Alternative Report presented by ECUARUNARI and CAOI[1]
Committee against Racial Discrimination
United Nations

July 2017

Discrimination against indigenous peoples: Denial of ancestral marriage in Ecuador

1. Given that Ecuador ratified CERD on September 22, 1996, we are presenting this report on behalf of the Plurinational State of Ecuador denouncing racial discrimination through the denial of ancestral marriage.

I. Historical precedents of racial discrimination in marriage

2. It is important to understand that the denial of an indigenous marriage in Ecuador in 2016 is not an isolated event: it is the result of a historical process of discrimination and forced assimilation. For centuries, laws have regulated marriage marking the intersection of race, marriage, and citizenship in colonial states. In the book *Illicit Love* (2015), historian Ann McGrath indicates that interracial love has been fundamentally transnational (p.32) - and it continues to be - and that marriage policies are tied to the racial project of nation building. McGrath notes that in the nineteenth and early twentieth centuries North America and Australia controlled the boundaries of love. The settlers defined Christian marriage as an index of civilization, automatically devaluing Indian marriage as primitive, savage, and illegitimate. That is why white women who married Indian men were accused of betraying their race. For the state, it was a consolidation of racial divisions to establish white supremacy, a site for the performance of sovereignty; for indigenous nations like the Cherokee, marriage was a means of defending their sovereignty.
3. This colonial inheritance has been integrated into the modern legal system of colonial states. Interracial marriages have been condemned by segregation laws in many countries. In the United States, laws prohibited marriage between British and Native American settlers since the seventeenth century. In 1661, the Colony of Maryland passed a law declaring the descendants of interracial marriages as slaves to limit marriages between white and colored workers. Laws condemning marriage between "British and Black" were declared in Virginia (1691), Massachusetts (1705), North Carolina (1715), Pennsylvania (1725). This colonial legacy ended only in 1967 with the Loving versus Virginia case (388 US1), when the Supreme Court declares unconstitutional laws prohibiting interracial marriage. Richard and Mildred Loving were arrested at home in 1958 because Virginia's code 20-54 made marriage between whites and people of color illegal. Mildred was of mixed indigenous origin (Rappahannock) and African. Laws prohibiting whites from

[1] With the support of International Network for Human Rights (www.ridh.org) and its international advocacy coordinator, Walleska Pareja Díaz.

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marrying "blacks" had changed their term to "people of color" to limit the civil rights of indigenous peoples.

4. In South Africa, apartheid began in 1948 by imposing racial laws for marriage. The "Prohibition of Mixed Marriages Act" (No. 55) of 1949 prohibited marriage between "Europeans" and "non-Europeans." It is important to remember the history of marriage in the construction of the colonial state and colonial settler to understand that marriage is not an individual issue, but a political event that is fundamentally linked to the sovereignty and self-determination of peoples. The family is the basis of a political system and states perpetuate racial boundaries and the forced assimilation of peoples through policies of racial discrimination in marriage.
5. Just as the colonial system defined which relationships were legitimate or illegal, which children were legitimate or bastards, today the state of Ecuador perpetuates discrimination against indigenous peoples by a lack of recognition of their ancestral institutions and treating their family and marriage forms as illegitimate. This non-recognition of indigenous marriage goes against the principle of plurinationality and constitutes a forced assimilation: how can one not be assimilated when ancestral institutions are continuously treated as illegitimate? Not recognizing ancestral marriage is denying the civil rights of indigenous families and the collective rights of peoples.

II. Historical precedents of racial discrimination against indigenous peoples in Ecuador

6. The denial of indigenous marriage is part of the State of Ecuador's systematic racial discrimination against indigenous peoples. This process of rights violations is marked by a context of persecution and criminalization of indigenous peoples in Ecuador, particularly through racist and denigrating attacks, especially through targeting of anti-extractivist leaders, racist and denigrating attacks, and the destruction of their system of bilingual education.
7. First, there is a strong criminalization of activists and indigenous authorities. The indigenous peoples constitute the majority of more than 700 people criminalized for defending the rights of nature against extractivism during the government of Rafael Correa. For this reason, the Confederation of the Indigenous Peoples of Ecuador (CONAIE) demanded amnesty for the more than 150 people criminalized by the government of Rafael Correa. The campaign "To resist is my right" seeks to make visible the criminalization of protesters in Ecuador during the National Uprising in August 2015. More than 100 people were tried for crimes such as Sabotage, Attack and Resistance, Public Service Stoppage. Several have already been punished and sentenced to prison and large fines, others could be sanctioned and go to jail from 6 months to 7 years in prison. For example, the leader Luisa Lozano de Saraguro was convicted of participating in the last national strike against the current government of Rafael Correa on August 17, 2015. Pepe Acacho, a member of the National Assembly representing the Amazonian province of Zamora Chinchipe, participated in the 2009 national demonstrations against the Water Law and Mining Law. He was sentenced to 12 years in prison for terrorism - for allegedly instigating the murder of one of his comrades. Manuel Trujillo, president of the community of San Pablo Amalí, province of Bolivar, where the company Hidrotambo S.A.

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Builds the San José del Tambo hydroelectric power plant, was indicted 30 times including charges ranging from acts of violence and destruction of property, to sabotage, terrorism and rebellion, was amnestied in 2008.

8. Carlos Pérez Guartambel is one of the criminalized indigenous authorities. He has suffered intense persecution for being a human rights and nature activist against extractivism for decades. This persecution has been further aggravated by his leadership role in ECUARUNARI in 2013 and the CAOI now. The persecution against Carlos Perez manifested in more than four arrests (2009, 2010, 2013, 2015) during the current administration of President Rafael Correa: "I have been accused of legal figures such as terrorism, sabotage, and disruption of public services to defend the human right to water. Two criminal proceedings are added against me, one of which is still in force".
9. Second, the government perpetuates racist attacks that seek to undermine the human integrity of indigenous peoples. Pérez Guartambel has had to face ridicule of his person, his family and his political person, racist disqualifications, and various harassment. For example, President Correa declared in a public meeting in Chimborazo in front of thirty thousand people that "Carlos Perez is not indigenous ... when he comes here, say 'quits siquiñawi' (ass face in Kichwa), you are not welcome." In several weekly presidential rebroadcasts called "sabatinas," President Correa has called me "crazy," "wild," "cavernous," "retrograde," and "backward," inciting racist attacks by his followers. The government has used public spaces to insult, bestialize and mistreat indigenous leaders. The resurgence of official racism attacked indigenous leaders in public office: for example, the President called Prefect Salvador Quishpe "reduced mind", and presidential deputy and presidential candidate Lourdes Tibán "ignorant." These verbal attacks have incited physical violence. In 2015, Tibán was beaten when she was about to enter the Legislative Assembly. The highest indigenous authorities live in fear and harassment, although they are not silent. These examples aim to demonstrate that institutional racism is accompanied by verbal acts of racism towards the indigenous leadership, which the president calls "terrorists" claiming that we oppose "national development." Social networks have been inundated with messages that animate the Indians as violent and savage.
10. Third, indigenous institutions are under state attack. Bilingual indigenous education is an achievement of decades of struggles of the indigenous movement. The first indigenous schools appeared clandestinely in the 60s, and in 1980 the first indigenous pedagogical institutes were created. In 1993 the model of Bilingual Intercultural Education MOSEIB was officialized. In 2000, 2,197 Bilingual Intercultural Education Centers with a staff of 6,441 teachers and 117,682 students were functioning, although the same State in its allied news agency *Andes* on November 22, 2012 maintains that the Intercultural Bilingual Education System of Ecuador reaches 163,900 students. The government abolished bilingual education, including the Amauta Wasi University, claiming they are of poor quality. More than 160,000 indigenous students in rural areas benefited from these community schools. President Rafael Correa, in September 2013, told the ECUAVISA channel "Of 18,000 community schools there will only be 5,500 remaining, which will be improved," now there only abandoned schools left.
11. In addition, collective memory, self-esteem, and socio-cultural fabric are destroyed. The attack on the self-determination of peoples constitutes yet another form of forced assimilation, a form of cultural and political genocide. For example, in 2009 the

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government of Rafael Correa issued Official Decree No. 620, which provides for the evangelization of the Amazon, through which he entrusts *"to the missions Capuchin Vicarist Apostolic of Aguarico and others undertake ... to work with all efforts to promote the development of cultures, evangelization and incorporation of socioeconomic values, of all the human groups that inhabit or inhabit within the territorial jurisdiction entrusted to their care exalting the values of Ecuadorian nationality."* Thus, the government gave the religious missions the work of working for development, the question remains: what type of development -- extractivist, colonial, civilizing? Anywhere this constitutes ethnocide.

III. Ancestral matrimonial unions

12. In the pre-colonial Andes of Ecuador, unions among different *ayllus* were formalized after some time of pre-marital cohabitation called Tinkunacushpa (in the south) or Pantanacu (in the north). The *servinacuy* was meant to discover the possible compatibility or incompatibility of the couple, their psychologies, under the supervision of elders. If the couple worked harmoniously, the *servinacuy* led to the Cuchunchi ceremony, a collective dialogue of life among parents and godparents to enter an agreement and make the marriage official in the Kañari[2] philosophy and on sacred dates determined by elders. With this ceremony, the couple obtained full majority and autonomy/responsibility as adult members of their community. If the couple were children of the elite, the pre-marital trial could last between 5 to 9 years depending on parental decision. Unions were regulated and could be dissolved for serious matters. New unions could be celebrated only after a long time after the separation.
13. There are no peoples' superior, the differences among peoples should be celebrated as diversity. There have been different civilizations in history; the supposed superiority of one people has been imposed by force than codified into law by racist imperial practices developed during European colonialism. European colonizers debated whether indigenous peoples were humans or beasts. Colonial law long treated us as apolitical savages to appropriate our territories under the doctrine of *terra nullius*. Colonial systems legalized the oppression and exploitation of non-European peoples across the world, defining them as racially inferior and less developed. Our bodies were appropriated together with our territories, and this violation was naturalized. Even our imaginaries were dominated through scientific narratives of racial hierarchies that perpetuate self-shame until today. We indigenous peoples were marginalized as pagans and savages; we were Christianized and forcefully assimilated in the so-called modern state. Our history is archeology; our philosophy is cosmovision; our art is folklore.
14. For "indigenous" peoples, who share in common the experience of being colonized peoples, autonomy means:
15. To recognize and consolidate our own systems of law, administration, and politics; our education, languages and economies. We must know who we are and where we come from. Autonomy and identity mutually reinforce one another; they are a complementary

[2] Kañari is a pre-Inka indigenous people that live sin the South of the Ecuadorean andes. It is the nation of Carlos Perez Guartambel.

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movement between past, present and future since identities are dynamic.

16. Legal authority over our territories. There is no autonomy without territory and territoriality. Paradoxically, autonomy implies dependencies with regard to who we are and what we want to be. Autonomy is an act of independence from other and dependence with ourselves.
17. The right to elect our own authorities to manage our nations. These authorities are experts in collective rights; peoples can only be peoples with formally recognized authorities.
18. The right to be consulted in the affairs that affect our communities, livelihoods and territories, directly and indirectly. Adequate mechanisms of consultation must be analogous to the plurinational parliaments constituted by some nation-states with indigenous peoples.

IV. Denial of the ancestral marriage of Carlos Pérez Guartambel and Manuela Picq

19. The case deals with an explicit act of racial discrimination against indigenous ancestral marriage. Despite Ecuador's status as a plurinational state that recognizes collective rights, among them being indigenous jurisdiction (Article 1; 57; 171 and others of the Constitution), the state has denied registration of indigenous marriage and consequently the ability to exercise the fundamental human right to family for the very fact of being indigenous.
20. Carlos Pérez Guartambel and Manuela Picq, a journalist and academic of French and Brazilian nationality who has been established in Ecuador for over a decade, were married through an ancestral ceremony in Lagunas de Kimsacocha, in the Ecuadorian Andes on the full moon of August 21, 2013. The same day the marriage was registered in the Ancestral Community of Escaleras, Tarqui Parish, Province of Azuay, plurinational state of Ecuador. The marriage proceeded to be registered in ECUARUNARI in Quito to be legally ratified. However, in 2016 the state of Ecuador has refused to recognize this ancestral marriage, denying its registration in the civil record of Quito and refusing to change Pérez Guartambel's civil status to married.
21. This refusal is the result of double discrimination against marriage and against the indigenous family, as Pérez Guartambel is an Indigenous Authority. As president of the Confederation of Kichwa Peoples of Ecuador (ECUARUNARI) and of the Coordinator of Andean Indigenous Organizations (CAOI) he has had to lead and accompany a number of actions organized by indigenous peoples like peaceful marches in their pursuit to exercise their collective rights and as they attempt to prevent more violations of their legitimate right to self-determination. In August 2016, Pérez Guartambel, along with other indigenous authorities, was at the front of the March for the Peoples' Dignity and Freedom (Marcha por la Dignidad y la Libertad de los Pueblos) that went across Ecuador from the south of the Amazon all the way to the capital city of Quito. In response to this social protest, the state proceeded to illegally and arbitrarily detain Pérez Guartambel and Picq who was accompanying the march's arrival to the *centro histórico* of Quito on August 12, 2015. The couple was surrounded by police and both were struck in the face, head, and body and were transferred to a hospital in police custody. The next day, Picq's visa was abruptly revoked without any notice or legal basis, and she was imprisoned in the Carrión

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Detention Center for Immigrants of Irregular Status (while Pérez Guartambel remained hospitalized with the blows he sustained to the skull). After four days, Picq was liberated through an act of protection, but her visa was never restored, leaving her in a state of legal defenselessness. Her insecure status was made explicit when the Minister of the Interior José Serrano gave written instructions to the judge to defer the case to his ministry so that he could determine Picq's deportation, causing a clear encroachment of executive power over judicial power. Faced with the imminent risk of another arrest, Picq was forced to leave Ecuador for Brazil.

22. Although Picq was never accused of any legal liability, members of the government declared publically that she was being punished for "participating in politics" and that foreigners do not have the right to participate in politics. This is untrue (the constitution guarantees the same rights to Ecuadorians and foreigners) and has not been proved in any legal process. To redress this forced familial separation we began by applying fora Mercosur visa, which is generally granted automatically within a few days; but the visa was denied after once month with no legal basis, only invoking "discretionary authorities of the state." With this denial, the couple opted to apply for a family refuge visa with the Chancellery of Ecuador since they were already married and had been in a stable conjugal relationship since 2013. It is important to note that the Ecuadorian Constitution guarantees the same status to civil marriages and unmarried unions. However, the government rejected the Family Refuge visa (Visa de Amparo Familiar) alleging that Pérez Guartambel, who does not appear as being married in the National Civil Registry of Ecuador (Registro Civil Nacional de Ecuador) had failed to update their civil status. The couple came before the civil registry to ensure that their ancestral marriage was registered, which was denied on the basis that the state recognizes civil marriage, but not indigenous marriage. As such, they filed an action for constitutional protection of collective rights on the grounds of the civil registry's non-recognition of the ancestral marriage. This protective action was also dismissed by alleging secondary rules which disregarded all constitutional regulations and international instruments of the rights of indigenous peoples. Facing this new dismissal, they filed an appeal to the Provincial Court of Justice of Pichincha, which ended up ratifying the denial of the registration of the ancestral marriage in the Civil Registry. This consequently denied the family refuge visa that should have been granted by the Ecuadorian State Chancellery in favor of Manuela Picq. Without any other means to present at the state level, Carlos Pérez Guartambel filed a petition before the CERD body at the UN.
23. These facts have infringed upon not only individual rights, but also the collective rights of indigenous communities in general.
24. First, the denial of indigenous marriage infringes upon the indigenous right to self-determination and the principles of plurinationality, which includes the right to autonomy in matters of jurisdiction and millennia old procedures and institutions (see Convention 169 of OIT and UNDRIP).
25. Second, Violation of a set of collective rights of indigenous peoples to maintain their culture, traditions, customs, historical continuity, education and philosophy (these Rights are recognized in international norms and in articles on collective rights in the Constitution of Ecuador). Indigenous marriage is an age-old legal institution that contains rites, rituals,

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allegories and other indigenous ceremonies, according to the specific cultural and spiritual cosmovisions of the indigenous group.

26. Third, the non-recognition of indigenous marriage results in forced assimilation into the national hegemonic mestizo culture and to the legal-political state apparatus. This implies the sacrifice of the principle of plurinationality and legal and political pluralism.
27. Fourth, the denial of our ancestral marriage resulted in a forced conjugal separation, which infringes upon the right to have a family, and particularly the right of indigenous communities to create families according to their principles, cultures, and philosophies. Additionally, the trauma that arises from a forced separation since August 2015 presents a serious risk of destroying our familial relationship.
28. Fifth, there was a violation of due process in the appeal because the hearing on the appeal was never fulfilled nor were the requested proceedings prior to the hearing.
29. Sixth, there was no judicial autonomy in the petitions for protection action to keep my spouse in my territory: the former Minister of the Interior ordered the courts to forward the case of deportation to his Ministry, proving the interference of the executive over the judiciary to implement an illegal and illegitimate deportation.
30. Seventh, Ecuador's constitution guarantees equal rights and freedoms for nationals and foreigners, but Manuela was discriminated against because of her status as a foreigner.
31. Articles of the Convention for the Elimination of Racial Discrimination alleged to have been violated with the denial of ancestral marriage:
    I. Art. 1.1; 1.2; 1.4
    II. Art. 2.1 (a); 2.2
    III. Art. 5.a); 5.d) iv
    IV. Art 9.1

32. This Articles of ICERD are in agreement with:
    I. Art.2 of the Universal Declaration of Human Rights;
    II. Art.1.1 and 1.3 of the International Covenant on Civil and Political Rights;
    III. Art. 1 and 3 of the International Covenant on Economic and Social Rights;
        i. and (2), (2), (2a), (2a), (6a), 7.1.8.1, 8.2, 8.3, 9.1 of ILO Convention 169.
    IV. Art. 3, 4, and 5 of UNDRIP;
    V. Art. 3, 8, 9, 10.1, 10.2, 12, 17.1, and 21 of the OAS Declaration on Indigenous Peoples.

V. Legal foundations

33. The legal articles that have been violated are: Articles 1, Art. 6, Art. 10, Art.11, Art.57, Art. 66, Art. 67, Art. 88, Art. 171 of the Constitution of Ecuador, in accord with Art. 1, Art 2, Art. 3, Art. 5, Art. 7, Art. 8, Art. 9 y Art 10 of Convention 169 of the ILO and Art. 1, Art. 2, Art. 3, Art. Art.4, Art.5, Art. 6, Art. 9, Art. 11, Art. 12, Art. 20 y Art. 33 of the UN Declaration on the Rights of Indigenous Peoples; Art. 1.1; 1.2; 1.4; Art. 2.1.a); 2.2; Art. 5.a); 5.d)iv; Art 9.1 of the Convention on the Elimination of Racial Discrimination; Art.2 of the Universal Declaration of Human rights; Art.1.1 y 1.3 del International Covenant of Civil and Political Rights; Art. 1 e 3 of the International Covenant on Social and Economic

Rights; Art. 3, 8, 9, 10.1, 10.2, 12, 17.1, y 21 of the OAS Declaration on Indigenous Peoples Rights among other international legal instruments referring to Indigenous Peoples and Human Rights.

VI. Petition

34. I formally request that the CERD expert committee at OHCHR demands the state of Ecuador to stop the discrimination and provides reparation for the systematic violation of human rights at the individual and collective levels, respecting the full rights of indigenous families to live in dignity. This includes the formal state recognition of matrimonial unions in indigenous law, the formal inscription of indigenous marriage under the Civil Registry and in Identification Cards, and legal language that explicitly recognizes the authority of indigenous jurisdiction to declare matrimonial unions under indigenous customary law as prescribed in the Constitution and international norms.
35. This is the racist context in which the process of denial of my ancestral marriage was developed as an act of political revenge, humiliation and racial discrimination for being an indigenous activist for the self-determination of the indigenous peoples of the Americas.

*Annexed: Copies of court and court documents; Copies of the relevant legislation; Documentation evidencing the facts and their chronology.

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