangoe* (Law of control and protection of the A'l Cofan de Sinangoe's ancestral territory), prohibiting any extractive activity in their territory without its prior consent. The Community found out that more than 50 armed miners had been inside its territory looking for gold, and threatened community members when asked to leave the area (Melo 2022, 8).

Fearing for their territory and physical integrity, the A'l Cofans of Sinangoe issued three warnings between July 24 and October 19, 2017, denouncing the penetrations in their territories, and demanding to competent authorities guarantees for the enjoyment of their constitutional right to "freely strengthen their identity in their ancestral territory". Due to the lack of prior consultation, the community filed subsequently for a protection action, which included a request for precautionary measures – as the suspension of concession processes and the reversal of ancestral land concession – and the prohibition of mining concession by the Ministry of Mining in the territory of the Cayambe-Coca Ecological Reserve (Ibid. p. 9).

The protection action was later accepted on August 3, 2018, by the constitutional judge of the Gonzalo Pizarro Canton, claiming that the Community of Sinangoe's right to prior consultation (Article 57.7 of the Constitution) had been violated. The State subsequently filed for appeal; however, the Court of second instance recognized the violation of the Community's rights to free, prior, and informed consent and to water, and the right of Nature and the environment. In any of its phases, the mining activity in the hydrographic basins and in the proximity to the protected area had been represented by this Court as a "direct and serious threat to the collective rights of the A'l Cofán community of Sinangoe and the communities bordering the Aguarico River". The conduction of proper investigations and reparations were ordered by the Provincial Court to the concerned authorities (Ibid.).

Rio Piatúa case (2019)

The Piatúa river crosses along the province of Pastaza, within the ancestral territory of the Kichwa peoples of Santa Clara. It is a sacred natural element for the communities living on its banks, and its crystal-clear waters are considered curative. Due to these natural characteristics, the river has become the motor of tourist activity, hence the basis of the livelihood of these Indigenous communities (Melo 2022, 11).

On March 2, 2015, an electric company began proceedings before the local office of the National Water Secretariat to request the concession of a flow of the river for the construction of a hydroelectric power plant. A month later the president of the *Pueblo Originario de la Nacionalidad Kichwa del Cantón Santa Clara* (Native People of Kichwa Nationality of the Santa Clara Canton, PONAKICSC) addressed a letter to the Water Secretariat expressing its opposition to the request for authorization to use the waters of the river for the hydroelectric project. The reasons for his disapproval were the consequences of water collection as land degradation and the disappearance of tourism (Ibid.).

Environmental impact studies were carried out in May 2016, which later determined the compliance of the project with the national provisions; at the end of 2016 the Under-Secretariat for Environmental Quality issued a favourable pronouncement, and on February 20, 2018, the Ministry of the Environment granted the environmental license to the company (Ibid. p. 11-12).

Attention was brought to the case in June 2018 by the president of the Achuar nationality of Ecuador, which declared his solidarity to the Kichwa peoples of Santa Clara and his rejection to the construction of the project within ancestral territories. He also underlined the State's obligation to promote, recognize and guarantee Indigenous peoples' rights as established in the Constitution and international human rights treaties (Ibid.). With the support of the *Confederación de las Nacionalidades Indígenas de la Amazonia Ecuatoriana* (Confederation of Indigenous Nationalities of the Ecuadorian Amazon, CONFENIAE), between December 2018 and January 2019 the PONAKICSC has maintained a peaceful takeover of the project facilities (Ibid. p. 12).

Legal actions for the violation of the right to prior consultation and Nature's rights have been prepared thanks to the help of the *Defensoría del Pueblo* (Ombudsman's Office) and several CSOs (Ibid.). They were accepted by the Provincial Court of Pastaza,

declaring the violation of the rights of the Community and the river. It demanded the suspension of the hydroelectric project and withdrew the authorization of the use and benefit of the river's flow, as well as the Ministry of the Environment's environmental licence (Ibid.).

Being a reference for the struggle for Nature's rights, this case has been selected by the Constitutional Court in 2020 to generate binding jurisprudence on the rights of Nature and collective rights.[11]

### 1.3. Indigenous mobilization and non-governmental organizations' support

According to the experience of lawyers working with Indigenous peoples, these latter are not aware of their own autonomy and their right to self-determination, including the possibility to have their own jurisdiction within their territories (the so-called *Derecho Propio*, or *Ley de Origen*), as affirmed and protected by Articles 57.10 and 171 of the Ecuadorian Constitution.

*Derecho Propio* (literally translated in "own law") is a term used to refer to Indigenous legislation, meaning "a living, dynamic, unwritten right, which through its set of rules regulates the most diverse aspects and behaviours of community living" (Masapanta Gallegos 2009, 431). Indigenous law is part of the cultures of the Indigenous peoples, and as such is based on custom law and their ways of living. The *Derecho Propio* has its own system of legislation, its administration of justice and its prison systems. Contrary to "official" legislation, Indigenous law is known to all Indigenous peoples, thanks to a process of socialization in the knowledge of the legal system obtained through a direct participation in the administration of justice (Ibid. p. 431-432).

As lawyers have stated, in most cases – when something happens on their lands – Indigenous peoples do not have the political capacity for the settlement of internal disputes because there are no implemented processes for upholding their own system of law in their lands. Moreover, because of the imposition of judicial categories from the State – like the recognition of the community's legal personality – weaking traditional authorities capable of maintaining harmony within the territory, Indigenous communities think that someone from outside will solve these problems and facilitate the

[11] www.pachamama.org.ec/nuestro-trabajo/derechos-humanos-y-derechos-de-la-naturaleza/caso-rio-piatua/ consulted on April 7, 2023.

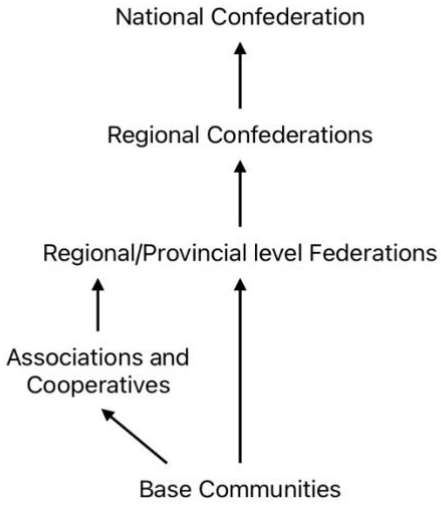
implementation of their autonomy.

With these preconditions, Indigenous political mobilization and the support of international NGOs are fundamental for the recognition and respect of Indigenous peoples' rights and self-determination in Ecuador.

### *1.3.1. National, regional, and local Indigenous peoples' grass-roots organizations*

In Ecuador, the Indigenous movements engaged in promoting the rights and group interests of Indigenous peoples gained strength by establishing themselves in organizations (Indigenous peoples' organizations), following a corporatist model (see Figure 1) (Becker 2011, 48).

*Figure 1. Structure of Indigenous Participation*




They are indeed structured on different grades: in the first grade, there is the *pueblo* or the *nacionalidad* itself (example: *Federación Indígena de la Nacionalidad Cofán del Ecuador*, Indigenous Federation of the Cofan Nationality of Ecuador or FEINCE); this is followed in the second grade by regional Indigenous peoples' organizations (example: CONFENIAE in the Amazon region), and at the top of the pyramid in the third grade there are national Indigenous peoples' organizations as the *Confederación de Nacionalidades Indígenas del Ecuador* (Confederation of Indigenous Nationalities of Ecuador, CONAIE). The smallest organizations are members of the regional and national Indigenous peoples' organizations, although they do not always act in unison. Indigenous peoples' organizations have played an extraordinary role in negotiating and engaging in social and political engagement with governments over the years, as the most important

ones are included within national and regional plans (IFAD 2017, 25).

CONAIE is the national organization of the Indigenous peoples of Ecuador. It has been created in 1989 and represents an autonomous Indigenous organization, independent of political parties, or of any State institution, foreign or religious. Its objectives are: strengthening Indigenous organizations; supporting specific community demands, such as land and water rights; and, challenging government policies that threaten Indigenous peoples (Ibid.). It is the largest federation and is organized in 53 grass-roots organizations from the three Ecuadorian regions, bringing together 18 Indigenous *pueblos* and 15 *nacionalidades* (CONAIE 2022, 3). By regrouping Ecuador's Indigenous peoples into a force for social justice, CONAIE has emerged as "a leading force behind street mobilizations" aiming at dismantling neoliberal governments (Becker 2011, 48).

A regional confederation included within CONAIE is CONFENIAE (see Rio Piatúa case, 2019, Section 1.2.3), representing the Indigenous peoples of the Amazon region. It aims at: demanding Indigenous peoples' self-determination; defending, protecting and advocating the legalization of Indigenous territories; conserving the ecosystems of the Amazon and natural resources; and, ensuring the integration of the Amazonian peoples into the national agenda (IFAD 2017, 26). Another regional organization is the *Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador* (Confederation of Peoples of the Kichwa Nationality of Ecuador, ECUARUNARI), which has been representing the peoples of Kichwa nationality since the 1970s. Through the union of their provincial federations, its objective is the promotion of Kichwas' dignity by advocating for social change and mobilization, as well as for justice and equality *vis-à-vis* the State (Ibid.). Lastly, the *Confederación de Nacionalidades y Pueblos Indígenas de la Costa Ecuatoriana* (Confederation of Nationalities and Indigenous Peoples of the Ecuadorian Coast, CONAICE) is composed by the nationalities and peoples living in the Coastal region as the Awás, Chachis, Éperas, Tsáchilas, and the peoples Pukro, Manta and Huancavilca (CONAIE 2022, 21).

Regardless of their limited numbers, Indigenous organizations have gained political significance both through "uprising politics" and the *Movimiento Unidad Plurinacional Pachakutik-Nuevo Pais* (Pachakutik Movement for Plurinational Unity-New Country, or MUPP-NP, also known as *Pachakutik*), an electoral movement representing an alliance of Indigenous organizations with other social movements that has elected several

Indigenous members to Congress. The Quichua word *Pachakutik* signifies "change, rebirth, transformation, and the coming of a new era"; it was adopted by the electoral movement to express its opposition to the Government's neoliberal economic policies and to support for a more inclusive and participatory political system (Becker 2002, 77). The Indigenous movement started gaining international attention in June 1990, when an impressive Indigenous uprising paralyzed Ecuador for several weeks against land disputes in the *Oriente* and in the *Sierra* (Ibid.). Indigenous political organizations played a fundamental role in the negotiation and writing of the 2008 Constitution and have been working especially in the Amazons to defend their culture, lands, territories, and communities from external violations without their consent. Some groups have designed projects to protect the environment thanks to the support of international NGOs, which have been helping them in obtaining funds that are used to secure their lands and territories (IFAD 2017, 11).

### *1.3.2. International non-governmental organizations protecting Indigenous peoples' rights*

In Ecuador, specifically in the Amazons, several international NGOs have been providing health care, bringing potable water, building schools and community houses, as well as electric power facilities to Indigenous communities. Because of the expanding scope of NGO activities, Ecuador – among other States – and its marginalized communities have been growingly dependent from these international actors, as seen from the rapid growth of the sector in the country during the 1980s into the 1990s (Wilson 2015, 351).

Many NGOs have made the Amazons' conservation as a top priority, an objective that could be obtained through the promotion of forest conservation and sustainable management, also thanks to the knowledge and comparatively sustainable use of forest resources by Indigenous peoples. As many Indigenous peoples' organizations started identifying with these goals, NGOs began being concerned in strengthening Indigenous communities through a direct collaboration with them (Ibid.). As a consequence, environmental conservation and Indigenous empowerment became two faces of the same coin, and complementary activities: on one hand, empowering Indigenous peoples and protecting their land rights would help conservation efforts, and on the other, stronger environmental regulations would benefit and protect Indigenous communities living in

the forest (Ibid. p. 352).

From the 1980s onwards, NGOs for sustainable development and forest conservation reinforced their alliance with Indigenous peoples by: providing them economic and technical support; sponsoring conferences, which would bring together Indigenous organizations to discuss their shared interests; increasing international and national media attention on Indigenous issues. Due to the intertying between NGOs' environmental concerns and Indigenous social issues, Indigenous groups had been able to redefine their projects in the global movements of environmentalism and human rights protection, and to re-frame their disadvantageous relationships with the Government (Ibid.).

The most known NGOs that have been currently playing a vital role in the affirmation and protection of Indigenous rights at the local, national, and international level are *Amazon Watch* and *Amazon Frontlines*.

Amazon Watch[12]

Founded in 1996, Amazon Watch is a non-profit organization protecting the rainforest and advancing Indigenous peoples' rights in the Amazon Basin in Ecuador, Peru, Colombia, and Brazil. The NGO works in solidarity with Indigenous and environmental organizations in battles for the protection of human rights, corporate accountability, and the preservation of the Amazon's ecological systems. Amazon Watch's action is focused on three topics: (1) stopping the destruction of the Amazon Forest; (2) promoting Indigenous solutions; and (3) supporting climate justice.[13]

By challenging corporate and government powers that threaten the forest and exposing global financial institutions supporting worst practices, Amazon Watch is working to shift the economic and socio-environmental policies affecting the Amazons and its inhabitants. Through its partnership with Indigenous peoples, the NGO has been reforming the financial industry by innovating effective strategies, and as such contributing to the global climate justice movement. It promotes Indigenous-led environmental solutions and amplifies Indigenous leaders' capacity for the maintenance of their sovereignty and the administration of their territories thanks to its team composed by in-country human rights lawyers. Moreover, Amazon Watch provides emergency aid to Earth defenders through

[12] Personal interview with Nathaly Yépez Pulles, Ecuador Legal Advisor for Amazon Watch, conducted online in Tena, Napo region, Ecuador on May 5, 2023.

[13] For more details, check out www.amazonwatch.org/work.

its *Amazon Watch's Amazon Defenders Fund* (ADF), amplifies Indigenous voice and delivers clean energy and communication hardware to remote communities.

Amazon Frontlines and the Ceibo Alliance

Amazon Frontlines is an international NGO based in the Ecuadorian Amazon rainforest committed to the fight for Indigenous autonomy and rainforest protection.[14] At the beginning of its action in 2011, it tackled the issue of industrial-scale oil contamination of Amazonian waterways by coming up with a solution alongside Indigenous communities whose water had been poisoned. This collaboration – together with core-capacity building and youth leadership support – led to the creation of an alliance between Amazon Frontlines and the Indigenous nations Kofán, Siona, Secoya and Waorani in order to cooperate towards the protection of their lands and cultures (Amazon Frontlines 2019, 11).

The NGO has been supporting Indigenous mobilization through an exercise of juridical dialogue via through two tools: the adequation of the juridical process in intercultural terms, and the writing of *amicus curiae*. Thanks to these mechanisms, Amazon Frontlines has helped the Waorani peoples of Pastaza in winning a historic ruling of 2019 for the protection of their territory from oil drilling – among others judicial decisions – and supported the Indigenous uprising of 2022 alongside CONAIE and other regional Indigenous peoples' organizations.[15]

To contrast the singular struggles for the protection of their homelands, in 2016 Amazon Frontlines brought together these four Indigenous nations for the creation of the *Ceibo Alliance*. This Alliance is a first of its kinds as it regroups ancestral nations of Ecuador, Peru, and Colombia. It develops and implements strategies to protect the Amazons and Indigenous ways of living, representing a model for Indigenous-led solutions and international solidarity to address the Amazons' most urgent problems (Ibid.).

[14] For more details, check out www.amazonfrontlines.org.
[15] Personal interview with Angel Gonzalez, Junior attorney at Amazon Frontlines, conducted online conducted in Tena, Ecuador on April 28, 2023.

# Chapter 2 – The vulnerable position of Indigenous women in Ecuador

## 2.1. Ecuadorian Indigenous women's social and political role

In popular culture, Indigenous women are represented in traditional ethnic attires, as if they were resisting global forces of modernization in guarding authentic cultures and ancestral languages on the verge of disappearing (Picq 2018, 29). Especially for Kichwa women, they have always been culturally valued for what they *do*, which makes them who they *are*. The social reproduction of sex/gender-related practices – as women's "natural" capacity as farm workers, machete wielders, or caregivers – in the Indigenous communities of Ecuador does not make women weaker in their peers' eyes, but rather stronger. A *sinzhi warmi* (strong woman) is not only a physically strong woman, but also a woman with the potential of helping others in developing their abilities: Indigenous women in Ecuador have been affirming a form of gendered agency through their bodies, which – at the same time – are *produced by* and *productive for* the social body at large, particularly their children and grandchildren (Shenton 2019, 7).

Even if they bear witness of the past, their lives are constantly transforming, like for every other human: they live in the present, and need to deal with the multiple forms of marginalization that affect them in contemporary societies. Indigenous women's experiences and identities are indeed the result of social, economic, and political inequalities; their role as "guardians of culture" is tightly tangled with political participation (Picq 2018, 29-30).

### *2.1.1. Indigenous women's stories and perceptions on food and land*

Direct testimonies of Kichwa women in Ecuador on their life and their perception on land and food will be reported – in addition to socio-political and anthropological studies – to generate a correct representation of Indigenous women and their role.

Estela's life and perception on land[16]

Estela is a Kichwa woman living in the city of Tena, the main province of the Napo region. She is the president of a small cooperative of Indigenous cocoa producers, composed by her closest family members, as her sister, her brother-in-law, her sons, and

[16] Personal interview with Estela, conducted in Venecia, Napo region, Ecuador on April 20, 2023.

her nephews and nieces. She has worked for 30 years as a public administration employee, and at the same time she has been harvesting fields all her life. As a member of the Evangelical Church, she is very religious but also embraces her full indigeneity, especially concerning the Kichwa way of living in the present, day by day.

Estela has had a turmoiled life: she got married very young because of the pressure of her parents; her husband left her to go study in Europe, with the promise to come back soon, and when he returned, he presented himself with another woman whom – unbeknownst to Estela – he married. She has had four children – one of which diagnosed with Down syndrome – with different men and had to bring them up as a single mother.

Throughout her life Estela has experienced discrimination as a woman, as an Indigenous Kichwa person, and as a single mother. She has always seen the effects of *machismo* and – as a Kichwa woman – she recalls having dwelt discriminatory episodes from community members, white individuals, and authorities, as well as within public institutions like schools and hospitals, and public transports. Estela affirms that Kichwas have always been discriminated, especially from an economic point of view: as the majority of them are *campesinos* (farmers), they sacrifice a lot and do not get paid a fair price for their products; their money is not enough for supporting their children, as they do not accept credit because it will mean an extra insecurity.

According to Estela's nephew, Kichwa women are "men's strength" because they do everything: they are the ones taking care of the house and the food, of the children and of the land with their machetes; men only help with hard labour, but for everything else are women who work. Within Kichwa communities at large, there is some sort of gender equality when harvesting the land: the aim is to work together and quickly achieve the goals. Women are more reliable than men, therefore they are the ones who get sent ahead when there is the need to talk with the authorities.

When asked what land means to her, Estela defined it as a "tool to demonstrate who we are": harvesting the land and being in the fields means producing food, working without worries according to Nature's pace, teaching kids from an early age in what working consists of. Harvesting is a way to redeem oneself from poverty, and at the same time an instrument to learn how to organize your daily life and to manage money. She herself claims to have embraced these Christian ideals and made them their own, in her path to gain respect from others as a single mother and woman. Cocoa, coffee, and platan have

been her stability resources throughout all her life.

Estela sees owning land as a reassurance, for herself and her children: in her words, "what you have today in the field you can have it also tomorrow", as "money ends while land does not". Land represents a hope for her children's education, as well as a tool to end patriarchy and women's economic dependence from men.

*Figure 1. Estela's sister and nieces cooking lunch for everyone. Picture taken by the author on April 15, 2023, in Venecia, Napo region, Ecuador.*


Mamá Olga and Mamá Ophelia's life in the *chakras*[17]

Mamá Olga and Mamá Ophelia are two ancestral *parteras* (midwives) from Amupakin, an association based in the city of Archidona composed by other *parteras* with the aim of promoting ancestral medicine and customs within the Indigenous communities of the Napo region of Ecuador.[18] The *Mamás* of the association are engaged in assisting mothers-to-be during childbirths using ancestral techniques as the vertical birth, in the production of natural medicines, and in the practice of ancestral rituals for the

[17] Personal interview with Mamá Olga and Mamá Ophelia, conducted in Archidona, Napo region, Ecuador on April 28, 2023.

[18] For more details, check out www.amupakinachimamas.com.

improvement of people's psycho-physical well-being. Their natural remedies are created using the plants harvested in their *chakras* (or *chacras*, or *chagras*), a form of ancestral garden and traditional agroforestry method which has long been a "key component of local food security and household economic diversity" (see Annex 5) (Santafe-Troncoso and Loring 2021, 398).

When talking about discrimination against women, Mamá Ophelia recalls that almost every woman she knows has been a target of discrimination: within the Ecuadorian society there is no recognition of women's value and, because of *machismo*, women are victims of gender-based violence within their communities and families. Men do not have any experience of women's working activities, although Indigenous women's capacities are by far larger than men's. Structural discrimination is manifest as land property has always been given only to males: historically, women were excluded from land inheritance, and if there were no sons, land would be sold to someone else (Muratorio 2005, 141). It has always been thought that women would not need land property as they would get married with a man; therefore, a sort of concrete union between men and women in harvesting plants and land property has been upheld.

In Indigenous spiritual vision, land is the *Pachamama*, "Nature" in Kichwa, where life is reproduced: in Mamá Olga and Mamá Ophelia's words, the *Pachamama* is life, and

*Figure 3. Mamá Olga burning sticks to ward off insects in her chakra. Picture taken by Sara Miante on April 29, 2023, in Archidona, Napo region, Ecuador.*

*Figure 2. Mamá Ophelia and her daughter Gisela set the table for lunch in Mamá Olga's chakra. Picture taken by the author of April 29, 2023, in Archidona, Napo region, Ecuador.*

*chakras* are *mujeres* (women). Women indeed gain power from plants' support: from the *Pachamama*, they obtain security and medicinal plants, as well as food for their everyday life. In their *chakras*, the Mamás harvest plants like yucca, chonta, cocoa, and patas muyu (*Theobroma bicolor*) whose fruits can be consumed by their families or sold at the local market. Working the land represents a long-term commitment, with no profits in the short term; this constitutes an obstacle to the economic security of Indigenous female farmers who start anew in this economic activity.

According to Mamá Ophelia, women are not taught how to harvest the land, and have no incentives in becoming agricultural entrepreneurs as there are no State activities promoting women's empowerment in agriculture. In her view, the presence of private organizations and cooperatives, as well as youngsters, are fundamental for the preservation and promotion of traditional agroforestry systems, land protection and the enhancement of Indigenous women's security.

Gisela and her experience as a young Indigenous woman[19]

Gisela is Mamá Ophelia's oldest daughter, she is in her early thirties and works within the Association Amupakin as responsible for the management of *chakras*, together with activities and *talleres* (workshops) for their promotion. She is not an ancestral midwife, but – since she grew up in the Association – she helps with the creation of traditional medicines and in harvesting the *chakras*.

Contrary to her mother and the other *parteras* of the Association, she is fully immerged in the creation of projects that have at the centre only the *chakra*: for her, it represents the answer to every problem that Indigenous women and their families could experience. This has led to many contrasts with the other members of the Association as these latter would prefer to give priority to the promotion of ancestral births and traditional medicine, rather than the *chakra* itself because it is a type of heavy work that the old Mamás cannot undertake.

In Gisela's words, *chakras* provide them with food and medicinal plants, therefore they should not be neglected. She is trying to spread this message by organizing workshops where she describes the various fruits and vegetables that can be grown in the *chakras*, the way in which they can be transformed (for the creation of flour like in the case of

[19] Personal interview with Gisela, conducted in Archidona, Napo region, Ecuador on April 29, 2023.

chonta, for example), and where it can be sold in local markets of the area. She is well aware that harvesting *chakras* is tough work, thus she is trying to encourage more and more young people to help the Mamás of Amupakin in the promotion of Indigenous culture and their products. Fostering land cultivation not only presents a way to preserve Indigenous identity, but also an extra economic security that is always there whether we notice it or not.

*Figure 4. Gisela cooking* maito de pollo *on the fire. Picture taken by the author on May 11, 2023, in Archidona, Napo region, Ecuador.*

### *2.1.2. Indigenous women as ancestral knowledge defenders and food providers*

In the ontology and socialized nature of Indigenous worldviews, gendered differences can be seen concerning both individuals and natural elements, as ecological and social relation webs create different gendered perceptions and categories on natural spaces, entities, and beings. The social division of labour between men and women is founded on the complementarity between the forest, considered masculine, and the gardens, that are on the contrary mainly feminine. As such, Indigenous communities are organized on relational conceptions of gender, created through symbolic and social processes of

kinship influencing "the production, consumption, and circulation of food products": on one hand, men are supposed to hunt, to fish and provide meat, to clear the forest for new areas of cultivation, and to make products for daily use; women, on the other hand, cultivate plants and vegetables in their gardens, and prepare food (Vallejo, Cielo, and García 2019, 184-186).

By working daily in their *chakras*, Indigenous women are constantly in close contact with natural and supernational beings with whom they have a relationship of mutual nourishment: the environment represents for them an important historic, spiritual-religious, and social resource, and a sustenance provider through agriculture (Vallejo, Cielo, and García 2019, 188). Otavalan Indigenous women, for example, are capable to read and interpret topographical features of the Earth in practices that can affect their well-being and good fortune; in this sense, knowledge of places and nature is closely linked to knowledge of the self, as Indigenous women can grasp one's position in a larger scheme of things (D'Amico 2011, 79).

Growing food in the *chakras* – even in small quantities or few types – represents a constant in Indigenous families, especially when for some of them is their primary source of livelihood, and it "keeps bellies fed when times are tough" (Shenton 2019, 13). Farming and harvesting remain intimately tied to female identities: traditionally, it has been believed that those women managing *chakras* hold the wisdom received from the ancestors on how to ask Nunkui, the spirit of *chakras*, to bless and provide food in their gardens. The *chakra* is where women learn from the land and restore their energies, it represents "a symbolic embodiment of food sovereignty": these gardens are a source of food diversity, as well as a tool for agency, building community, imparting traditional knowledge, voicing cultural identity, empowering women, protecting the environment, and preserving spiritual wellness (Santafe-Troncoso and Loring 2021, 401).

As previously stated, Indigenous women's gendered agency is founded on hard work as "producing crops, food, and children through manual labour" (Shenton 2019, 13). Ideal women should work hard and be generous, be a *pichihuarmi* (literally robin-woman) resembling in this sense a "light and quick-moving small bird". Men, on the other hand, are not expected to perform – and even less excel at – women's tasks; as such, those Indigenous women who are "lazy" and do not work hard are called *carishtna* (man-like). Indigenous young women must master the knowledge, skills and social attitudes about

the production, preparation, and consumption of food. Feminine virtues are validated – for example – by the blackness of women's pots, as it means that they are regularly used to feed others, to socialize, and to give generously (Muratorio 1998a, 414). Kichwas women are expected to prepare and serve the *wayusa* tea to all members of the household in the early morning, to accompany their mothers in the garden, and to take care of the younger siblings. Their right to their own garden symbolizes the realisation of autonomy and maturity, as it allows them to "enter into the process of production and circulation of food" (Ibid. p. 412).

Indigenous women revere farm work ethic and farm bodies, and their activities are highly respected by community members (Shenton 2019, 13). Through the cultivation of crops, food and children, Indigenous women create supportive social connections and mature over time both in experience and body (Ibid. p. 15). Women obtain particular types of food through the creation of social relations of respect with other women: this circulation of food is reciprocated through women's work in the garden belonging to the woman who helped them get the new crop, or by giving them gifts of another kind of food at a future time. They exchange knowledge in weekly fairs where they sell products, while creating a sort of autonomy from men's control (Muratorio 1998a, 413). For Kichwa women, seeding and harvesting *chakras* are important social activities, as well as sharing the food grown among family and community members; the disappearance of these gardens not only would have significant impacts on the physical well-being and culture of Indigenous peoples, but it would also damage their sense of community and solidarity (Santafe-Troncoso and Loring 2021, 403).

### *2.1.3. Indigenous women at the forefront of the political debate*

Throughout the XX century, due to persistent coloniality and patriarchy in Ecuadorian society, the world beyond the Amazons knew very little about Indigenous women: they had been portrayed as non-political subjects, only linked to natural life. This representation was not limited to broader societal structures, but was also affecting the dynamics within Indigenous organizations (Sempértegui 2021, 214). Indigenous women have a long history of political leadership and resistance inherited across generations: they fought against colonial armies and oppressive independent States, in position of leadership, in courts, and through daily acts of resistance (Picq 2018, 64). They have

played a fundamental role in the Indigenous struggle thanks to their better knowledge of the mechanisms that can be used to protect their rights, their higher fame to national and international audiences, their greater ability to manage and administer their territory, and their capacity to keep their communities united. However, their role in the defence of their territory, life, and dignity has been often obscured as male leaders have been carrying out every political negotiation, dialogue with external actors, and public recognition (Vallejo, Cielo, and García 2019, 189).

Created in 1944 after a leftist mobilization of Indigenous peoples, the *Federación Ecuatoriana de Indios* (Federation of Ecuadorian Indians, FEI) started involving from inception women in its leadership roles, as Dolores Cacuango and Tránsito Amaguaña being its founding members (Glidden and Shaffer-Cutillo 2017, 29). From then on, Indigenous women were allowed to very low degrees to lead or discuss issues close to them; moreover, they were not treated as equals within Indigenous organizations due to their imposed "subservient social positions", expecting from them – for example – to serve their male colleagues at meetings. Because of these reasons, Indigenous women decided to distance themselves from local and regional Indigenous organizations and to create new ones specifically for women (Glidden and Shaffer-Cutillo 2017, 30).

In the 1990s in Ecuador, Indigenous women's organizations started emerging at the national level by questioning gender policies arising from programmes of quality: in their view, the liberal feminist concept of equality was not relevant in their cultural contexts, as it would risk reducing Indigenous women's demands to questions of poverty and development, while completely bypassing the issues of internal colonialism and feminist racism (Bastian Duarte 2012, 160-161). Furthermore, the institutionalization of Indigenous politics did not benefit men and women equally: Indigenous women were left behind by "successful" party politics, as positions of power were usually occupied by men (Picq 2018, 65).

By the early 2010s, Indigenous women started endorsing environmental and ecofeminist positions to denounce negative impacts of extractive activities on women's bodies, as alcoholism, domestic violence, and prostitution (Sempértegui 2021, 214). Ecofeminism – in particular – encompasses a broad spectrum of feminist approaches to "make the intersectional oppression of nature and women visible" thus defining extractivism as a representation of capitalism and patriarchy (Ibid. p. 213-218). Indigenous women's

resistance against the expansion of oil extraction projects became apparent with the so-called "March for Life" of October 2013. More than 100 women from seven Indigenous nations – Achuar, Shuar, Zapara, Kichwa, Shiwiar, Andoa, and Waorani — marched for 250 kilometres from the south-eastern Amazon to Quito to protest the Ecuadorian government's authorization for the eleventh oil licensing round and oil extraction in Yasuní National Park (Ibid. p. 202).

Ecuadorian Indigenous women – as Ana Maria Guacho, Cristina Cucuri, Sandra Patarón, Nina Gualinga and Nemonte Nenquimo – have been active in national politics, as well as on the global stage, by sharing their voices and experience with international NGOs and the United Nations. Members of *the Red Provincial de Organización de Mujeres Indígenas de Chimborazo* (Provincial Network of Indigenous Women's Organizations of Chimborazo), Cucuri and Patarón are responsible for the introduction of several articles on gender parity, equality, and rights for Indigenous justice in Ecuador's Constitution of 2008 (Glidden and Shaffer-Cutillo 2017, 29). However, Indigenous women are impacted too by the gender bias prevailing in world politics, as ethnopolitics is conformed to gender standards in order to enter the mainstream: women are relegated in grassroots organizations, while men compete in "high politics" (Picq 2018, 93).

In the last decades, the institutionalization of Ecuador's Indigenous movement as a democratic force is exactly what has deepened gender hierarchies at its core (Ibid.). The legal recognition of Indigenous rights – like the assimilation of Indigenous peoples as individual citizens – has paradoxically reinforced gender inequalities, further hindering women's political power and status within their communities: various agrarian reforms in the redistribution of land reinforced patriarchal land tenure, making Indigenous women loose land rights (Ibid. p. 89).

### 2.2. Indigenous women's struggles and discriminations

Indigenous women in Ecuador constitute the most vulnerable individuals in society, as they are oppressed in intertwined power structures based on race, gender, and social class. Indigenous women's experiences are still permeated by the colonial legacy of sexism and racism – still present both at the national and community level – which racialized and feminized them (Picq 2018, 6).

As every other Ecuadorian woman, Indigenous women struggle with domestic violence,

machismo, unpaid labour, rape, double or triple workdays, and a general low status. Due to their indigeneity, they also face additional problems as illiteracy, low levels of school enrolment, and higher infant and maternal mortality rates (Glidden and Shaffer-Cutillo 2017, 28). Indigenous women have indeed less access to formal education, basic healthcare, judicial and political representation (Picq 2018, 6). Only 65% of Indigenous young girls attend primary school, more than 30% of Indigenous women at 15 and older have no formal education experience and 53% are illiterate. Due to these educational disparities, they have higher risks to experience domestic and sexual violence, as well as to maternal and infant mortality (Glidden and Shaffer-Cutillo 2017, 28-29).

The case of Indigenous women and its specificities are highly relevant for a larger political analysis: fighting sexism does not mean tackling a prevalent problem within communities, but rather unravelling the nexus that has formed the exercise of power since the arrival of Europeans in Ecuador (Picq 2018, 6). Notwithstanding Indigenous women's activism at the national ad international level, forms of social control and "appropriate female behaviour" discourage them from confronting their problems and changing their reality, by keeping them silent and making it impossible for them to speak up at the local level (Glidden and Shaffer-Cutillo 2017, 31). In order to understand their situation, we need to adopt an intersectional approach considering – among other factors – sexism, colonial racism, as well as conceptual statelessness (Ibid. p. 29-30).

### *2.2.1. Unprotected land rights and the extractive activities*

Despite their visibility in cultural arguments adopted by Indigenous movements and the State, Indigenous women have been marginalized as stakeholders in political and economic dynamics affecting Indigenous land for collective land titles during modernization, and neoliberal and multicultural reforms (Radcliffe 2014, 860). Indigenous women struggle in protecting natural resources required for social reproduction because of female illiteracy, male bias in State reforms and household power relations contributing to dispossession (Ibid. p. 857).

Women's situation regarding land and territory is the results of a "multiscalar intersection between national development discourses, landscapers of market relations, elite notions of ethnic difference and policy bias towards male heads of households" (Ibid. p. 860). Indigenous women have been struggling with a range of multiple stakeholders over land

rights – like governments, experts, Indigenous leaders, and policy-makers – as they marginalized women in different ways (Ibid.). Local authorities are often presided by men, which disregard women in discussions around territorial-land issues at the community level (Ibid. p. 858). Extractive industries privileging mobile and male labour, deepen gender asymmetries in those Indigenous communities they influence (Vallejo, Cielo, and García 2019, 194).

According to a survey made by the Ecuadorian government in 1998, Indigenous and rural women had less access to land than men: among those few who had any land at all, female-headed households were particularly likely to have minimal landed property, while male-headed household held on average eight times the female-headed household's amount of land (Radcliffe 2014, 857). Regardless of the recognition of the principle of equal treatment, Indigenous women's status as landowners is uncertain as they do not know their rights over membership and land: female labour is consistently used as work obligations in return for usufruct rights to part of communal land, despite women's individual control over it (Ibid. p. 858). The 2008 Ecuadorian Constitution furthers the lack of attention to women's land rights, both as individuals and/or members of ethnic collectives: the constitutional provision for "Indigenous territorial circumscriptions" affirmed in Article 57 establishes a framework for Indigenous territorial and political autonomy; it fails, however, to clarify women's rights to land and territory. With these premises, Indigenous women view agrarian reform laws and programmes as "a tool to reduce land rights" rather than a tool to enhance them (Ibid. p. 859-860).

Due – and thanks – to their relational engagement with the land, Indigenous women are resistant to a monetary and extractivist model of resource use (Ibid. p. 857): older and middle-aged women maintain their *chakras*, while people with a salaried work no longer harvest crops; consequently, women's expertise in agriculture is devalued by temporary salaries and the dynamics that they create. Within Indigenous territories, capitalism appropriates and dispossess women of their knowledge and their bodies, extending in this way "the link between the accumulation of capital and patriarchal violence" (Vallejo, Cielo, and García 2019, 194). Due to the increased circulation of monetary income, extractive activities generate machismo and socio-cultural problems as alcoholism and domestic violence, thus aggravating Indigenous women situation (Vallejo, Cielo, and García 2019, 193; Sempértegui 2021, 218).

### *2.2.2. Violence against women and the Ecuadorian patriarchal and racist society*

In Ecuador, violence against women is an invisible phenomenon: governments do not collect data, making it difficult to measure. Despite the lack of statistics, violence against women – in particular Indigenous women – is significant, yet only few of them denounce it. As public policies are absent and justice systems are inefficient, victims are not encouraged in reporting the crimes they suffer. Moreover, concerning Indigenous women, gender inequality and ethnic discrimination need to be added to these general considerations (Picq 2018, 51-55).

Among Indigenous groups, domestic abuse is higher than in any other social and ethnic category of individuals: physical violence affects 44% of families, while psychological abuse 45%. This latter is most common among couples – affecting 45% of women – followed by physical (38%) and sexual violence (21%). It is estimated that from 41% to 76% of Indigenous girls under fifteen years of age are victims of physical abuse. Sexual and domestic violence are common, but these acts do not reach the light as they are typically dismissed as a private matter (Ibid. p. 51). Domestic violence is seen by Indigenous women as a sort of disease, an illness that men contract, especially since it is correlated with alcohol abuse, and it is spread with colonial power structures (Ibid. p. 54). When cases of gender-based violence go public, men judge Indigenous female victims in accordance with patriarchal structures, leaving them completely alone to fight the issue as both non-Indigenous and Indigenous organizations dismiss it: male authorities refuse to acknowledge it, and cases of violence are rarely discussed in community assemblies (Ibid. p. 53-57). Additionally, Indigenous women have – more than their non-Indigenous counterparts – little or no access to the judicial systems (Ibid. p. 51). There are no good options available for them to seek justice: despite its normative framework based on gender equality, ordinary justice is inefficient, costly, and discriminatory; Indigenous justice – although its higher accessibility, immediacy, and intention towards reconciliation – tends to mute cases of domestic and sexual violence (Ibid. p. 57).

The larger processes of colonization regarding Indigenous territories are inseparable from violence against Indigenous women, as this latter is indeed intertwined with colonial state-making. Sexual violence has been used by colonial States as a tool of conquest, for establishing their authority, centring Indigenous women as the personification of Western invasion. Spanish patriarchy pervaded colonial South America, marginalising Indigenous

women through gender ideologies. Historically, colonial authority in Ecuador has been established on the sexuality of Indigenous women, with landlords fully controlling their bodies until the 1960s. Across generations, men gained more and new rights, while women were further subordinated through marriage as Indigenous girls were married at an early age to be placed under their husbands' protective authority. The colonial process has revealed lasting effects in contemporary forms of sexual assault on Indigenous women, ranging from attacks on tribal authority over natural resources to Indigenous self-determination (Ibid. p. 52, 61-62).

Within Indigenous traditional, sexual violence is not common but rather a historical instrument of patriarchy and racism: rapes were a tool of genocide with the aim of destroying "Indigenous peoples, their dignity, and the foundations of community life" (Ibid. p. 54). Colonization has racialized and dehumanized Indigenous peoples as dirty and bestial bodies that do not have any relevance. As such, Indigenous women are considered "rapable" since they embody the discriminating factors of gender and indigeneity, which make them be seen as inherently dirty and undeserving of respect. Racism has been rooted among Ecuadorian elites, leading to the dismissal or even acceptance of sexual violence against Indigenous women, as well as the perdurance of Indigenous peoples' "bestialization". Violence against women is thus pictured as an Indigenous exception, rather than a colonial legacy affecting women across Ecuador and South America (Ibid.).

### 2.3. National institutions and legislation protecting Indigenous women's rights

To contrast discriminations and empower Indigenous women, specific structures, services, plans, programmes, and projects are needed. As warrantor of rights, the Ecuadorian State is ultimately responsible to design and implement gender policies, providing the technical and human financial resources required. Progresses have been achieved through the adoption of specific legislative acts and the creation of *ad hoc* institutions concerning Indigenous women's rights. However – as stated by the CEDAW Committee in its Concluding observations on the tenth periodic report of Ecuador of 2021 – legislation protecting Indigenous women and girls' rights to their traditional land is still lacking and hate crimes and discrimination against them are continuously reported.

### *2.3.1. The Ministry for the Woman and Human Rights* [20]

The *Ministerio de la Mujer y Derechos Humanos* (Ministry for the Woman and Human Rights, MMDDHH) has been created in late November 2022 by the Ecuadorian President Guillermo Lasso by endorsing the Executive Decree No. 608. Its mission is the creation of public human rights policies, and the promotion and comprehensive protection of rights and citizen participation, in the exercise and compliance with national and international obligations. It supports the "strengthening of specialized systems for the integral protection of rights" through citizen participation and inter-agency coordination. Within its objectives, the Ministry for the Woman and Human Rights aims at increasing the promotion of equality, equity, non-discrimination, and respect for diversity while affirming a culture of peace, non-violence, and the observance of the intercultural and plurinational structure of the Ecuadorian State. In the area of promotion, prevention, care and integral reparation, the Ministry works for the effective functioning of guarantee and monitoring mechanisms, mechanisms concerning citizen participation and the enforceability of rights, as well as specialized systems for the comprehensive protection of human rights at the national level. These systems dealing with specializes areas of prevention and protection must be created with the participation of movements, organizations, and social actors. Moreover, this institution is engaged in the increase of the formulation and implementation of policies concerning human rights, and in coordinating their effective implementation by the competent entities throughout the public policy cycle.

The recent creation of the Ministry, together with the elimination of other national agencies, has determined an insecure policy implementation due to limited economic human resources, authority, and budget. Especially with regards to the *Ley Orgánica Integral para Prevenir y Erradicar la Violencia Contra las Mujeres* (Comprehensive Organic Law to Prevent and Eradicate Violence against Women, LOIPEVM), civil society organizations have been stressing that adopting laws and mandates are not enough: resources, political will and greater mechanisms of enforceability are needed to implement Indigenous women's human rights and to achieve the different related entities' compliance. As the Government has a crucial responsibility in terms of public policies

[20] www.derechoshumanos.gob.ec consulted on June 14, 2023.

and offering services, it must create the conditions for the respect of Indigenous women's rights by working in all spaces and involving all actors (Bazán 2023).

### *2.3.2. The Comprehensive Organic Law to Prevent and Eradicate Violence against Women (2018)*

In Ecuador, violence against women has been considered a "public health problem" since the 1980s, when the State signed and ratified the CEDAW Convention in November 1981. Since then, many historic events have taken place as the establishment of the Women's Commissariats in 1994, and the adoption of the 1995 *Ley contra la violencia a la mujer y la familia* (Law against the Violence against Women and the Family, also known as Law 103), recognizing domestic violence as a problem transcending both private life and the public sphere, together with the existence of three types of violence: physical, psychological, and sexual. The State ratified in 1995 the *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women* of Belém do Pará, and signed the *Beijing Platform for Action* in the same year. The Republic of Ecuador recognizes in its 2008 Constitution equal rights, duties, and opportunities to all persons, and declares that no one may be discriminated on the basis of gender identity, sex, and sexual orientation; moreover, it establishes in its 2014 *Código Orgánico Integral Penal* (Comprehensive Organic Criminal Code, COIP) that violence against women or member of the family constitutes a criminal offence.

All of these national and international instruments implemented by the Ecuadorian State led to the adoption by the National Assembly of the *Ley Orgánica Integral para Prevenir y Erradicar la Violencia Contra las Mujeres* (Comprehensive Organic Law to Prevent and Eradicate Violence against Women, LOIPEVM) on February 5, 2018 (Guzmán Véliz et al. 2019, 46-49). The Organic Law creates a "comprehensive national system to prevent and eradicate violence against women" through the collaboration of sixteen institutions, including seven ministries as the Ministries of Justice and Human Rights, as well as National Equality and Judicial Councils among others (Ibid. p. 49).

At the beginning of the law-making process, the Organic Law was discussed with the title "Integral Organic Law to Prevent and Eradicate *Gender-Based Violence* against Women"; nonetheless the gender-based nature of violence against women was later arguably dropped as it has been thought that, for some forms of violence, explanations

can be found in different causes than those related to gender (Ibid. p. 46). The purpose of the Organic Law is "to prevent and eradicate all types of violence against women", including girls, adolescents, young peoples, adults, and older women, in all their diversity, both in the public and private sphere, especially when there are multiples situations of vulnerability or risk. This aim can be obtained through comprehensive policies and actions of prevention, care, protection, and reparation for victims, together with the re-education of the aggressors and activities on the social construction of masculinity. In compliance with the provisions of the Ecuadorian Constitution and international instruments, priority and specialized attention shall be given to girls and adolescents (Ibid. p. 49).

At Article 10, the Organic Law recognizes indeed seven types of violence: (1) physical violence, regardless of whether it is concretely caused or not; (2) psychological violence, encompassing any act or omission that affects psychological and emotional stability; (3) sexual violence, defined as "actions aimed at restricting or violating the right to decide on their sexual and reproductive lives"; (4) economic and patrimonial violence, that includes any action or omission preventing women "from making use of their personal assets", as those resulting from *de facto* unions; (5) symbolic violence, considering any behaviour – reproduced by any means – subordinating women in an environment of inequality, discrimination and exclusion; (6) political violence, covering actions aimed at causing harm to women exercising public office or their families, committed directly or indirectly; (7) gynaecological-obstetric violence, concerning those actions and omissions limiting women's right to adequate medical care (Ibid. p. 46-47).

The elimination of violence against women is an indispensable condition for women's individual and social development, as well as their full and equal participation in all spheres of life; as such, the Organic Law aims at eradicating it through the "transformation of social cultural patterns and stereotypes that naturalize, reproduce, perpetuate and sustain inequality between men and women" (Article 2) (PROAmazonía 2019, 50-51).

Despite the Organic Law is in force since 2018, the *Coalición Nacional de Mujeres de Ecuador* (National Women's Coalition of Ecuador) denounced that violence has been creasing every year – with 2022 being the most violent year since records are kept – due to the lack of an effective national plan concerning the implementation of the law.

Progress has been made with the creation of a national information system on violence against women (the so-called *Registro Único de Violencia*, Single Register of Violence or RUV), however it is not really in operation yet. For the integral protection system to work, governing bodies and State entities must coordinate each other in their obligations and functions as affirmed in the law (Bazán 2023).

### *2.3.3. The Organic Law on Rural Lands and Ancestral territories (2016)*

The *Ley Orgánica de Tierras Rurales y Territorios Ancestrales* (Organic Act on Rural Lands and Ancestral Territories) has been adopted in 2016 with the aim of guaranteeing the property of communal lands and establishing procedures for requesting the legalization of rural properties and ancestral territories (Galindo Lozano 2020, 32).

In its Article 3, the Organic Act gives – for the first time in Ecuador's history – a definition of "ancestral territory", corresponding to "the physical space on which a community, commune, people or nationality of ancestral origin has historically generated an identity based on social, cultural and spiritual construction, developing economic activities and their own forms of production on an ongoing and uninterrupted basis". According to this Article, the traditional ownership of these lands and territories is "imprescriptible, inalienable, unattachable and indivisible". Ancestral possession is defined as the "current and immemorial occupation of the territory where the identity of a people is reproduced", while immemorial occupation represents the permanence in a territorial space. Under the Organic Act, ancestral land allocation is free and exempt from taxes and fees, and will not be subjected to affectation or agrarian expropriation (Ibid.).

In response to judicial cases later brought by Indigenous peoples, the Ecuadorian National Assembly created the *Reglamento a la Ley Orgánica de Tierras Rurales y Territorios Ancestrales* (Regulations to the Organic Law of Rural Lands and Ancestral Territories) on January 11, 2017. The Regulations specify the provisions contained in the Act, as – for example in Article 1 – the duration of the immemorial occupation of a territory as ancestral possession, fixed at 50 years or more. The Regulations also sets in Article 5 the general and specific parameters of the social and environmental functions that lands have the obligation to fulfil affirmed in Article 100 of the Organic Act, without specifying whether it refers to rural lands only, or to ancestral territories too (Ibid.).

As the law and its regulations have been adopted without adequately consulting

Indigenous peoples, many of the requirements for the recognition of Indigenous land rights not only lack an intercultural approach, but also do not adhere to international standards (Special Rapporteur on the rights of Indigenous Peoples 2019, 5-6).

### *2.3.4. The Organic Law of the Food Sovereignty Regime (2009)*

As stated in Chapter 1 Section 2.1, the 2008 Constitution of the Republic of Ecuador sets the concepts of food sovereignty and agroecology as the basis of social transformation, as well as of political disputes between actors at the territorial level. These new concepts have been welcomed thanks to social, peasant, national and regional organizations that raised the issue with a strategic objective. Nowadays, the Constitution contains 11 articles addressing food, in particular food sovereignty, and since its adoption other laws have been implemented as the *Ley Orgánica del Régimen de la Soberanía Alimentaria* (Organic Law of the Food Sovereignty Regime, LORSA), which frames everything that has to do with food (Cordero-Ahiman 2022, 35).

The Organic Law has been approved in February 2009, and later modified in a Reform Act published in December 2010: the Reform Act eliminated some important issues related to the *Pachamama*, and the participation of different social agents in the territorial systems of food production, processing, marking and consumption. These modifications were not to the likings of those who write the Organic Law, as it should have been implemented while taking into account all social groups (Ibid.).

The purpose of the Organic Act is "to establish mechanisms by which the State fulfils its obligation and strategic objective of guaranteeing individuals, communities and peoples the self-sufficiency of healthy, nutritious and culturally appropriate food on a permanent basis" (Article 1). The law wants to implement the access to and use of water and land while fulfilling a social and environmental function – since they are relevant factors for productivity in all senses – as well as to protect through financial incentives agrodiversity and the ancestral knowledge linked to it (Ibid.).

To reduce and eradicate undernutrition and malnutrition, conscious consumption and nutrition must be promoted by the State through the elaboration of specific laws for the formulation and implementation of public policies. This process requires the broadest social participation incorporating citizens and CSOs, as the *Conferencia Plurinacional e Intercultural de Soberanía Alimentaria* (Plurinational and Intercultural Conference on

Food Sovereignty, COPISA) and the *Sistema de Soberanía Alimentaria y Nutricional* (Food and Nutrition Sovereignty System, SISAN) (Ibid. p. 37).

The first body is composed by nine members of civil society, universities, communities, and Indigenous peoples, with the task of developing recommendations. The second one – instead – involves a group of peoples, communes, communities, nationalities, as well as social, institutional, and state actors, with the main functions of: developing public policy proposals relating to the food sovereignty regime; harmonising civil society with the various levels of government; dealing with issues related to food sovereignty in areas such as production, marketing, distribution, transformation, and responsible consumption; influencing people's food and nutrition; and, promoting compliance to the Organic Act throughout the national territory (Ibid.).

Through COPISA and SISAN, it has been possible to guarantee the participatory construction of other laws related to LORSA, as the 2017 *Ley Orgánica de Agrobiodiversidad, Semillas y Fomento de la Agricultura Sustentable* (Organic Law on Agrobiodiversity, Seeds and Sustainable Agriculture). Despite their assistance in generating participation and territorial organization for citizen proposals, in addition to training processes on food sovereignty, not all these initiatives are implemented, triggering therefore internal debates with Indigenous peoples and nationalities about defending the *Pachamama*. The Covid-19 pandemic – that has affected the operational capacity of institutions – together with a frequent rotation of the ministries involved in the issue of food, do not allow progress in all established public policies. Moreover, many of the articles within the LORSA are not fully endorsed by governors, who carry out policies promoting agrobusiness instead of protecting the general population and Indigenous peoples' right to food (Ibid.).

# Chapter 3 – Strategies for the empowerment of Indigenous women in Ecuador

Despite the progresses that Ecuador made, there are still challenges in the protection of Indigenous women's rights to land and to food, and the obtainment of target 2.3 of the 2030 Sustainable Development Goal (SDG) No. 2 aimed at ending hunger, achieving food security and improved nutrition, and promoting sustainable agriculture. Through secure and equitable access to land, other production resources, inputs, and opportunities, the goal aspires at doubling the agricultural productivity and the income of small-scale producers, in particular women and Indigenous peoples (United Nations System in Ecuador 2022, 40).

As affirmed by the CEDAW Committee in its Concluding observations on the tenth periodic report of Ecuador of 2021, there are two main issues at the national level: firstly, the participation of Indigenous women in the formulation and implementation of public policies and strategies on issues of climate change and disaster risk reduction is lacking; secondly, data and research on the consequences and gender-specific effects of the climate crisis – which are particularly damaging to Indigenous women and girls – are absent (United Nations System in Ecuador 2022, 94).

To achieve the target 2.3 of the 2030 SDG No. 2, many initiatives have been put in place by CSOs, national and international NGOs, as well as international intergovernmental organizations and the national government to empower Indigenous women and to affirm their land and food rights.

## 3.1. Non-governmental organizations' and civil society organizations' initiatives protecting Indigenous women's land and food rights

### *3.1.1. The* Casa de Mujeres Amazónicas *(Home of Amazonian Women)*

In March 2022, an alliance of Indigenous women founded in the city of Puyo, in the Pastaza province, the *Casa de Mujeres Amazónicas* (Home of Amazonian Women), a house for Indigenous women who have fled violence – ranging from domestic violence to violence faced by Indigenous land defenders – with the aim of helping them recover (Godin 2022).

The centre was first formed in 2013, with the goal of resisting against extractive firms that wanted to work in the founders' communities after the Ecuadorian government

started selling oil concessions: as it was stated in Chapter 2, an increased rates of sexual violence and human trafficking is often correlated to an influx of male-dominated extractive workforces in Indigenous territories. As such, Indigenous women need to stay united when addressing both external and internal violence, within the communities, as it would cause a dangerous fissure that nobody wants (Ibid.).

The centre is the first in Ecuador acknowledging the *fil rouge* between the harm caused by colonialism, gender inequality and extractive violence, and treating violence against women and Indigenous peoples as connected issues. Due to rises of violence in Indigenous territories, where threats are referred to Indigenous peoples defending their land from illegal mining, deforestation, poaching and oil drilling, the House represents a timely intervention against the government's failure to provide protection (The Borgen Project 2022).

The founders wanted the place to be different than the other women's shelters across Ecuador: the *Casa* is light and airy, filled with art, and is situated next to a river. It provides many services for Indigenous women as accommodations, legal help, emotional support, as well as a sense of community: listening and sharing are fundamental, as these women heal by supporting one another. According to the women working in the centre, group therapy is most beneficial for Indigenous women: dealing with structural issues, Indigenous women have the possibility to talk between them, and to discuss how to change gender dynamics in their communities moving forward (Godin 2022).

Although Indigenous women are well organized at a professional level, there are weak notions of friendship among them: within Indigenous communities, a support system aimed at dealing with important question for them is lacking. Conversations stimulating exchanges on episodes of domestic violence are encouraged by friends in informal moments, over coffee, laundry, or lunch for example. However, these types of conversations are more frequent in urban settings, while in other areas – as in the *Sierra* – do not take place among Indigenous women (Glidden and Shaffer-Cutillo 2017, 32). The founders desired to facilitate conversations about gender-based violence within Indigenous community, and that women could "rest, recover, and reimagine what resistance might look like" – since Indigenous peoples have been under attack for centuries, with no time or space for healing within the communities (Ibid.).

### *3.1.2. The Asociación de Mujeres de Juntas Parroquiales del Ecuador (AMJUPRE) and the Training School for Rural Women* [21]

The *Asociación de Mujeres de Juntas Parroquiales Rurales de Ecuador* (Association of Women of Rural Parish Boards of Ecuador, AMJUPRE) is an association founded in 2005 with the mandate of: (1) promoting the individual and collective strengthening of organized women and rural women leaders, in their leadership trajectories; (2) generating expertise and capacities for an effective exercise of citizen participation; and (3) successfully governing and defending economic and political rights (AMJUPRE 2015).

The Association is composed by 450 women from rural areas around the country, and as such constitutes a diverse organization from an ethnic, territorial, generational, and political point of view. They want to help women in developing their leadership potential, with the aim of accessing public resources and exercising their right to participate in the economic and political life.[22]

With national and international support, AMJUPRE founded in 2007 the *Escuela de Formación de Mujeres Rurales* (Training School for Rural Women) with the objective of training 150 women – who had been elected to public office – on topics as leadership, public administration, participatory planning, technology and information, and gender issues. The School aimed at raising awareness on the valuable, tenacious, effective and efficient character of women's contribution in management, and as such to contrast the marginalization and rejection that is often raised to the criteria, ideas and proposals raised by rural women (Haro 2008, 3).

The "School graduates" later developed in 2008 the *Agenda Política para Mujeres Rurales* (Political Agenda for Rural Women), articulating rural women's vision and priorities (IAF 2013). As a result of the training process undertaken, many rural women have successfully implemented their administration, leadership, and local management capacity, as well as inter-agency coordination. They have focused on the social development of their communities through the execution of important proposals and projects (Haro 2008, 3-4).

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[21] Personal interview with Lucya Rodriguez, conducted in Tena, Napo region, Ecuador on May 4, 2023.

[22] For more details, check out https://archive.iaf.gov/our-work/where-we-work/country-portfolios/ecuador/2013-amjupre.html.

### *3.1.3. NINA APS' Wa.Sa.Na project* [23]

NINA APS is an Italian NGO working in Italy and South America in the field of international cooperation, with a focus on women's social and economic empowerment, on the right to food and food sovereignty. It has been founded in 2019 in Belluno, Italy, and since then it has created social and working opportunities for women to improve their economic and social inclusion. The NGO has been created with the aim of adopting a different approach to international cooperation: the focal point of every decision and action must be taken according to the concrete will of the people they are working with and their wellbeing.

In the Archidona canton of the Napo province in Ecuador, NINA APS has launched in 2022 the *Wa.Sa.Na project*, aimed at improving the social and economic conditions of Indigenous women and their families by emphasizing the traditional agroforestal system of the *chakras*, as well as the relevance of women's role within communities regarding nutrition and economic activities. Wa.Sa.Na is the acronym of *warmi sacha mikuna*, meaning "the food of the women of the forest". With the project, NINA APS wants: to encourage the transmission and safeguard of the knowledge and practices of the ancestral agro-food heritage from the *chakra* system; to value the endless nutritional properties of local products to reduce the problems of malnutrition and the loss of cultural identity; to give Indigenous women a tool for their economic and social empowerment.

The disadvantaged socio-economic reality in which Indigenous Kichwa communities live has caused many families to change their lifestyles, values, traditions, and beliefs, especially with regards to their economic and productive means of support. As more and more Indigenous peoples are compelled to support extractivism and conventional agriculture and their apparent higher economic benefits (see Section 1.1.3), the *chakra* system is weakened and many of its products are lost.

In addition to its cultural value, the *chakra* represents an opportunity for Indigenous women to bring additional income to their families, and in doing so to reduce the chances of discrimination and violence they face within their communities. It has been proved that preserving and working in the *chakras* also inspires women to become entrepreneurs

[23] Personal observation of the author. Archidona, Napo region, Ecuador. April 29, 2023. For more details, check out www.ninaaps.com/en.

thanks to agricultural and tourism activities they can carry out (Santafe-Troncoso and Loring 2021, 404). Undervaluing the *chakra* and its multi-faceted positive impacts would threaten the economic situation of Indigenous women, as well as their well-being, their culture, and traditions.

Symbolizing a stimulus for Indigenous women to improve their quality of life, while staying close to their families and *chakras*, Wa.Sa.Na is structured around three axes: firstly, promoting and transmitting the ancestral knowledge and practices of the local agro-food heritage to young people, through the cultivation and management of the *chakra* system; secondly, strengthening and innovating traditional cuisine with the use of local, healthy, and nutritious products from the *chakra*; lastly, promoting the food security and nutrition of Kichwa families, while involving mothers and pregnant women.

Wa.Sa.Na has been warmly welcomed by the Indigenous women involved in the project as Mamá Olga, Mamá Ophelia and Gisela (see Section 2.1.1): through Wa.Sa.Na, not only they have been able to preserve and pass down their ancestral knowledge about the *chakras*, but also have been empowered in the protection of their economic and social rights within their families and communities. In the implementation of the project, Indigenous women have been feeling proud of harvesting their gardens, selling their products in local markets and participating in gastronomic activities, as they have revitalized the multi-sectorial power that the *chakra* holds in fighting intersectional discrimination.

## 3.2. Inter-governmental and governmental initiatives

### *3.2.1. World Bank's Territorial Economic Empowerment for the Indigenous, Afro-Ecuadorians and Montubian Peoples and Nationalities (TEEIPAM) project*

The *Territorial Economic Empowerment for the Indigenous, Afro-Ecuadorians and Montubian Peoples and Nationalities (TEEIPAM) project* has been founded and approved by the World Bank in 2020. The project aims at helping reduce gender-based violence, as well as providing economic stability among minorities in Ecuador, including Indigenous peoples (The Borgen Project 2022).

The project's objective is to improve the livelihoods of Indigenous peoples – together with Afro-Ecuadorians and Montubio peoples – while respecting their vision and priorities for development. TEEIPAM will focus on: strengthening their governance,

preparing, and implementing territorial sub-projects concerning food security and income generations; promoting their financial inclusion; improving their access to tertiary, professional, and technical formation and employment opportunities; and lastly, Covid-19 response and recovery (World Bank 2020, 10).

Within TEEIPAM, priority has been given to the access to general and rights training for Indigenous women, the promotion of their rights within the communities, their increased participation in agricultural production projects, community tourism, credit programs, community banks and cultural promotion, as well as the access to higher education. In their qualities of direct beneficiaries, Indigenous women must participate in the design and implementation of TEEIPAM, as leading actors in the diffusion of their realities in the society (SGDPN 2022, 41).

Since economic interventions with gender-transformative programming for women effectively prevent some types of gender-based violence, TEEIPAM has identified four elements to combat it: (1) working towards the training and sensibilisation of local authorises to gender-based violence, while at the same time raising Indigenous peoples' participation in coordination spaces; (2) creating a community-based approach to address the phenomena, focused on communication and local activities; (3) educating households on gender equality and healthy relationships; (4) consolidating Indigenous community repercussions for gender-based violence, and educating Indigenous leaders to advocate against it (The Borgen Project 2022).

TEEIPAM's activities are designed and validated with Indigenous communities, on the basis of fieldwork results, international evidence, and an intercultural approach (Buitrago Orozco et al. 2021). An initial identification of the risks, the actors, and the potentialities of the project has been made in the first half of 2020 through interviews conducted by the then-Human Rights Secretariat (now Ministry for the Woman and Human Rights), by giving the opportunity to the stakeholders to raise their concerns about TEEIPAM. From these consultations, it has been observed a general support for the objectives and scope of the project; however, there were still questions concerning some aspects as the promotion and enjoyment of traditional medicine, the access to water, and the insurance of non-transgenic seeds (SGDPN 2022, 28-30). Furthermore, to ensure Indigenous peoples' ongoing participation and ownership, as well as leadership in the decision-making and management of the project, national and regional roundtables are created and

composed by representatives (World Bank 2020, 17).

The project is still in the early stages of its implementation, however project financers have invested US$40 million to achieve the project goals by 2026, thus representing a promising tool for the empowerment of Indigenous peoples, in particular Indigenous women (The Borgen Project 2022).

### *3.2.2. ProAmazonía's "*Antisuyu Warmikuna*" School for Amazonian Women* [24]

The *Antisuyu Warmikuna* School is a training centre for Amazonian women leaders in Ecuador, founded in 2019 by the CONFENIAE and UN Women under the framework of the PROAmazonía programme – an initiative led by the Ministry of Environment and Water (MAAE) and the Ministry of Agriculture and Livestock (MAG) – with the aim of incorporating a gender approach for strengthening the capacities of Amazonian women, considered a tool to reduce gender gaps. The project has been funded by the Global Environmental Facility (GEF) under a convention between UNDP and UN Women.

The school aims at reinforcing Indigenous women's management and leadership capacity through a formation process regarding women's rights, organization and leadership, territoriality and natural resources, climate change, sustainable development with landscape approach, ancestral health, and communication. Women leaders from forty-one Amazonian communities belonging to ten Indigenous nationalities participated in the training, and collectively reflected on important topics for their personal and economic empowerment as the use of time, the care of the *chakra*, domestic chores, etc. as well as their fundamental contribution to the "development of the people of their communities in harmony with their environment".[25]

Indigenous women learned that sharing the knowledge acquired during the training with other women – within and outside their communities – is fundamental: some among them have been trained with the objectives of accompanying students and replicating the contents in other communities. Despite the differences between nationalities, women appreciated and perceived a sense of belonging during the training process; it also constituted an opportunity to stop their activities and take time for themselves.

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[24] www.proamazonia.org/el-tiempo-en-la-escuela-es-un-tiempo-para-mi/ consulted on June 16, 2023.

[25] https://lac.unwomen.org/en/stories/noticia/2022/03/mujeres-amazonicas-liderazgo-y-autonomia-ante-la-crisis-climatica-en-ecuador consulted on July 10, 2023.

These workshops created debates around the exercise of women's rights, and on how to address issues that affect Indigenous women's lives. During the training, they have had the chance to share their own experiences, leading to the conclusion that there is a need to strengthen Indigenous women's capacities for the advancement of a greater participation of women in decision-making. As such, the school represents an "opportunity to open the way for more Indigenous women to demand their rights so that they can strengthen their capacities and participate in decision-making in their communities".[26]

### *3.2.3. Ecuador's Ministry of Agriculture and Livestock (MAG) and its National Agricultural Strategy for Rural Women (ENAMR)*

As women have less access to productive resources – as land, credit, technology and training – and their participation in the family, community, and productive decision-making is still weak and undervalued, the Ministry of Agriculture and Livestock (MAG) adopted in 2020 the *Estrategia Nacional Agropecuaria para Mujeres Rurales* (National Agricultural Strategy for Rural Women, ENAMR) (Ministerio de Agricultura y Ganadería 2021).

The Strategy is a public policy instrument aimed at recognising and making visible the participation and work of women and their importance for family and peasant agriculture, as well as at contributing to the guarantee of their rights. To adopt a broader view of the problems faced by women in all regions, around 1,300 women from all three Ecuadorian regions have participated in 2019 in the design of the policy. Through this process it has been possible to identify the problems that mainly affect rural women, as well as to build tools empowering stakeholders on the articulation of differentiated and non-discriminatory policies (Ibid.).

Since its adoption, ENAMR has been carried out through the establishment of an "Inter-institutional Technical Table for Rural Women" led by the MAG, which has represented an important space for dialogue on actions to strengthen the capacities of women in agriculture, and the implementation of the agricultural policy established in the Strategy (Ibid.). Moreover, the MAG has called for rural women's participation at the local level

[26] Ibid.

through the so-called *Mesa Mujer Rural* (Rural Women's Roundtable), a national initiative aimed at promoting their voices and enhancing the visibility of their work in rural areas. This roundtable constitutes a mechanism for citizen participation and convening the voices of rural women leaders regarding Ecuador's agricultural sector. Through local capacity building initiatives positively impacting their productive interests and rights, it encourages the professional growth of women involved in agricultural activities, as harvesting, fishing, artisanship, especially in relation to their access to financial resources and education.[27]

ENAMR seeks to provide decent life opportunities for women and young girls, with equal access to resources and opportunities, while breaking the socially and culturally established idea that agriculture is always represented by a male producer; it also recognizes the importance of family farming for the development of rural areas. By taking into account the high presence of female labour in agriculture, strengthening rural women is essential to guarantee the quality of life of individuals, families, territories and also economic productivity (Ibid.). Through the improvement of the environmental knowledge and resource management skills of rural women, together with a greater economic power, the empowerment of women can lead to an expansion of their rights and of their participation in household and community decisions (Mello and Schmink 2017, 30).

### 3.3. Recommendations and good practices

From the initiatives adopted by civil society organizations, NGOs, intergovernmental organizations and agencies, and national bodies, it is possible to deduct good strategies and recommendations for the empowerment of Indigenous women and their economic and productive autonomy through the protection of their rights to land and to food.

First and foremost, due to information gaps about Indigenous women, the generation and systematic collection of disaggregated quantitative and qualitative information is fundamental for the design, implementation, and evaluation of public and gender equality policies. As this represents a great challenge in terms of funding, the collection of data can be obtained through the generation of collaborative working strategies between the

[27] www.fao.org/joint-programme-gender-transformative-approaches/resources/news/jp-gta-voices-rural-women-leaders-ecuador/en consulted on July 9, 2023.

public sector, academia, civil society organizations, and the private sector (United Nations System in Ecuador 2022, 101).

After the obtainment of the data, the definition and participation of priority groups of rights holders as Indigenous women must be strengthened through the design of specific intervention and targeted actions. Their capacity building must be deepened also with help of strategic partners and implementers, especially in the normative and coordination field, while upholding gender mainstreaming (UN Women LAC 2023, 4-5). Discriminatory attitudes, stereotyping, harassment and violence based on ethnicity, Indigenous identity and/or gender, must be challenged and be put to an end as they constitute "persisting and entrenched obstacles to Indigenous women's equality" (Munslow 2020, 52).

The participation of women – especially Indigenous women – in all decision-making forums must be encouraged through temporary measures promoting their political involvement, and the establishment of permanent spaces of exchange with political parties and organizations (United Nations System in Ecuador 2022, 110). Indigenous women's leadership must be enhanced – especially when Indigenous authorities are reluctant to their visions due to patriarchal biases – by promoting leadership schools and training on their rights, and by creating an interchange network between them.

Active engagement and involvement of Indigenous women's organizations are fundamental: partnerships between Indigenous women, partners and stakeholders in global and regional political spaces ensure their inclusion in policy arenas for the articulation, simplification, and advocacy of projects. The accompaniment and co-investment of Indigenous women leaders, organizations and networks enable the recognition of Indigenous peoples' rights and the implementation of national and international policies and instruments (FIMI 2022, 25).

As poverty is a phenomenon increasingly concerning women, the Ecuadorian State must redistribute wealth by giving priority to initiatives promoting social inclusion and gender equality, and adopt measures for addressing pre-existing gender inequalities – as for Indigenous women (United Nations System in Ecuador 2022, 103). Concerning violence against women, it has been proved that – contrary to the situation of jobless women – remunerated jobs make sexual and emotional violence decrease and raise women's self-esteem (Ponce, Ramos-Martin, and Intriago 2019, 274-275).

Bearing in mind that women's entry into the formal labour market depends largely on their schooling level, education constitutes "an engine for equality": despite the significant advances in women's and men's access to education, significant gaps persist affecting rural and Indigenous women. To contrast this issue, the educational infrastructure in rural and remote areas must be improved – for example, by providing free and reliable school transportation – together with the expansion of educational provisions to ensure an access to quality, culturally relevant, inclusive and gender-sensitive education (United Nations System in Ecuador 2022, 105). Indigenous women's enrolment to educational institutions at all levels must be facilitated, by correspondingly ensuring adequate opportunities to receive instructions in their own languages. Moreover, sufficient funding must be provided to Indigenous educational institutions, and Indigenous women's access to non-Indigenous educational institutions at all levels of education must also be guaranteed (CEDAW Committee 2021, 11). Within educational institutions, gender-based violence prevention routes and protocols have to be implemented, and evaluated on an ongoing basis to ensure their effectiveness (United Nations System in Ecuador 2022, 105).

In accordance with international standards, the Ecuadorian State needs to adopt legislation protecting Indigenous women's collective rights to their traditional lands, and requiring their free, prior, and informed consent, their consultations and benefit-sharing in relation to development projects affecting their traditional lands and natural resources (CEDAW Committee 2021, 15). Indigenous women must be active agents of change especially in the formulation and implementation of policies and strategies on climate change and disaster response and risk reduction; as such, these policies must explicitly include a gender perspective, and include Indigenous women's particular needs (Ibid. p. 14).

Considered the concrete embodiment of the abstract notion of food sovereignty, *chakras* – through their safeguard, promotion, and transmission to younger generations – can empower Indigenous women in the exercise of their self-determination and the recognition of their ancestral territories. The *chakra* represents an economic and cultural tool, as the harvested products can be used for consumption or sold in local markets, and the money in return can be used to pay for children's education and other necessities, thus creating alternative economic networks for women emancipation. By growing

subsistence crops and reorientating their economy around the traditional agro-food system, Indigenous communities can have direct authority over their territories, hence promote their empowerment without sacrificing their traditional foods, values and identity (Santafe-Troncoso and Loring 2021, 407).

To safeguard the protection of Indigenous women's fundamental rights, any environmental impact assessment and licensing procedures must incorporate a human rights-based framework that includes principles as non-discrimination, meaningful participation, transparency, and accountability, and requires an ongoing process of community engagement. In line with the principles of due diligence in corporate decision-making, the access to justice and effective remedies, the conception, planning, and implementation of projects designed to expand access to natural resources must protect, respect, and fulfil Indigenous women's rights. Only with the adoption of a human rights based-framework is possible to create "the essential procedural mechanisms required for the exercise of Indigenous peoples' right to self-determination and sustainable management of natural resources", and to build a relationship of trust between local and Indigenous communities and project developers (Pereira 2021,185).

Outcomes of the different programmes depend on many variables as the intervention itself, education, age, ethnicity, income, rurality, and others. However, even without the social, psychological, and economic assets required to claim their rights, women can achieve partial empowerment and/or adopt micro-strategies of resistance, like disagreements within their families and communities. Disagreements reflect a certain kind of women's empowerment, as they challenge someone's decision and represent women's willingness to participate in choices which had been denied to them in the past (Ponce, Ramos-Martin, and Intriago 2019, 275).

In general, a deeper understanding, analysis and strengthening of Indigenous women's movements is needed, and can be achieved through a strategy based on five axes: (1) education and training; (2) broader inclusion; (3) assistance; (4) internal and external interchange (between Indigenous women, and with other actors); and (5) alternative economic solutions. As they satisfy these criteria, the promotion and safeguard of Indigenous women's ancestral land, natural resources and food can be therefore considered a way to empower them, and a tool to fight the intersectional discrimination that they experience.

# Conclusion

As the primary and secondary resources in the past chapters have showed, the protection of the rights to land and to food of Indigenous women in Ecuador is still not completely guaranteed due to shortcomings of the Ecuadorian government and its institutions.

Despite the pressure from international and regional actors, the standards for the protection of Indigenous peoples' rights affirmed within international legal and political instruments – also translated in the national framework – are not entirely upheld in the Ecuadorian context because of multiple reasons of economic, political, and societal nature. Therefore, Indigenous rights are more and more violated, and Indigenous women continue to represent the most vulnerable individuals in society.

International non-governmental organizations and national associations, together with civil society organizations, are always trying to do what is in their power to counterbalance the national administration's flaws. However, they do not dispose the same resources for the implementation of large-scale solutions, and for eradicating altogether the intersectional discrimination that Indigenous women experience.

On the basis of a human rights based-framework, strategies and solutions promoting education and training initiatives, a broader and culturally-sensitive inclusion, assistance, internal and external interchange, and the implementation of alternative economic activities have proven to be effective in the self-determination of Indigenous women.

Through this research I tried to prove how Indigenous women in Ecuador can become actors of change in this battle against discrimination through the promotion of their rights to land and to food. These elements represent a starting instrument for overcoming the struggles Indigenous women face throughout their lives, leading to a broader awareness of the power they have, and thus to empower them.

Many efforts and initiatives need to be yet employed for a thorough empowerment of Indigenous women and the achievement of gender equality in Ecuador. International and regional arenas – with their agencies, courts, and bodies – have the power to pressure and compel the Ecuadorian government for the protection of Indigenous women's rights. National institutions must respect the human rights standards to which they have voluntarily committed themselves and allocate their resources accordingly, with the help of local communities, civil society organizations, national and international non-governmental organizations.

# Annexes

Annex 1. Ecuador's Indigenous nationalities. Source: CARE Ecuador 2016, p. 14-17.

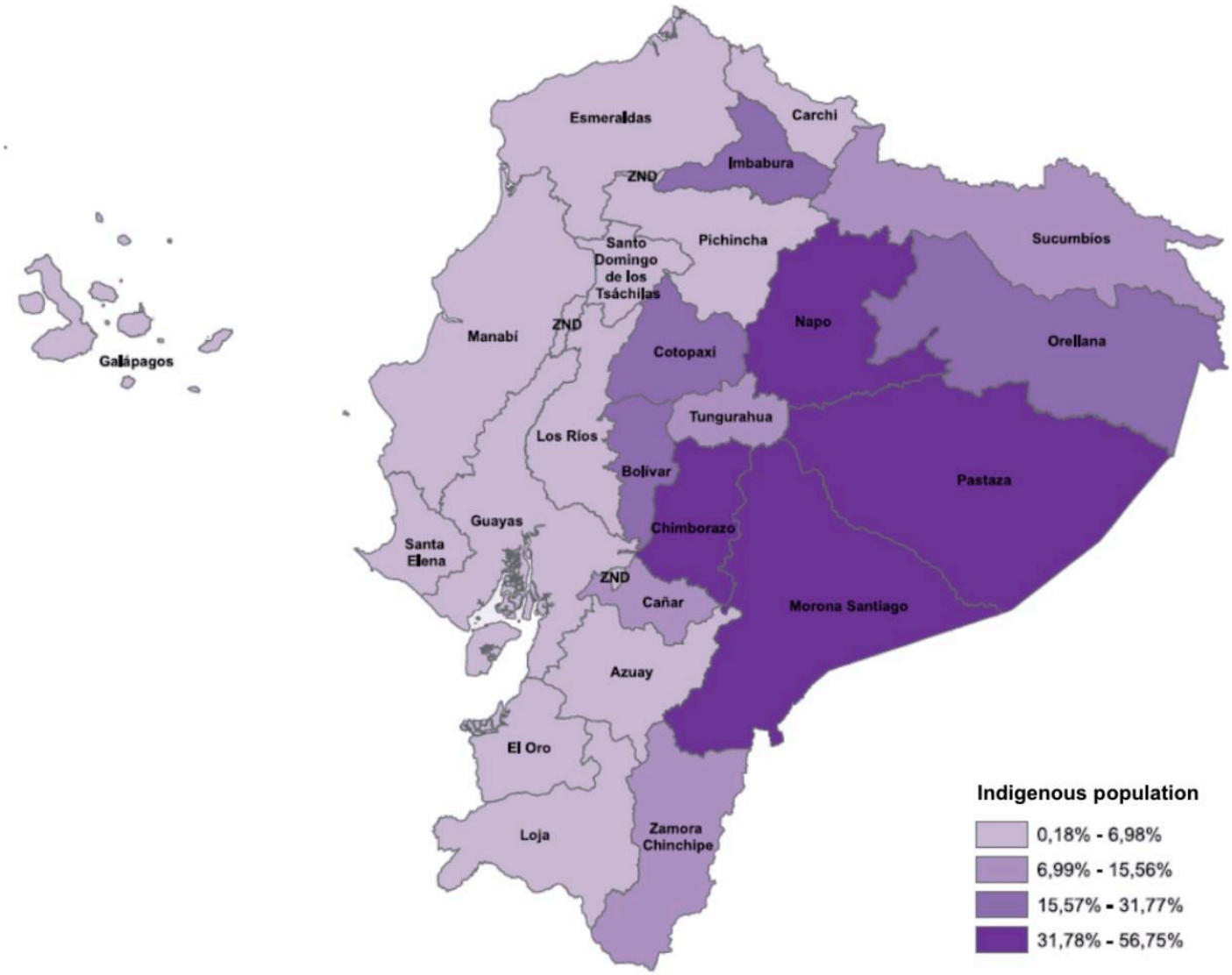
| Region | Nationality | Provinces | Total population |
|---|---|---|---|
| Coast | Awá | Carchi, Esmeraldas, Imbabura | 3.082 |
| | Chachi | Esmeraldas | 8.040 |
| | Épera | Esmeraldas | 300 |
| | Tsáchila | Santo Domingo de los Tsa'chila | 2.640 |
| *Sierra* (highlands) | Kichwa (Sierra) | Imbabura, Pichincha, Cotopaxi, Tungurahua, Bolívar, Cañar, Azuay, Chimborazo, Loja, Zamora, Napo | 2.000.000 |
| Amazons | Achuar | Pastaza and Morona | 5.440 |
| | Andoa | Pastaza | 800 |
| | Cofán | Sucumbíos | 800 |
| | Waorani | Orellana, Pastaza, and Napo | 2.200 |
| | Secoya | Sucumbíos | 380 |
| | Shiwiar | Pastaza | 697 |
| | Shuar | Morona, Zamora, Pastaza, Napo, Orellana, Sucumbíos, Guayas, Esmeraldas | 110.000 |
| | Siona | Sucumbíos | 360 |
| | Zápara | Pastaza | 450 |
| | Kichwa (Amazons) | Sucumbíos, Orellana, Napo and Pastaza | 80.000 |

Annex 2. Ecuador's Indigenous peoples. Source: CARE Ecuador 2016, p. 15-17.

| Region | *Pueblos* (peoples) | Location | Total population |
|---|---|---|---|
| Coast | Huancavilca | Santa Elena province, Guayas province (from Puná Island to the south of the province) | 100.000 |
| | Manta | Manabí province (cantons: Portoviejo, Manta, 24 de Mayo, Puerto López, Jipijapa, Montecristi), Guayas province (cantons: Santa Elena, Playas and Guayaquil) | 168.724 |

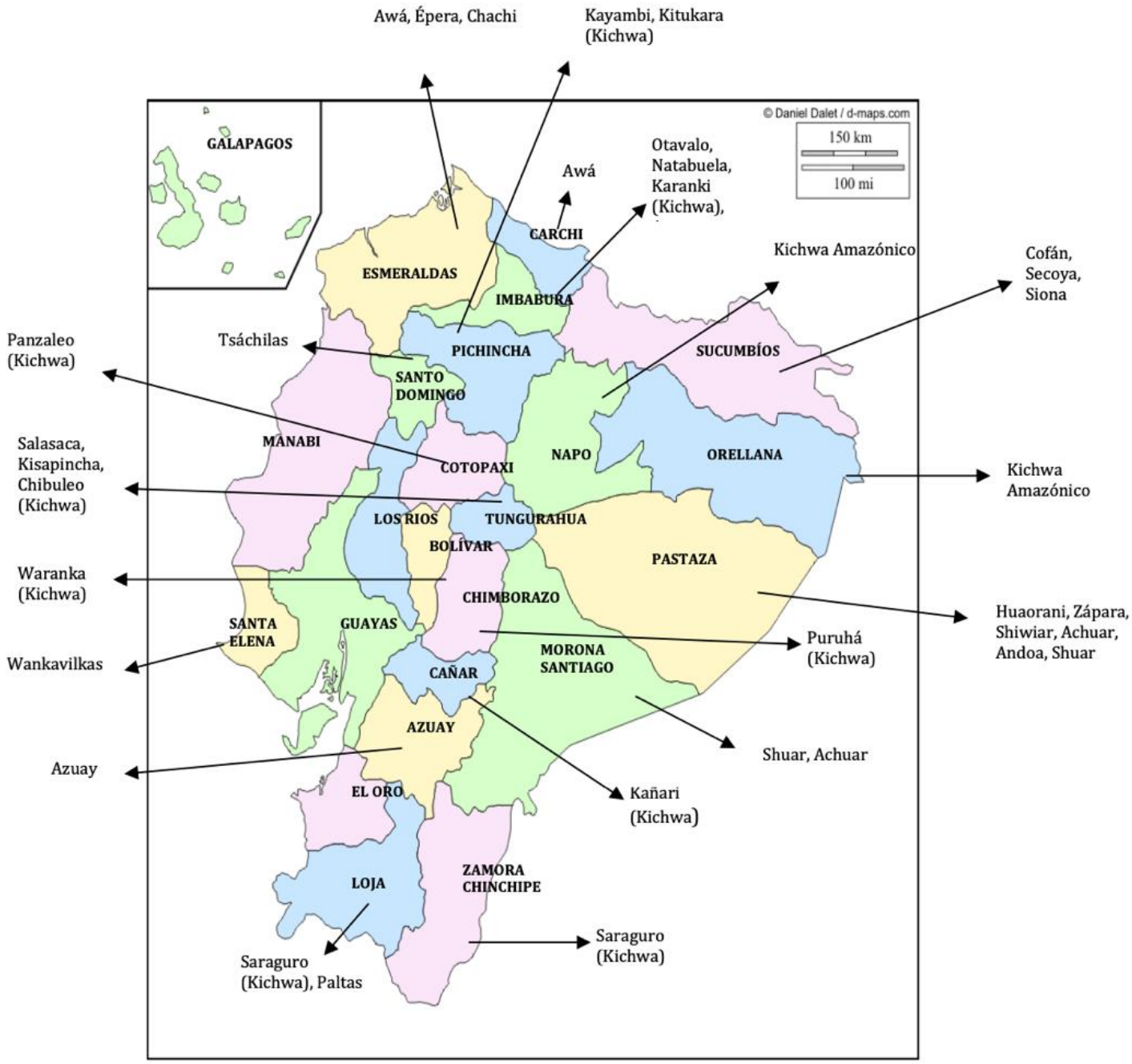
| | | | |
|---|---|---|---|
| *Sierra* (highlands) | Chibuleo | Tungurahua province (Ambato canton) | 12.000 |
| | Cañarí | Azuay province (cantons: Cuenca, Gualaceo, Nabón, Santa Isabel, Sigsig, and Oña), Cañar province (cantons: Azogues, Biblián, Cañar, Tambo, Déleg, and Suscal) | 150.000 |
| | Karanki | Imbabura province (cantons: Ibarra, Antonio Ante, Otavalo, and Pimampiro) | 6.360 |
| | Cayambi | Pichincha province (cantons: Quito, Cayambe, and Pedro Moncayo), Imbabura province (cantons: Otavalo and Pimampiro), Napo province (El Chaco canton) | 147.000 |
| | Kisapincha | Tungurahua province (cantons: Ambato, Mocha, Patate, Quero, Pelileo, and Tisaleo) | 12.400 |
| | Kitukara | Pichincha province (cantons: Quito and Mejía) | 100.000 |
| | Panzaleo | Cotopaxi province (cantons: Latacunga, La Maná, Pangua, Pujilí, Salcedo, Saquisilí, and Sigchos) | 58.738 |
| | Natabuela | Imbabura province (cantons: Antonio Ante and Ibarra) | 15.000 |
| | Otavalo | Imbabura province (cantons: Otavalo, Cotacachi, Ibarra and Antonio Ante) | 65.000 |
| | Purwá | Chimborazo province (cantons: Riobamba, Alausí, Chambo, Guamote, Pallatanga, Penipe and Cumandá) | 400.000 |
| | Palta | Loja province (Paltas canton) | 24.703 |
| | Salasaka | Tungurahua province (San Pedro de Pelileo canton) | 12.000 |
| | Saraguro | Loja province (cantons: Saraguro and Loja), Zamora Chinchipe province (Zamora canton) | 50.000 |
| | Waranka | Bolívar province (cantons: Guaranda, Chillanes, Echandía, San Miguel and Caluma) | 67.748 |
| Amazons | Secoya | Sucumbíos province (cantons: Shushufindi and Cuyabeno) | 380 |
| | Siona | Sucumbíos province (cantons: Shushufindi and Putumayo) | 360 |
| | Cofán | Sucumbíos province (cantons: Lago Agrio, Cuyabeno, and Sucumbíos) | 800 |

Annex 3. Map of Indigenous population concentration by province




Source: Censo de Población y Vivienda 2010. INEC Ecuador. Elaboration: CONEPIA

Annex 4. Location of Indigenous nationalities and Peoples of Ecuador




Source: Nota técnica de país sobre cuestiones de los pueblos indígenas – República del Ecuador. 2017. IFAD.

Annex 5. The *chakra*, Mamá Olga and its products. Pictures taken by the author of April 29, 2023, in Archidona, Napo region, Ecuador.

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