

Sarayaku

before the Inter-American Human Rights System

Justice for the People
of the Zenith and
their Living Forest

Mario Melo



WORKING PAPER 8

Mario Melo

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Introduction

This book brings together information and reflections on the case of the Kichwa People of Sarayaku before the Inter-American Human Rights System regarding the defense of their territory and way of living, which has been affected by the hydrocarbon activities of an Argentinian company acting as the operator of an oil block granted by the Ecuadorian state. This work also systematizes, complements, and analyzes the various stages of this case from 2002 to 2015 in order to share a moving and inspiring story that might guide other Indigenous people threatened by extractive or infrastructure projects, or by any other development affecting their territories and hindering the normal development of their lives, worldviews, and cultures.

The protagonists of this story are the Sarayaku people — their leaders, elders, men, women, boys, girls, and teenagers — who invested a very long and significant period of their lives to a cause with a deep historical meaning for their community. We will, of course, address the legal aspects of the case regarding the scope and content of the human rights violated; however, the organizational and political advocacy aspects were equally — or even more — important than the legal arguments in achieving the favorable judgment of the Inter-American Court of Human Rights (IACHR).

It is only fair to recognize the contributions of the civil society organizations who, throughout the years, accompanied the Sarayaku people in their battle, especially the Centro de Derechos Económicos y Sociales (CDES), the Centro por la Justicia y el Derecho Internacional (CEJIL for its English name), and the Fundación Pachamama.

The author of these pages has had the honor of being the attorney of Sarayaku from the beginning of the case in 2002, when we resorted to Ecuadorian national justice, until today, as we monitor compliance with

the judgement issued by the IACHR. Consequently, it is not my intention to present an objective, distant, or unbiased view of the case. On the contrary, I believe that my closeness to and daily involvement with the case and its protagonists ensure not only an immediate and intimate knowledge of the facts, but also a perspective committed to the defense of the rights in question.

This work is also an act of gratitude to the Sarayaku people for the opportunity to be part of their battle and for allowing me to narrate this moment in their history.

Mario Melo

Quito, November 2015

The Conflict

In the 2002 documentary *Soy Defensor de la Selva*,¹ by Sarayaku filmmaker Eriberto Gualinga, we see stunning shots of a helicopter landing on the beach of a jungle river. A group of oil workers, wearing their colorful yellow uniforms, descends hurriedly from the helicopter. As soon as they set foot on the land, while the helicopter cautiously takes off, they are surrounded by a mob of angry women who decry this invasion of their territory. Of course, the oil workers are Kichwa people, just like the inhabitants of the territory they have come to, uninvited. A woman angrily shouts: “Can you not see how they are leaving you lying on the floor like garbage?” Further on, we see a group of soldiers blocking the Bobonaza River with a chain, a route the people have travelled freely for centuries.

The documentary *Soy Defensor de la Selva*, presented as evidence before the Inter-American Commission on Human Rights in 2004, summarizes how the people of Sarayaku, located in the jungle area of the Province of Pastaza, in the middle of the Ecuadorian Amazon, saw the beginning of oil activities in their territory: uncertainty, anger, anguish, conflict, pain. Women carrying their small children faced the armed invaders under the unproven assumption that the soldiers, protecting the workers of the Argentinian oil company Compañía General de Combustibles (CGC) in their unauthorized entry to the Sarayaku territory, would be less violent with them than with their husbands, brothers, and sons.

Ena Santi, a witness proposed by Sarayaku, mentioned this during the public hearing of the *Case Sarayaku v. Ecuador*, held before the

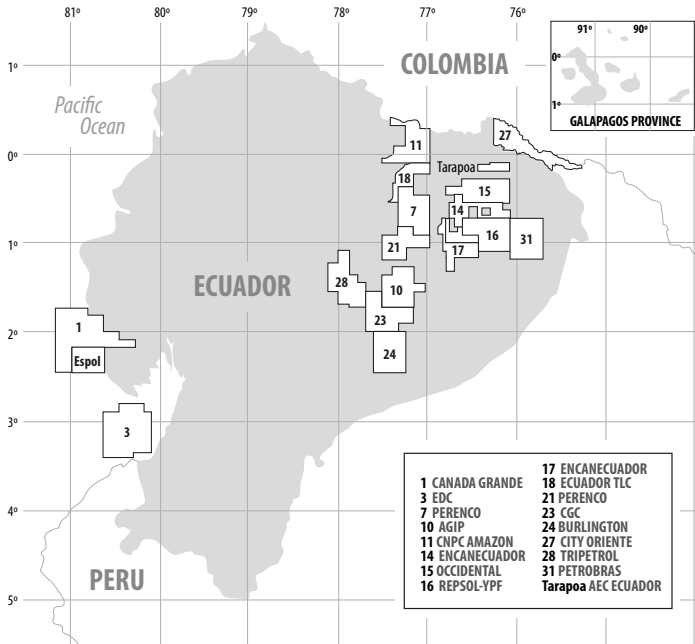
1 <https://www.youtube.com/watch?v=nnLvVNsUmnY>.

IACHR in San José de Costa Rica in 2011. The defense questioned her on the Peace and Life Camps, the resistance strategy adopted by the people to protect their territory in what they considered a state of emergency. According to Santi, the mission of the women was to travel through the jungle in groups to intercept parties of oil workers — under protection of the army — who had entered their territory carrying explosives to conduct seismic surveys in search of hydrocarbons.

The Facts

The trigger of the conflict between the Sarayaku people and the state was the concession of oil block no. 23, a portion of land equal to 200,000 hectares in the south central region of the Ecuadorian Amazon, granted by Ecuador to the Argentinian oil company Compañía General de Combustibles (CGC) in 1996. The territory granted for exploitation affected 60% of the territory of the Kichwa Indigenous People of Sarayaku.

Map 1
Protected areas and oil



SOURCE: Acción Ecológica (2011).

This concession to conduct oil activities in their territory was granted by the Ecuadorian state without any prior information, consultation, or request for consent from the Sarayaku people. In addition to having lived in that territory ancestrally, the Sarayaku people have a public deed over that territory in their name, awarded by the Ecuadorian government in 2002, which accredits them as its true owners (Melo 2006).

Since November 2002, CGC intended to enter Sarayaku territory to commence the seismic survey stage of oil exploration. During the first six years of the concession (1996–2002), the presence of CGC in the territories affected by block 23 was sporadic and rather discrete. The inhabitants of Sarayaku mentioned that a group of technicians disguised as tourists conducted the environmental impact study. José Gualinga said,

At no time were the Sarayaku people consulted. Sometime later, once we heard them saying that a group of tourists had been retained in Kichwa territory, we learned that they were conducting the Walsh environmental study.²

During this time, CGC executives always sought to maintain a cordial and generous relationship with the Indigenous leaders of Pastaza. As a result, they reached an agreement with several communities in the area: Canelos, Pacayaku, and Jatun Molino. The only reluctant communities were the Sarayaku, owners of 65% of the territory of the block, and the Achuar people (CDES and Tayjasaruta-Sarayaku 2006).

In May 2002, engineer Ricardo Nicolás, a representative of CGC, visited the Sarayaku community and offered them USD \$60,000 to allow the company to enter their territory. Sarayaku's General Assembly rejected the proposal after an enlightening internal debate. During its 9th Congress, held May 6–9, 2002, the Organización de Pueblos Indígenas de Pastaza (OPIP),³ a second-degree federation of which the Sarayaku As-

2 Affidavit presented before Notary Public Two of *Cantón* Pastaza on June 27, 2011; presented before the Inter-American Court of Human Rights.

3 Generally, the Amazon people of Ecuador have the following organizational structure: the community, *comuna*, center or *Ayllu* is the first-degree organization. There are five communities in Sarayaku: Sarayaku Centro, Sarayakillo, Cali, Shiguacocha, and Chontayaku. The communities are grouped in a second-degree organization or association. The Kichwa Nation of Sarayaku has a legal personality registered before the competent state entities. The federations are the third-degree organizations. Historically, Sarayaku has been part of the OPIP (Organización de Pueblos Indígenas de Pastaza), currently known as the Kichwa coordinator of Pastaza. The

sociation is a member, resolved that no organization, individual, community, or person could negotiate with the oil company operating block 23.

Put into perspective, the decision of the Sarayaku Assembly to reject the money offered by the company was decisive. This decision meant political defeat for some grassroots leaders who had been receptive to the discourse of the oil company until that moment. The people ended the dialogue definitively and assumed the defense of their territory against what was seen to be an armed invasion by the company.

How did they reach this decision? The historical memory of the leaders supports the decision in the information received during trips organized by the NGO Acción Ecológica at the time. They visited the area where Texaco has been operating in the northeast Amazon. There, the grassroots leaders of Sarayaku confirmed the impact of hydrocarbon activities (CDES and Tayjasaruta-Sarayaku 2006). For example, during the early years of the case, Franco Viteri, former President of Sarayaku, mentioned that

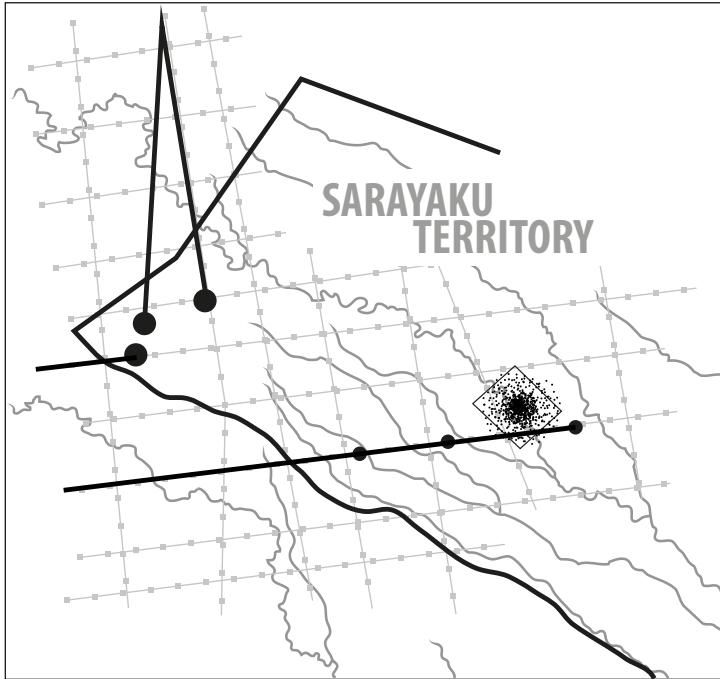
We had some knowledge of the consequences of oil activities somewhere else. I traveled to the Coca and saw them. What struck me the most was the oil burners, which are on day and night. That had a large impact on me, as seeing the Napo River did. Around five meters from the shore, the river was full of oil; there were two or three dead fish in there. And the cleanest part of the river was flowing in the center. These things had an impact on me, a very big impact. I went there; I went there long before becoming president, when I was the director of education. These things increased our conviction and desire to defend our territory.⁴

This exercise of going and observing the impacts and talking to the people suffering from oil activities in their territory was an effective and enlightening experience. The 2004 film *Los guerreros Kichwas y el petróleo* by Holdger Riedel and Siegmund Thies tells the idealized story of two young people of Sarayaku who, as delegates of their people, travel and see

confederations are the fourth-degree organizations. Sarayaku participates in the Confederation of Indigenous Nations of the Ecuadorian Amazon, or CONFENIAE, with a regional scope in the Amazon, and in the Confederation of Indigenous Nations of Ecuador (CONAIE), with a national scope.

4 Affidavit rendered before Notary Public Two of the Pastaza *cantón* on June 27, 2011; presented before the IACHR.

Map 2
CGC oil exploration map, block 23



SOURCE: CDES (2005).

the oil exploitation in the province of Orellana. Upon returning to the community, they convince the Assembly to resist entering into such an agreement.

Since then, Sarayaku has publicly expressed its rejection of oil activities entering its territories, based on the vast negative impacts this activity would have on their sacred territory, the form and quality of life of their members, their options for development, their spirituality, the Amazon environment, and the social peace. Despite Sarayaku's decision, during the last quarter of 2002 and the first quarter of 2003, CGC repeatedly entered Sarayaku territory, without authorization and against the will of the people, to conduct highly destructive seismic surveys.

The seismic prospecting planned in block 23 included the construction of 82 heliports — meaning that aircraft would be constantly flying over the treetops for entire days — as well as secondary trails and dozens of temporary camps to accommodate an average of 20 employees each, leaving trails of non-biodegradable waste in their wake. These actions

implied the direct deforestation of 260 hectares (Amazanga Informa 2002). Furthermore, the planned seismic surveys would use an average of 40 pounds of explosives each with powerful loads planted underground, 100 meters apart, detonating over 1,400 wells or boreholes (Amazanga Informa 2002). Since no area in the 20,000-hectare block would be excluded, the level of forest logging, waste contamination, and noise caused by the oil exploration would affect the environment (trees, water sources, caverns, underground rivers) and all forms of life. Between late 2002 and early 2003, CGC conducted 35% of the seismic prospecting works planned, venturing deeply into Sarayaku territory and causing serious damage.⁵

In an attempt to stop the seismic campaign, Sarayaku declared a six-month emergency and mobilized its inhabitants — men, women, youth, and even children — to protect their territory in bases called Peace and Life Camps. These camps were built in the middle of the jungle, where the armed invasion by CGC backed by the army was taking place. This decision implied serious risks to the life, integrity, health, nourishment, education, culture, and spirituality of the members of the community. Based on testimonies and other evidence heard before the Inter-American System, the IACHR valued the people's efforts, beyond their personal sacrifices, to stop the invasion of their territory:

Because of the reactivation of the seismic survey stage in November 2002, and due to the entry of CGC into Sarayaku territory, the Association of the Kichwa Sarayaku People declared an “emergency” during which the community stopped all of their daily economic, administrative, and educational activities for four to six months. With the purpose of protecting the boundaries of their territory and preventing the entry of CGC, members of the group organized six “Peace and Life Camps” around the borders of their territory. Each camp was formed by between 60 and 100 people, including men, women, and young people. Particularly, they claimed — and the state did not contest — that the Sarayaku people, including toddlers and pregnant women or with newborns, entered the jungle to reach the camps established on the borders. The only people not involved in the surveillance were the elderly, ill people, and some children who were not old enough to walk, who stayed in the Sarayaku Centro

5 Request Sarayaku-CEJIL-CDES, 2003.

village. They lived in the jungle during this time; crops and food reserves were depleted and, for several months, families lived solely from forest resources.⁶

Oil, Threats, and Violence

In this context, on January 25, 2003, four young Sarayaku people from the Tiutihualli Peace and Life Camp were violently captured, kidnapped, and tortured by members of the army and employees of the CGC. During the Inter-American Commission on Human Rights (IACHR) hearing in Washington, D.C., held on October 21, 2005, Fabián Grefa, one of the young prisoners, testified how members of the Ecuadorian army captured them and took them to the CGC camp near Chontoa. During the detention, company workers brutally beat them, tied them, and immobilized them on an anthill for insects to bite their naked torsos. Several hours later, soldiers, police officers, and employees of the oil company took them to the police station in the city of Puyo.

The testimony clearly outlined why Fabián Grefa, and many other men and women of Sarayaku, assumed the defense of their people's territory, even at the expense of their own personal safety — the deep conviction that their land is sacred and that the life of the Sarayaku people depends on respect for their territory.

It must have been a couple of days before the celebrations of Holy Week 2005. I was at the office with José Serrano, my colleague at the Centro de Derechos Económicos y Sociales (CDES), when Marlon Santi, who was *Tayak Apu* (President) of Sarayaku at the time, surprised us with his visit. We were surprised not only because his visit was unexpected, but because Marlon was painted almost entirely in black. His face, hands, neck, and arms were all covered in the blackness of genipap, a tincture extracted from the fruit of the same name, used by the Sarayaku people to paint their faces and bodies with deep spiritual meanings. Marlon explained that it was war and death paint, and that it matched the mission he would undertake in Quito. In fact, he had come to say goodbye. The

⁶ Affidavit by Gloria Berta Gualinga Vargas presented before Notary Public Two of the Pastaza *Cantón* on June 27, 2011; presented before the IACHR.

Sarayaku people had met during an assembly and decided that their leaders would concentrate on the territory and resist to death.

The news left us dumbfounded. “Why?” We asked. Justice is slow, measures are not enforced, the suffering is unbearable; that is my interpretation of the temporary distance in Marlon’s response. Sarayaku felt that a military incursion against them was imminent. Then, we learned that Acción Ecológica had the initiative of organizing a camp on the main street of Shell’s little town, where the main military base of the south central Amazon region and the best aerial runway are located. The intention of this camp was to monitor troop movements. Acción Ecológica had alerted Sarayaku regarding an unusual mobilization of soldiers, and rumors from the base that Sarayaku territory would be militarized during the celebrations of Holy Week to facilitate the entry of the CGC oil company. This was the origin of their sad and complex decision. José and I asked for more time. We resorted to all kinds of reasons to trust the rule of law, to trust justice — which we assured them would eventually prevail — to prevent bloodshed.

Marlon was very clear in saying that the decision had already been made. The people were aware of the huge risk of the army opening fire against them, as they had already seen soldiers armed with high-power rifles patrolling the territory, while the Sarayaku Indigenous people only had spears and caplock muskets to defend themselves. Thus, their decision was to give their lives in the Kawsay Sacha, their sacred territory.

José and I managed to get only a few hours to attempt what seemed impossible. Patricio Pazmiño, then director of the CDES, called one of his friends in Santiago de Chile and got the personal number of José Zalaquett, President of the Inter-American Commission on Human Rights. We called him and explained the risk of militarizing the Sarayaku territory, which would violate an injunction issued by the IACHR. Professor Zalaquett then called Colonel Lucio Gutiérrez, President of the Republic, who expressed very emphatically that he never intended to militarize Sarayaku during Holy Week festivities.

I will never know if the rumor of imminent military incursion was true or false, but I have no doubt about its impact. Upon clearing up the threat, tranquility returned to Sarayaku, and with it, the consolidation of a strategy to defend their territory through the means offered by the rule of law, which were ultimately effective.

Another intense moment took place in early December 2004, when the Confederation of Indigenous Nations of Ecuador (CONAIE)

organized a march in solidarity with Sarayaku. About 50 canoes with people from Sarayaku sailed up the Bobonaza River to get to the city of Puyo and participate in this activity. When they reached the village of Canelos — a community with an economic agreement with CGC to allow them to conduct oil activities — the canoes were fired upon and forced to come ashore. There, the people were beaten and attacked with machetes, resulting in multiple injuries. Some ran away into the jungle, disappearing for several days. Others were taken to the community center, where they were rescued by the Ombudsman’s Office and the Red Cross. One of the victims was Franco Viteri, former President of Sarayaku. His wife, Berta Gualinga, recounted these dramatic moments:

All this time has been a very difficult one, mainly because at the time my husband was no longer the President. The President was Marlon Santi, and there was a march to Puyo under the slogan “for peace and for life.” Then, the Sarayaku people traveled upstream from Sarayaku and had to pass through Canelos, and there they beat them. Precisely on that day, my husband and I were in Puyo, and he said, “Let’s go,” but then he said, “It is better if you stay here.” I stayed in Puyo, he went there, and was also beaten with sticks; some people were bearing even machetes. Then, Hilda Santi, a friend, ran away and got to the mission; they lodged her there and she called us. When she told us that Franco had been attacked with a machete and that he had injuries on his head, I became desperate, and I did not know what had happened with all the news we were receiving. On that day, I was so desperate that I drove a car looking for him. I couldn’t find him. He went missing in the jungle. I looked for him until two in the morning, and since I did not see him, I came back. The next day, I asked for help, but I couldn’t find him. I was so desperate. The march took place on that very day. Then, at the end of the day, money was collected during the march to make an overflight so that the people who were missing could find their way. I did not find anything, and at the end of the day, I decided to travel to Canelos, but I was not able to get there. In my desperation, I went there again and, three days later, he came back. It was such a desperate time. I abandoned my children. Luckily, my mother-in-law was nearby and stayed with my children.⁷

7 Testimony recorded by the government council of Sarayaku.

The Territorial Defense Strategy

The Political-Organizational Strategy

The main pillar of the strategy that allowed Sarayaku to withstand the huge pressure it suffered since December 2002 without breaking was its organizational strength. Tayjasaruta⁸ is an organization promoted and maintained by a generation of young leaders very engaged with the outside world for study, work, and even family reasons. These young people work closely with the Kuraka, Barayo, and Yachag traditional authorities and wise elders. From the inside, they keep the flame of tradition, identity, and spirituality alive, creating a balance that allows the organization to move freely onto national and international stages without breaking — or even stressing — their relationship with the traditional dynamics of the jungle, thus greatly legitimizing their struggle. The state and the company always seemed bewildered by this formula.

The discourse from voices of power only revealed their own inability to understand the richness of this balance. During the administration of Lucio Gutiérrez, Colonel Arboleda, Minister of Energy, repeatedly made public statements belittling both Sarayaku as being “only two families” and their leaders because “they constantly travel to forums abroad.” The capacity to formulate responses to an identified kinship reality — in Sarayaku, as in many jungle villages, family ties are so close that most members are related — and another in which Sarayaku had decided to internationalize its struggle, could no longer hold.

The political advocacy strategy used by Sarayaku has proven effective. After identifying the risk of marginalizing the conflict regarding the integrity of its people and territory, most efforts focused on placing the Sarayaku case among the main topics of national and international public opinion (Melo 2005).

Sarayaku was smart in approaching the national Indigenous organization CONAIE and strengthening its presence in the national Indigenous movement. This strategy allowed them to present their problem directly to the President of the Republic in early 2003 when the Indigenous movement was part of the political alliance that took Lucio Gutiérrez to office. The strategy was not enough, however, to get the regime to adopt a solution to the conflict. Following the rupture of the alliance with the government, from September 2003, President Gutierrez himself publicly

⁸ See their blog at <https://tayjasaruta.wordpress.com>

announced his intention of militarizing the area to allow the entrance of CGC.

The struggle of Sarayaku made it a referent for other Indigenous people in Ecuador, as recognized in 2008 when Marlon Santi, former *Tayak Apu* of Sarayaku, was elected chair of CONAIE, a position he held until 2011. I tell the following story to show the relevance of Santi being chair of CONAIE and facing, practically alone, the government of Rafael Correa. Popular support kept Correa in office despite the fact that many of his policies were contrary to the interests of social sectors such as the Indigenous movement.

On October 5, 2009, in a time of great social unrest, about two thousand members of CONAIE marched to Independence Square, expecting their leaders to meet with the President of the Republic. Five days earlier, a Shuar leader had died near the Amazon city of Macas during a protest against large-scale mining exploitation. The government blamed the Shuar leaders for the death of Bosco Wisuma, while the former blamed the police. The meeting finally took place at the Carondelet Palace, the seat of the Ecuadorian government. The entire cabinet was present, and the meeting was broadcast on television.

During his speech, Marlon Santi demanded respect towards the Indigenous movement, described as “a few lazy louts” being estimated at only two percent.⁹ President Correa angrily interrupted and asked, “Who was the fool who said they were only two percent?” Marlon replied, “You, Mr. President.” This reply, delivered with the sincerity and confrontationality characteristic of the Amazonian people — born and raised in the jungle without learning to sugarcoat words so as not to disturb the powerful, unlike city dwellers — had a deep political impact. The media reproduced this conversation, which became a symbol of speaking irreverent truth to overflowing power.¹⁰

The political and information dissemination strategies used by Sarayaku and several of its allies allowed the national media to continuously monitor the case, which fostered political support in Europe and the United States. The dissemination of the case at the national and international levels became a priority for two reasons. First, because years

9 This reference to “two percent” was not clear about whether the comment referred to the population, the voters, or another group.

10 “La lucha antipetrolera catapultó a Santi,” *El Comercio*, October 11, 2009.

of battle experience had taught Sarayaku that the arrogance of the powerful can only be stopped once public opinion is activated. Second, because the cause — becoming a *cause célèbre* in the press — was an inspiration for other Indigenous peoples who suffered similar abuses in Ecuador and elsewhere.

At the national level, media coverage of the case was always good. First, because Sarayaku undertook this task with determination and without being intimidated by all the closed doors; second, because it had the support of the communication teams of its allies at the time: CDES, Fundación Pachamama, Acción Ecológica, and others. The American organization Amazon Watch, which channeled information on cases related to the Amazon and Indigenous rights to North American media, played an important role in international dissemination. In Europe, Amnesty International mainly promoted the campaign in favor of Sarayaku.

By an initiative of Amnesty International, Eriberto Gualinga — along with Mariano Machain and David Withbourn — were able to film a documentary about the adventure of Sarayaku organizing the delegation that attended the hearing before the IACHR. The Sarayaku leaders, always protective of their privacy, had to get used to having camera and sound crews behind them every single day for several months, accompanying them during their preparations for the hearing, and then during their trip to the hearing in Costa Rica.

I cannot deny the stress of those intense days before and during the trip because of the countless tasks that needed to be addressed. Sometimes, the stress increased because of needing to set boundaries with the camera crew, who wanted to film everyone all the time. Nevertheless, the result is significant; the documentary *Los descendientes del Jaguar*¹¹ tells the story in an agile and informal way, from the collective view of the people. The documentary is important not only for its artistic value,¹² but because it contributes to the historical memory of Sarayaku and all Indigenous people of the world who fight to defend their territories.

Over the years, the Sarayaku case became known and followed by many people and institutions. The people fondly remember Rodolfo Stavenhagen's visit to Sarayaku as Special Rapporteur on the Indigenous

11 See <https://www.youtube.com/watch?v=u9rmZeBcvuM>

12 In 2003, *Los descendientes del Jaguar* received first prize at the National Geographic All Roads Film Festival.

people's human rights and fundamental freedoms situation on May 1, 2006:

With rumbling drums and traditional dances, over one hundred girls and boys of the community, their faces and bodies covered in symbolic paintings, welcomed the illustrious visitors. The Sarayaku people gathered massively to expose their battle to defend their territory from the arbitrary and non-consensual entry of the Argentinian oil company CGC... The visit ended with an emotional message by the Rapporteur to the Sarayaku community, the contents of which he has asked not to be disclosed. (CDES 2006)

On that occasion, as in many later ones, Sarayaku demonstrated a great warmth and organizational capacity to receive illustrious visitors to their territory. Coverage by national and international media was crucial, for example, when Dr. Galo Chiriboga, then Minister of Energy, visited Sarayaku on September 4, 2007, to announce that the explosives left by CGC in Sarayaku territory would be removed. Other coverage included the visit of the IACHR to the territory to hold a hearing (April 2012) and the Ecuadorian state public apology held in the community on October 2, 2014, in compliance with the judgement issued by the IACHR.

We must not forget the capacity of Sarayaku to monitor and decipher the strategies used by its adversaries during the conflict. No doubt this power comes from adapting the survival skills of an ancestral hunting and warrior people to contemporary scenarios. In November 2003, the Sarayaku described the strategies used by companies to enter Indigenous territories in a document prepared by the Tayjararuta:

- They identified sociologists and experts on the matter and on Indigenous behaviors who, in turn, hired Indigenous personnel, mainly those with a history of corruption and of receiving easy money, who are very convincing in their discourse. Based on slander, gossip, false arguments, and discrediting the leaders and directors, they begin to break the communities and organizations apart. In the case of Sarayaku, CGC hired the company DAYMI SERVICE to divide the community, or as they call it, community relationships. They began to divide the communities of Pakayaku and Canelos, but were not able to do so with Sarayaku, who were able to face and refute all the arguments they used.
- If this strategy fails, they resort to threats, murdering the leaders, families, sons, and fathers. With lies, they make judgements against their leaders, accusing them of being mere criminals. With their power, they influence the decision of prosecutors and judges, all while obscuring and hindering our defense.

- If the resistance continues, they work to create inter-community struggles, that is, struggles with brothers from other communities with the argument that our position of defending the territory negatively affects the development offered by the company to the communities who have accepted. Thus, we have suffered a year of the blockade on the Bobonaza River by these communities, preventing us from freely traveling through it to contact the provincial seat. The authorities have done nothing about it, arguing that it is a local problem, even if they know that preventing the free river traffic, which we have navigated since ancient times, is a felony.
- They are experts in creating organizations comprised of oil company workers who, claiming to be leaders, create mostly non-existent communities without any representation and with the sole purpose of creating conflicts.
- In turn, as soon as we discover and begin to report the winning bidders and the companies who have shares in the blocks, in absolute reserve and quietly, these companies transfer their holdings to other companies to win time and disrupt our fight. This way, in the Sarayaku case — and block 23, owned by Chevron Texaco, which transferred its holdings to Burlington Company, which was partially acquired by Perenco, and so on — shows the public that companies such as CGC are in bankruptcy, since they have nothing to lose regarding their image and credibility.
- In turn, the state, arguing that it has to ensure foreign investments, supports all these activities and gives credibility to these pseudo-organizations, even announcing that it will enter the jungle even if the Kichwa Nation clashes with public forces. Thus, in December, the Minister of Mines and Energy publicly announced that they would enter Sarayaku territory to conduct seismic surveys with the army's engineering team. (Tayjasaruta 2003)

The Legal Strategy

In response to the fact that CGC had been entering Sarayaku territory since mid-2002, in violation of the express prohibition of Sarayaku's Assembly, in November 2002, Sarayaku began its legal strategy by filing for its rights, established in the Political Constitution of the Republic of Ecuador of 1988. This action sought to adopt urgent measures to cease, prevent, or immediately remediate the consequences of an illegal action or omission by a public authority or people who provide utilities or act under delegation or under concession of a public authority, which violates or may violate any right set forth in the Constitution or an international treaty or convention in force and which, imminently, threatens to cause serious damage. In one instance, the judge ordered the suspension of activities in block 23. In December 2002, while the legal prohibition was still in force, CGC employees entered the Sarayaku and Achuar territories, causing the communities to react by retaining the workers. Then,

the judge simply stopped processing the case, and it has not been ruled on to date.

Although the Sarayaku case should not be analyzed only as a legal case, it is clear that the combination of political advocacy with the legal strategy to demand the fulfillment of their rights before national and international judges and authorities was a powerful one. The alliance between Sarayaku and CDES, a specialized body with the capacity to provide the legal support that was more and more necessary, was defined in December 2002. This alliance increased the capacity of the community to face the attacks of the oil company effectively. Later, once Sarayaku saw the need to resort to the Inter-American system, CEJIL — an organization based in Washington, D.C., and specialized in litigations before this system — joined the legal team. Although the alliance between Sarayaku, CDES, and CEJIL was never formalized in a written and signed agreement, it was established in the request presented by the three entities to the Inter-American Commission on Human Rights on December 13, 2003.

The above-mentioned appeal for the protection of constitutional rights filed before the judge in Puyo did not solve the case, but it did serve



Sarayaku women posing with judges of the Inter-American Court, delegates of the Inter-American Commission, and their allies from CEJIL. San José de Costa Rica, Thursday, July 7, 2011.

to produce two legal effects with significant political relevance. Since the judge ordered the suspension of all activities in block 23, but CGC did not stop provoking the community with new invasions to their territory, this action demonstrated that the company was acting illegally. Every new invasion constituted a breach to the lawful order of a competent judge. The illegality of the company's actions allowed us to defend the Sarayaku leaders, criminally prosecuted at the request of CGC for retaining the employees who illegally entered their territory, by arguing that these actions were taken under the principle of legitimate resistance. The two trials conducted for these facts were resolved in favor of Sarayaku.

The second legal effect, ultimately critical, was that the judge proved that local justice could not enforce the rights of Sarayaku, as he failed to enforce the suspension of activities in block 23 and unreasonably stopped processing the case. This view of national justice and judicial decisions paved the way for resorting to the Inter-American Human Rights System (Melo 2005).

In December 2003, Sarayaku requested that the IACHR solve the case and declare that the Ecuadorian state had violated the human rights set forth in the American Convention on Human Rights by allowing CGC to operate on block 23. The decision to file a claim before the IACHR raised the level of debate on the case to the international sphere. Following the positive reception of the *Awas Tingni* judgement in human rights matters,¹³ we believed that the court would be more open towards Indigenous matters and might have a special sensitivity towards cases that would potentially allow it to develop jurisprudence on the matter (Melo 2005).

International litigation was always a hard experience for Sarayaku leaders. Every trip abroad to attend the hearings before the Inter-American Commission, and then appearing before the court, was very challenging for them. They come from a small community in the Amazon jungle and are not used to international spaces. However, they showed great intelligence and made the most of every opportunity to defend their truth and garner support. Their learning about the international human rights framework and the functioning of the protection bodies was constant.

13 The *Awas Tingni v. Nicaragua* case (2001) refers to the right of the Indigenous community to collective property over their territory.

I fondly remember the trip I made to CGC headquarters in Buenos Aires, Argentina, in November 2004 with Marlon Santi (President of Sarayaku), Rubén Gualinga (a young community leader), and Milton Callera (an Achuar leader), with the support of my friend and colleague, New York activist Kenny Bruno, who at the time worked for the NGO Earth Rights International. We tried to meet with the owner of the company to explain the position of the people affected by their activities in the Ecuadorian jungle. We could not meet with them, despite the willingness of several senior officials of the Argentinian government to organize the meeting. As I said to the Argentinian media at the time, however:

The visit has been positive, because we met our three objectives. First, to inform Argentinian public opinion, who ignored the matter. Second, to contact organizations in favor of our battle, such as the Indigenous movement Alerta Argentina. And third, because we pressured CGC, so they learned that public opinion and the Argentinian state are aware of the subject and are watching them.¹⁴

During this trip, I admired the leaders' skill in explaining the case to the Argentinian authorities, to the press, to the students of Universidad de Buenos Aires and Universidad Popular Madres de Plaza de Mayo during the events we held there, and to the people who surrounded them during their demonstration in the famous Plaza de Mayo.

This trip was not exempt from culture shock. The Buenos Aires custom of men greeting each other with a kiss on the cheek was shocking for the Amazonian leaders accompanying me. This fraternal gesture is not customary in Ecuador (except between very close relatives, such as father and son, or grandfather and grandchild), and is unusual between the Indigenous people of the Amazon. But the maelstrom of an advocacy trip left no time or opportunity for questions. After four or five days, I found myself smiling while watching Marlon, Rubén, and Milton excitedly kissing the cheek of every Argentinian who approached them to show support for their cause.

The rapid concession of precautionary measures by the IACHR on May 5, 2003, showed that the system thought the Sarayaku case had

14 "La interpretación de los sueños: Sarayaku en Buenos Aires," *lavaca.org*, Nov. 11, 2004, <https://archivo.argentina.indymedia.org/news/2004/11/235588.php>

potential. These measures included, first, the requirement of the Ecuadorian state to guarantee the physical, psychological, and moral integrity of the members of the Sarayaku people, which had been constantly threatened since the scaling up of the conflict. Second, the state must adopt the measures required to protect the special relationship of the Sarayaku community with their territory, as mentioned in the document sent on May 6, 2013, by the IACHR notifying the Ecuadorian state of the injunctions.

Since the beginning of the Sarayaku case before the Inter-American System, the attitude of the four different administrations of Ecuador was never positive. The position of Lucio Gutiérrez's Minister of Energy regarding the injunctions was typical: on December 2, 2003, when addressing the National Congress regarding the Sarayaku case, he referred to the precautionary measures as "a spurious statement from people who don't even know where Ecuador is."¹⁵ In January 2004, when referring to the injunctions, the minister stated, "the OAS has no power here" (Serrano Salgado 2004).

On March 3, 2004, when Sarayaku and the Ecuadorian state were summoned to IACHR headquarters in Washington, D.C., to analyze the enforcement of the precautionary measures, the Attorney General announced to the media that he would travel to Washington to attend the summons. In reality, the comptroller traveled to the United States, but failed to attend the meeting with no legal justification whatsoever (Melo 2005).

However, these facts should not lead us to think that the state was careless or ignorant regarding the importance of the litigation before the IAHRs, quite the opposite. The Office of the Attorney General has undergone significant institutional learning regarding the Inter-American Human Rights System in the last decades, after Ecuador had to indemnify the relatives of the victims of the famous Restrepo case,¹⁶ studied by the commission, as well as Suárez-Rosero, Tibi, and other cases that reached the court.

In the Sarayaku case, the attorneys of the Office of the Attorney General intensely litigated. Both their public statements and their behavior

15 Statement in the National Congress dated March 3, 2004.

16 For background on the Restrepo case, see Human Rights Watch: <https://www.hrw.org/reports/1992/WR92/AMW-07.htm>

before the commission may have been part of a premeditated litigation strategy that included actions to intimidate a community that resisted the interests of extending the oil frontier, which was the government's priority. The reasons of the state ended up being the reasons of force (Melo 2005).

On the other hand, the Ecuadorian state systematically ignored the precautionary measures ordered by the commission. Regarding the breach of the injunctions, the IACHR asked the court to issue provisional measures in favor of Sarayaku, granted in July 2004. These measures aimed to protect the life and integrity of the Sarayaku people and to investigate the violent actions committed against them. As well, these measures were intended to ensure their right to free travel, which had been violated by the arbitrary blockade of the Bobonaza River by allies of the oil company attempting to pressure Sarayaku into negotiating rather than pursuing legal action.

Getting the State to Enforce the Measures

The IACHR provisional measures issued in favor of Sarayaku in 2004 were largely due to the explicit absence of political will in the Ecuadorian government in complying with the injunctions and searching for a solution to the block 23 conflict. The IACHR measures increased the expectations of the Sarayaku people and its allies. Furthermore, in August 2004, the Ecuadorian Minister of Foreign Affairs took the initiative of promoting an inter-institutional public commission to coordinate a plan to enforce the injunctions with the Sarayaku people.¹⁷ The commission, chaired by the Minister of Foreign Affairs, was comprised of delegates from the ministries of Energy, Government, Environment, the Attorney General, the National Police, and the army. The creation of the commission was a positive step that contrasted with the state's position regarding the intervention of the Inter-American System.

After several delays and disorganization between its members, the commission met with Sarayaku for the first time in Puyo on August 26, 2004. This first meeting, which was public and garnered the attention of the press¹⁸ and of various social organizations in the region, confirmed

17 Ela Zambrano, "Se busca solución en caso Sarayaku," *El Universo*, July 31, 2004, <https://www.eluniverso.com/2004/07/31/0001/12/1FD7B4C399A6422DA4D6E170B3A7623C.html>

18 Paulina Escobar, "Comunidad Sarayaku recibió a comisión," *El Universo*, August 27, 2004.

that this was an important opportunity for the state to show actual political change regarding the case and to guide the search for a solution that respected the human rights of the community.

During the next meeting, held on September 3, 2004, at the offices of the Ministry of Foreign Affairs, the commission and Sarayaku representatives reached several operational agreements. These included maintaining weekly meetings, an agenda with key points to be discussed regarding compliance with the measures and, most importantly, that the chair of the commission be the only state authority to make statements to the press regarding the Sarayaku case. This last point, requested by Sarayaku, was aimed at stopping the repeated, aggressive, demeaning press statements aimed at Sarayaku leaders, their members, their leaders, and their battle that the state authorities had been making since 2003. Reaching this agreement was real progress. The next advance was the commitment of the Attorney General to review the legal situation of the contract between the state and CGC for block 23. Sarayaku and its allies found several irregularities that, they argued, made it invalid.

Suddenly, when the work of the commission was becoming very interesting, on September 21, 2004, at approximately 7:15 a.m., the Minister of Energy made a statement on Gamavisión news, broadcast throughout the country, once again referring to the Sarayaku community, their members, and their battle, in aggressive and demeaning terms. These statements had a devastating effect on the spirits of the Sarayaku people. The image of sincerity and transparency that the state had been forging through the commission was now demolished, showing the true face and the double tongue of power. It seemed as if there had never been any true intent to respect the agreements. The commission and its talks seemed to be smoke and mirrors to mislead the IACHR and Sarayaku while they had other plans, as usual, to protect the interests of the powerful to the detriment of the rights of the poor.

Obviously, Sarayaku was forced to suspend its participation at commission meetings. “The opportunity has been lost, we hope not forever,” said President Marlon Santi of Sarayaku in a letter to commission chair Julio Prado Espinosa, deputy secretary of Multilateral Affairs of the Ecuadorian Ministry of Foreign Affairs, on September 23, 2004.¹⁹ The chair’s

¹⁹ “Sarayaku ya no conversará con el Gobierno,” *El Universo*, Sept. 24, 2004.

insistence on Sarayaku resuming the dialogue²⁰ was not well received, as there were no significant changes to oil policies to recover the commission's credibility.

This situation made us ponder what Ecuador's multiculturalism actually means. The refusal of Sarayaku to return to dialogue under these conditions should not be seen as stubbornness. Members of our white-mestizo urban society are too accustomed to the authorities lying, breaking whatever commitments they deem convenient, and maintaining a double, and even triple tongue, depending on the occasion. Dishonesty is seen as a necessary attribute in politics. People from the jungle have no reason to assume the decency of a society that, for centuries, has turned its back to them. They refuse to play the game of the double tongue. Falsehood is frowned upon in their culture, so they do not believe in a dialogue in which things are not said openly and honestly. Perhaps this non-compromising position in fundamental values ended up making Sarayaku's battle a badge of honor in the defense of their rights. This attitude also became a moral referent for mestizo society, refreshing their understanding of public matters.

Regarding this new breach of the Ecuadorian state, in June 2005 the IACHR ratified the injunctions and extended them by including a provision to urgently remove the explosives left in Sarayaku territory by CGC. Thanks to this decision, Sarayaku was able to measure the impacts to its territory caused by CGC. On September 3, 2015, the authorities of various Ecuadorian ministries visited Sarayaku to plan the enforcement of the injunctions. Technical advisors of the Ministry of Energy exposed the serious danger that the presence of high-powered explosives left by CGC posed to the people of Sarayaku and to the environment. According to official information presented by the Deputy Secretariat of Environmental Protection of the Ministry of Energy, there were 476 points in Sarayaku and Achuar territory where CGC placed loads of between 3 and 5 kg of pentolite, a highly destructive explosive, without prior consultation and against their will. In total, 1,433 kg (almost a ton and a half) of explosives was planted 12 meters deep, and an undetermined amount was abandoned in the sacred forest of Sarayaku, in their hunting spots, in places where children and young people walk looking for sustenance. The

20 "Diálogo con Sarayacu no está roto, dijo Prado," *El Universo*, Sept. 30, 2004.

**Letter sent by the Minister of Mines and Oil
to the company CGC on May 8, 2009**



SOURCE: Personal archives of the author.

Ministry of Energy confirmed that these explosives are highly dangerous and easily detonated.

In response, CGC unleashed a new smear campaign against Sarayaku in the media, founded on the nonsense of accusing the people, whose territory it invaded, of stealing the explosives left by their employees and using them to set traps, without even realizing the danger or taking the minimum precautions. On this point, Sarayaku stood firm in the defense of its rights. Despite establishing the risks regarding the explosives installed by CGC in Sarayaku territory, the state took no effective measures to deactivate and remove them until December 2007. Under the administration of President Rafael Correa, the Ministry of Mines and Oil undertook efforts

to remove the explosives through the National Police Intervention and Rescue Group. As of December 2009, only fourteen kilograms of explosives had been removed, and the process is currently suspended.

In a judgement issued in 2012, the IACHR considered that the oil company cleared trails and planted around 1,400 kg of pentolite in block 23 with the consent and protection of the state. In the words of the court,

This has been a clear and proven risk, which the state was in charge of deactivating, as ordered in the injunctions. That is, the breach of the state's obligation to ensure the right of the Sarayaku people to community property. Allowing the planting of explosives in their territory has resulted in constant risks and threats to the life and personal integrity of its members. (Inter-American Court of Human Rights 2012)

On May 8, 2009, the Ministry of Mines and Oil unlawfully authorized the resumption of oil operations in blocks 23 and 24, which the Sarayaku people and the Shuar and Achuar Nations had been opposing since the late 1990s, and which had decisions from international human rights bodies protecting the Indigenous people. Even though CGC did not resume its activities, this ministry authorization showed the fragile state of the Sarayaku case as of 2009. In a press release dated June 9, 2009, *El Comercio* newspaper linked the decision to resume activities in block 23 with the resignation of Minister Derlis Palacios.²¹

The Sarayaku Case in International Justice

The Final Stage Before the Inter-American Commission

On January 26, 2010, the Inter-American Commission issued its report on the case,²² blaming the state for violating the human rights of the Sarayaku people and including a set of recommendations regarding the measures needed to solve the situation, compliance on which the state had to report in two months. During this time, no state entity contacted Sarayaku to coordinate its enforcement. Instead, the state remained silent and,

21 “2 temas dejaron sin piso a Derlis Palacios,” *El Comercio*, June 9, 2009, <https://www.elcomercio.com/actualidad/temas-dejaron-piso-derlis-palacios.html>

22 Inter-American Commission on Human Rights, In-Depth Report No. 138/09.

on April 10, 2010, presented a brief report that did not show any progress whatsoever in fulfilling the recommendations.

I do not want to speculate on the reasons why the state chose not to attempt to close the case by complying with the measures recommended by the commission, or at least to delay its transit to the court by requesting an extension. Perhaps it was poor coordination by the different state entities monitoring the Sarayaku case. Perhaps they hoped to reverse the outcome at the IACHR. In truth, the apparent disinterest of the Ecuadorian state in complying with commission recommendations precipitated a rapid outcome.

The Sarayaku Case before the Inter-American Court of Human Rights

The Inter-American Commission on Human Rights submitted the case to the court on April 26, 2010, by means of a claim received by the Court Secretariat on May 17. Pursuant to the Inter-American process, the next few months consisted of intense written litigation, as the alleged victims (Sarayaku) and their representatives²³ had to prepare and present the autonomous claims, arguments, and evidence document (ESAP, for its initials in Spanish), and the state replied to the claim and made remarks on the ESAP. Simultaneously, we prepared the evidence to be presented at the court hearing. In all this work, the support and commitment of the Tayjasaruta (Sarayaku Government Council) and the technical team of Fundación Pachamama was fundamental.

No other moment of the process was as crucial as the final hearing, held at the IACHR in San José de Costa Rica, on July 6 and 7, 2011.²⁴ Upon receiving the summons, I mentioned to Sarayaku leaders the need for a small delegation to attend. They said, “No, at least twenty delegates should travel.” “Where are we going to get the money to take all these people?” I asked. “We’ll see,” they said. The remarkable management capacity of Sarayaku effectively moved international cooperation to get a large delegation of 21 people, including a four-month old baby, to attend the hearing, while the rest of the community followed the proceedings on the Internet.

23 At this time, the representatives of Sarayaku before the court were CEJIL and me.

24 See summary video of the hearing: <https://www.youtube.com/watch?v=gqgrHyQAFkU>.



From left to right, José Gualinga, *Tayak Apu* of Sarayaku; Sabino Gualinga, spiritual leader of Sarayaku, and Diego García Sayán, President of the Inter-American Court, at the hearing of the Sarayaku case. San José de Costa Rica, July 7, 2011.

Traveling to the hearing with the Sarayaku delegation was a delightful adventure, shared with my colleague and dear friend from Fundación Pachamama, Carlos Mazabanda, who was in charge of the travel logistics, which allowed the leaders and me to focus on preparing for and monitoring the hearing. We booked a suite close to the headquarters of the court, in the Los Yostes neighborhood of San José. Patricia Gualinga stayed with her parents, Sabino and Corina, at an apartment with a kitchen and various bedrooms, which became the headquarters of the delegation. During our ten days there, meals prepared with love and Amazonian flavor were always ready, with a glass of wine to encourage conversation. Journalists, activists, and friends from all over the world visited us to show their solidarity with the Sarayaku cause.

On the legal team, the support of Viviana Krsticevick, lawyer and director of CEJIL, who collaborated in the litigation, was crucial. With her experience and extensive knowledge of the Inter-American System, and especially her empathy and respect for Sarayaku, she was the foundation that gave us the confidence and strength to face each challenge. The professionalism of the CEJIL team — from both the San José de Costa Rica

and Washington, D.C., offices — was impressive. I remember one particular meeting with Viviana where we developed the idea that the presence of pentolite buried in significant stretches of Sarayaku territory was similar to territories affected by anti-personnel mines. Viviana mentioned it to one of her colleagues in Costa Rica to see what they could find out on the matter. Then, our conversation turned to other matters and we concluded that there were actually more differences than similarities between the pentolite and a minefield, and we forgot about it. Twenty minutes later, an impressive dossier on human rights standards related to anti-personnel mines was on our desk, and a United Nations expert on the matter was waiting for Viviana on the phone to answer any question we might have.

During the hearing, the debate focused on the right to consultation and to the free, prior, and informed consent of the Indigenous people to the militarization of Indigenous territory and to the environmental, social, and spiritual damage the oil activities caused to the lives of the Sarayaku people. The most important moment of the hearing was when Don Sabino Gualinga, spiritual leader of Sarayaku (*Yachak*), gave his statement to the court. Ever since I began traveling to Sarayaku regularly in 2004, I always felt welcomed and loved in Don Sabino's house. He shares the leadership of a family of political leaders and spiritual guides, important to the contemporary history of his people, with his wife, Corina Montalvo. Their opinion is respected and revered by all of Sarayaku. Many of its members regularly participate in his *ayahuasca* ceremonies, or just want to talk to him. Although he is over 90 years old, his vigor and resistance are admirable. We shared key moments of the case with him, both the 2011 hearings in Costa Rica and the 2012 hearings in Sarayaku, as well as countless demonstrations and mobilizations organized by CONAIE. I have participated in some of these demonstrations and have seen that they give courage and coherence to new generations of Indigenous people.

As an elder — *Yachak tahaquero* — capable of being an interlocutor with the spiritual beings living in the sacred forest, or *Kawsay Sacha*, Don Sabino has been kind enough to welcome me and make me part of his *ayahuasca* ceremonies, especially when the vicissitudes of life hit me where it hurts the most. Just the night before the state's public apologies act, held in Sarayaku on October 2, 2014, during which Sarayaku showed its appreciation by gifting me a spear, Don Sabino, with the help of the allied spirits, gave a little peace to my heart, troubled by an especially painful loss. I will always remember him with respect and gratitude.



Don Sabino Gualinga in the territory of the Sarayaku people.

During the 2011 hearing before the Inter-American Court in San José de Costa Rica, Don Sabino decided to declare, from his perspective as *Yachak*, the most unsettling side of the unwelcome presence of an oil company in their territory. When answering the interrogation regarding the impact of the activities of the oil company in the Sarayaku territory, Don Sabino mentioned that half of the “jungle masters” were no longer there. “Sarayaku is a living land,” he said,

It is a living forest. There are medicinal trees and plants, and all kinds of beings... Many of them are hiding; others have died. They maintain the jungle, the forest. If things are destroyed, mountains will also crumble... Everyone who wishes harm does not know what they are doing. We do know, because we can see it.²⁵

He also told the story of elder César Vargas, also a *Yachak*, whose power tree, *Lispungo*, was destroyed by the oil workers:

The lands of César Vargas were in a place called *Pingullo*. There he lived with his trees, how he could heal others was woven in the trees, like threads. When they tore down the *Lispungo* tree, he was immensely sad... When they tore down the largest *Lispungo* tree he had, he was immensely sad and his wife died;

25 Don Sabino Gualinga’s entire statement is available in the Inter-American Court video: <http://vimeo.com/26136863>



From left to right: *Tayak Apu* José Gualinga; Mario Melo, Sarayaku attorney; Viviana Krsticevick, director of CEJIL and Sarayaku attorney, July 2011.

some time later he died, his son died, and then his other son died. Now, only two of his daughters are alive.²⁶

The court assessed Don Sabino’s testimony and considered that “for Sarayaku, the destruction of sacred trees like the Lispungo tree by the company meant a violation of their worldview and cultural beliefs.” The damage caused by the oil operations in Sarayaku territory caused that,

In the worldview of the people, the spirits who owned this sacred place left, causing its sterility, which, in turn, the Sarayaku relate to the material sterility of the site and the permanent departure of animals from the area until the spirituality of the place is restored.²⁷ (Melo 2014, *Voces de la Selva*)

In the judgement of the Sarayaku Case, the court interpreted the words of the witness and referred to

the importance of these symbolic places for the cultural identity of the Sarayaku people and their worldview, as a collective sub-

26 Inter-American Court of Human Rights, *Sarayaku Indigenous People v. Ecuador*, judgement dated June 27, 2012, note 290.

27 *Ibid.*, paragraph 218.

ject. Several testimonies and expert reports produced throughout the process reflect the strong bond between nature and culture, on one hand, and the dimensions of being of each member of the people.²⁸ [...] The court believes that failing to consult the Sarayaku people affected their cultural identity, as there is no doubt that the intervention and destruction of their cultural heritage implies serious disrespect for their social and cultural identity, their customs, traditions, worldview, and way of living, naturally causing great concern, sadness, and suffering to them.²⁹

During the hearing, the court heard important testimony and expert opinion. The intervention of Professor James Anaya, the United Nations Special Rapporteur on Indigenous rights and freedoms, was particularly noteworthy, as was the testimony of the Paraguayan expert attorney and anthropologist Rodrigo Villagra Carró. This latter expert report had very special meaning for us. For some reason, Rodrigo missed his connecting flight, and there was a serious risk that he would not make it to court in time. CEJIL somehow managed to get him to San José in the late afternoon the day before the presentation of his expert report. Rodrigo did not want to miss the opportunity of talking with the Sarayaku people and even had dinner with them at Patricia's apartment. I left early to prepare my arguments for the next day.

At first light the next day, the second and last day of the hearing, Carlos Mazabanda woke me up and took me to a very early breakfast before the first meeting of the day with Viviana. They had barely served us when Viviana arrived; there was too much to discuss, so our plates remained untouched. We entered the courtroom, sat down, and the hearing began with the statement of a witness that had been pending since the previous afternoon. Only then, I realized that I had not seen Rodrigo Villagra. I asked Carlos to help me look for him. He diligently looked for him around the room. He asked the entire Sarayaku delegation, but no one had seen him. We panicked, because we would soon be called upon to render his statement, and the expert was nowhere to be found. Carlos shot out of the courtroom to look for him at the hotel. I did not hear anything else until the chair of the court called Rodrigo to the stand and... he appeared. He gave a very solvent statement, extensively answered my questions, and

28 Ibid., paragraph 219.

29 Ibid., paragraph 220.

swept the floor with the state's interrogator, who wanted to surprise him with theoretical-anthropological questions. In summary, a brilliant expert's report. I could not hug him and thank him for his excellent work, as his flight left before the end of the hearing. I was only able to thank him in person some years later, when I saw him during a visit to Paraguay.

Later, I found out that the conversation following dinner the night before his testimony had extended for much too long. One by one, the Sarayaku leaders went to sleep until the last person, Patricia, had to ask Rodrigo sincerely to get some rest at about 3 a.m. Even worse, half an hour later, he knocked on Patricia's door to pick up the shoes he had forgotten. Obviously, the next morning's fatigue and the time difference did a number on him and Carlos had to go to great lengths to wake him up and make him operational speedily. But everything turned out well.

Marlon Santi's testimony was also important. I must confess that interrogating Marlon was very hard for me. I have a deep friendship with him, forged in a shared battle under high-tension, high-stakes, emotionally charged circumstances. When he referred, on the stand, to an especially painful matter for him, such as the passing of his mother, which happened at the height of the conflict, his voice broke and he paused, his eyes full of tears. I felt a lump in my throat and, for a few seconds, thought I would not be able to continue without breaking into tears. I did not want to cry, but not for shame or for fear of showing weakness. Quite the opposite. I never saw Marlon braver or fiercer than when fighting his emotions at that moment. I did not want to cry because, thousands of kilometers away in Quito, my family, my wife, my sons, and my mother were following the hearing live via the Internet. I did not want to increase their already enormous concern for me on that day by showing the intensity of my emotions. So Marlon and I recovered and went on with his testimony.

The Hearing in Sarayaku Territory

The hearing in Costa Rica was favorable to us.³⁰ We hoped for a rapid judgement, but the court decided that, before issuing its judgement, it should visit the community in its territory to listen to new testimony. Sarayaku worked hard to receive the illustrious judges, the state delegations,

30 Ecuadorian journalist Roberto Aguilar titled a chronicle of the hearing as "Sarayaku fue más que el Estado en la Corte" ("Sarayaku was more than the state at court"), *Diario Expreso*, July 10, 2011, http://expreso.ec/actualidad/sarayaku-fue-mas-en-la-corte-que-el-estado-XAGR_2350234

the Inter-American Commissioners, and dozens of media from all over the world.

On April 21, 2012, the court, represented by Chair Diego García Sayán and Judge Radhys Abreu, arrived in Sarayaku territory in the Ecuadorian Amazon jungle. This first visit of the Inter-American Court to an Indigenous territory took place in the context of the announcement of new mining and oil concessions in Indigenous territories by the Ecuadorian government, once again made without the consent of those affected and amidst criticism of the actions of the Inter-American Human Rights System.

The reality of holding the hearing in Sarayaku territory was extraordinary. José Gualinga, *Tayak Apu* of Sarayaku, put the situation in perspective when, during his welcoming words, he mentioned that his people had been waiting for that day since time immemorial. When arriving via the Bobonaza River to the place where their community now lives, the *Tayak*, the legendary founders of their people, drank *ayahuasca* and had the vision that some great elder-chiefs would visit them and solve a serious problem for their people. That is why they founded Sarayaku there.

The court heard the statements of the Sarayaku people — men and women of all ages. For the first time in their history, the highest court of justice in the Americas was listening to the Indigenous people in their own territory. In doing so, the IACHR made a leap in the application of the principle of immediacy. This time, the Ecuadorian state acknowledged its responsibility and the Sarayaku people reflected, during an assembly to answer the judges and the state on the same day, accepting and valuing the injunction, but asking the court to issue the expected judgement.

Closing a Cycle

For the victim, starting legal action at the national and international levels implies a huge effort. The first victory is presenting a claim, overcoming the feelings of fear, shame, and helplessness that usually dominate those who have suffered firsthand or through their loved ones. These feelings seriously affect their human dignity. Reporting the perpetrators to the authorities and monitoring the progress of the claim are activities that help rebuild those affected by the violation of their rights.

When the victim is a collective, as in the case of the Sarayaku people, the process of enforcing their rights contributes to strengthening the social cohesion of the community. This provides an opportunity to strengthen

their ethnic identity. The hardships they went through, the insults, the threats, the aggressions, the unrelenting pressure by the oil company — and the various state authorities who pressured, denigrated, and disqualified them for their anti-oil position that opposed the “national interest” — have left a mark on their identity at both the individual and collective level. The process before the Inter-American Court served Sarayaku in channeling their need for vindication and justice in a positive, creative, and non-violent way, thanks to the key role assumed by their leaders in the case, and the constant monitoring by their members. The hearings — both those held at the headquarters of the court in San José de Costa Rica and those held in the Sarayaku community — were a show of perseverance. Continuing with the case for almost a decade without surrendering to cost, distance, and difficulty was justified in those moments where the people were able to tell their truths to the representatives of a state that failed to protect them and gave their sacred territory to be turned into an oilfield.

The significance of this cycle-closing act of the ritual of saying in front of the judges what they had kept inside of them for almost a lifetime can be explained by the story of Rumi. When Rumi’s mother, as leader of her people in 2003, stood before a group of women at the Peace and Life Camps he, then a child of only eight, would walk through the jungle holding his mother’s hand. Another young man from Sarayaku, studying communication and a lover of film, managed to document the militarization of his people’s territory with a camcorder and produced the documentary *Soy Defensor de la Selva*.³¹ The film was used as evidence before the Inter-American Commission and won several international prizes. The documentary ends with the image of a small child with the phrase “Soy defensor de la selva,” from which the title of the video is taken, painted on his chest.

Nine years later, at the Sarayaku Assembly House where the hearing of the case before the IACHR took place, the now 17-year-old teenager was called to the stand. Like most kids his age in the community, he wore blue jeans, a shirt, and sports shoes. Only his face painting and the *llawthu* (traditional headband) he wore on his head showed his ethnic origin. During the five steps between where he was sitting and the stand, with state representatives to the left and the attorneys of his people to the right, he faced the judges and paused. In a storm of photographs, he removed his

31 <https://www.youtube.com/watch?v=nnLvVNsUmnY>

shirt and prepared to speak, just like that, bare chested, just as the camera had filmed him while he was walking with his mother to defend their territory. He did not say anything — he did not have to — but this manly and ancestral gesture tuned those present into what that moment meant to him. Without a doubt, his statement, speaking his mind and showing his feelings after a life of battle, meant closing a cycle to move on (Melo 2014, *Voces de la Selva*).

The Ecuadorian State Admits Responsibility

In the framework of this historic visit by the IACHR to Sarayaku territory, Alexis Mera, Legal Secretary to President Rafael Correa, told the court, the Kichwa Nation of Sarayaku, the Inter-American Commission, and the national and international public, that the state recognized its responsibility and was willing to reach a compensation agreement as part of the Sarayaku case. This transcendental statement was made in the framework of the Inter-American Court visiting Indigenous territory for the first time as part of its deliberations in a case submitted for its consideration — unprecedented diligence in approaching the victims to listen to the story of their suffering from their own mouths and in their own context. It was also the first time in the decade-long struggle that the Ecuadorian state had publicly recognized its responsibility regarding the human rights violations reported by Sarayaku.

It is a complex task to decipher the reasons behind the state's new position on the Sarayaku claims, after having disputed, and even attacked them during the nine years of litigation, four of which had been under the government of Rafael Correa. However, we felt that the government was expecting a defeat and designed the announcement as damage control. After all, it was made in the framework of a hearing taking place in the territory of the affected people and with massive international media coverage. We assumed that their intention was, first, to attempt to force an amicable solution of the case, at the last moment, to prevent a judgement setting a precedent on prior consultation and, second, to capitalize politically by focusing responsibility on previous administrations.

This crucial hearing took place amidst great tension and emotion. The previous day, the court delegates and representatives for both the state and the victims met at the Shell Mera military base, about fifteen minutes from Puyo, the capital of Pastaza province, under the leadership of Diego García Sayán, president of the IACHR. This meeting, in preparation

for the hearing the following day in the community, was very tense. The agents of the state included officers of the Attorney General who had assumed the defense of the case during the process, the Vice-Chancellor of the Republic, and the Executive Director of the Institute for the Ecological Development of the Amazon, Carlos Viterí Gualinga. Besides holding such a senior position in government, Carlos Viterí Gualinga was a native of Sarayaku and cousin of José Gualinga, then *Tayak Apu*, who occupied the chair next to mine on the Sarayaku side of the table.

At times, the discussion about the technical details of the agenda for the next day heated up. The state insisted on an overflight of the Kutukachi area, north of Sarayaku territory. Some months before, there had been a conflict in this area between the Tayjasaruta (the legitimate government of Sarayaku) and a group of *excomuneros*, exiled from the people. This banished group intended to establish themselves and split the territory to provide facilities for the oil company ENI AGIP to dig a new well in Sarayaku territory. Viviana Krsticevick and I, as the Sarayaku attorneys, argued that the Kutukachi matter was alien to the process held before the Inter-American Court. When the tension reached its climax, the president of the court ordered a recess. Then, Carlos Viterí Gualinga approached José Gualinga and said that he had instructions from the President of the Republic himself that would change the direction of the case. José questioned Carlos in his language, *Runa Shimi*, as I observed the intense and emotional discussion between the two leaders, cousins to each other, who sat at opposite sides of the table and represented opposing interests in the litigation. Both men talked with broken voices and tears in their eyes. At the end of the recess, both Viterí and the Vice-Chancellor disavowed the position of the Attorney General's office in front of the court, and desisted in their claim to fly over Kutukachi. It felt as if the following days would surely bring more surprises. That night, the team of Sarayaku leaders and their attorneys analyzed the possible scenarios and prepared to answer any state allegations.

The feeling of surprise increased again the next morning when, during breakfast, attorney Alexis Mera, Legal Secretary of the Presidency of the Republic, arrived at Shell's base. We understood that the level of the state's delegation had risen to the top. During his intervention, Alexis Mera made the following statement:

The government does not want to repeat any of the events reported, all the testimonies, all the invasive acts of 2003; the go-

vernment believes that the state is responsible for the events of 2003.

The government recognizes its responsibility; therefore, all the acts, the invasion, the actions of the armed forces, the actions to obstruct the rivers, are matters that we condemn as a government and that we believe deserve compensation. Therefore, I invite the counter-party to sit and negotiate. The state is willing to perform every action necessary with the community; I want to be straightforward about it.

During this hearing, requested by the President of the Republic, the President himself sent a letter to the President of the Inter-American Court of Human Rights inviting him to visit and verify the situation of the people, and to confirm that the government did in fact expel the oil company CGC. Upon our arrival five years ago, we saw all these incidents. They were no longer exploiting oil, and there would be no oil exploitation here as long as there is no prior consultation.

I saw what they were doing. No to Round 23. No to any bidding round without prior consultation. The rivers and the communities may not be polluted by oil exploitation, no polluting exploitation may be conducted, and we must discuss the situation of the communities, including their health and education conditions. Here, when talking about oil, we could have the best doctors come to treat the mothers, have the best health care equipment, have the best teachers coming from Quito... If there is going to be oil exploitation, it should benefit the communities. The issue is that the state has turned its back on the Indigenous people for a long time, and oil exploitation has been undertaken in prejudice to the communities. The government does not want this regime; therefore, we are not going to undertake any oil exploitation behind the backs of the communities, but rather with dialogue in the event that we decide to begin oil exploitation or even think about oil exploitation here.

There will be no oil activities without an open and honest dialogue, not with the oil company. We have changed the laws so that dialogue shall be with the government and not with the extractive sector. (Acosta 2012)

In his response, José Gualinga, considered the state's acknowledgment of responsibility and, on behalf of his people, asked the court to issue a judgement. In the end, there was a public commitment by Court President García Sayán to issue the judgement.

Following the visit of the IACHR to Sarayaku, I remember arriving at the Shell military base air terminal by helicopter. Upon landing, I connected to the Internet on my phone and started reading the news of the day. I was very surprised to note that, a few minutes after the emotional moment in which attorney Alexis Mera recognized the state's responsibility for the situation in Sarayaku on behalf of the government, the President of the Republic issued a new public statement from Quito denigrating the Sarayaku case.³²

The Judgement

The judgement of the Inter-American Court of Human Rights on the Sarayaku case is a landmark for Indigenous rights because, after almost a decade of litigation — from 2003 to 2010 at the Inter-American Commission, and from 2010 to 2012 at the Inter-American Court — it ruled in favor of an Amazonian Indigenous people. Like many other Indigenous people around the world, the Sarayaku people have seen their territory, their life, and their culture compromised because of a state-imposed oil project in their habitat without previously informing, consulting, or obtaining their consent. The imposed oil activities meant the militarization of their territory, environmental destruction, violence, persecution, aggression, and even the devastation of sacred elements of their culture and worldview. From a legal perspective, the judgement covers several relevant matters. First, the development regarding the right to free, prior, and informed consent of the Indigenous people, and the standards for its application. At this time in history, several Latin-American countries are suffering socio-environmental conflicts, with Indigenous people claiming the violation of their right to consultation, which results in the violation of other rights. The judgement in the Sarayaku case is significant, therefore, as it is binding on the Ecuadorian state and sets a mandatory precedent for members of the Organization of American States.

32 “Ecuador admite la responsabilidad por la violación de derechos humanos de un pueblo indígena,” ABC Color, April 22, 2012, <http://www.abc.com.py/internacionales/ecuador-admite-responsabilidad-por-violacion-de-derechos-de-pueblo-indigena-392754.html>

The IACHR has been very clear and reiterative regarding the stipulation that consultations should be conducted in good faith, through culturally appropriate procedures, and with the purpose of reaching an agreement.³³ Consultation should not serve as a mere formality, but should be considered a “true instrument of participation, which should respond to the ultimate purpose of establishing a dialogue based on principles of trust and mutual respect between the parties, and aimed at reaching a consensus.”³⁴ As a guarantee of non-repetition regarding exploration or extraction of natural resources or any type of investment or development plans that could impact Sarayaku territory, worldview, life, or cultural identity, the Sarayaku people must be previously, adequately and effectively consulted, in full compliance with the relevant international standards.³⁵ The standard regarding the consent of Indigenous people was established in the Inter-American Court judgement of *Saramaka v. Suriname*. In that case, the court stipulated that, regarding large-scale development or investment that might impact the territory, the state has an obligation not only to consult, but also to obtain free, prior, and informed consent for any development plans, according to the customs and traditions of the communities. Consequently, by ruling that consultations must be carried out pursuant to international standards, the judgement of the Sarayaku case refers to the standard of the Saramaka judgement regarding consent, making an effective contribution to a greater and deeper protection of Indigenous people’s rights, and an example of dignity that will surely inspire many around the world (Melo 2014, Derechos Indígenas).

The Process of Enforcing the Ruling

The judgement of the Inter-American Court considered the following compensation measures in favor of Sarayaku:

1. The state must neutralize, deactivate, and, if applicable, remove the pentolite both buried and on the surface of Sarayaku territory, based on a consultation process with the people regarding the terms, means, and methods.³⁶
2. In the eventual case that the state intends to conduct any activity or project for the extraction of natural resources in their territory,

33 Inter-American Court of Human Rights, *Sarayaku Indigenous People v. Ecuador*, judgement dated June 27, 2012, paragraph 177.

34 *Ibid.*, paragraph 186.

35 *Ibid.*, paragraph 299.

36 *Ibid.*, paragraphs 293 to 295.

or any investment plan or development of any other kind that might impact their territory, the state must previously, appropriately, and effectively consult the Sarayaku people according to the applicable international standards on the matter.³⁷

3. The state shall adopt legislative, administrative, or other measures necessary to fully implement and enforce the right to prior consultation of the Indigenous and tribal communities and people within a reasonable term, and amend those that prevent its full and free exercise, ensuring the participation of the communities.³⁸
4. Within a reasonable term and with the respective budget, the state shall implement mandatory programs or courses including modules on the national and international standards of the human rights of Indigenous people and communities, aimed at the military, police and legal officers, as well as other positions that may have any relationship with Indigenous people.³⁹
5. The state must hold a public event to recognize its international responsibility on the facts of this case.⁴⁰
6. The state must publish the documents stipulated.⁴¹
7. The state shall pay compensation for the material and immaterial damages caused,⁴² as well as reimbursing costs and expenses.⁴³

As I write these lines, state compliance with these measures continues to be a long and winding road. In 2012, the state paid the legal costs in favor of the court's legal assistance fund and CEJIL; in 2013, they compensated the Sarayaku people for material and immaterial damages. Sarayaku recognized the state's efforts to comply with these obligations before the court. Although modest if we consider the serious damages suffered (USD \$1.3 million), the compensation Sarayaku received has been useful to implement solutions to community problems, such as transportation to and from the community. The people have invested most of the

37 Ibid., paragraphs 299 and 300.

38 Ibid., paragraph 301.

39 Ibid., paragraph 302.

40 Ibid., paragraph 305.

41 Ibid., paragraphs 307 and 308.

42 Ibid., paragraphs 317, 323, and 331.

43 Ibid., paragraphs 335 through 339.

resources in creating and equipping a community aviation company, operating small planes that provide services to the community and other users.

Regarding the publication and dissemination of the judgement in various Amazonian languages, the measure was enforced in 2014, although with poor coordination between the state and Sarayaku, as the community was not informed of the dates of these issues. Likewise, the order to train members of the Armed Forces and the National Police on Indigenous rights was enforced with limited coordination with Sarayaku, as Marlon Santi and I only participated as trainers once. We do not know how many training sessions were held, nor the total number of personnel trained, nor the contents or approach used for training.

On the other hand, the order to enshrine the right to prior consultation *in compliance with international standards* has not been fulfilled. On this matter, the state insists that it has complied by enacting the “Regulations for Conducting Free, Prior and Informed Consultation in the Hydrocarbon Blocks Bidding and Award Processes,” issued by Executive Decree No. 1247, published on August 2, 2012. The position of Sarayaku is that the government issued this decree on July 19, 2012, *before* the court released the June 27 judgement on July 27, without any consultation with the Indigenous people who may be endangered by these situations and without considering the standards established by the court. Second, considering that the right to consultation is included in the Constitution of Ecuador and affects fundamental rights, it must be regulated by means of an Organic Law and not by decree. Furthermore, on November 30, 2012, the United Nations Committee of Economic and Social Rights referred to Decree 1247, recommending that the state “consider suspending the application of Decree 1247/2012 and, in its place, design the legislative measures to regulate the right to consultation, and conduct the relevant pre-legislative consultations, in coordination with the Indigenous people.”⁴⁴

In terms of this coordination, the state must consult Sarayaku in full compliance with international standards in the event of any project that implies an impact to their territory. On November 28, 2013, the Secretariat of Hydrocarbons published information regarding Round XI of the southwest round of oil bids, which closed with the reception of four offers.

44 Final observations of the Committee on the Third Ecuador report, GE. 12, approved by the Comité de Derechos Económicos, Sociales y Culturales during the 49th period of meetings (Nov. 14–30, 2012).

One of these offers was from Andes Petroleum Ecuador Lt. for block 79, affecting approximately 6,790 hectares of Sarayaku territory. On this matter, in February 2014, the state reported to the court that it conducted a consultation process that included block 79 from October 8 to November 3, 2012. The state mentioned the communities consulted, with no mention of Sarayaku.

In April 2015, the state granted licenses for the exploration and exploitation of hydrocarbons and related substances in blocks 74 and 75 to the public company Petroecuador EP, affecting 68% of the territory of the Kichwa Nation of Sarayaku.⁴⁵ In March and April 2015, the state allegedly consulted with the communities affected, called a “free, prior, and informed consultation process on these hydrocarbon projects in several communities of the Sarayaku parish, province of Pastaza, and in the settlements of the area of influence of both blocks.”⁴⁶ However, although blocks 74 and 75 affect 68% of Sarayaku territory, the process did not include any of the seven communities that comprise it (Sarayaku, CEJIL, and Mario Melo 2015). On May 22, 2015, the WIO Sarayaku security team surprised an officer of the Hydrocarbons Secretariat conducting environmental studies in the territory of the Sarayaku people.⁴⁷ The Sarayaku community was not informed, nor consulted, nor gave its consent to these intrusions nor to the environmental impact studies in their territory (Sarayaku, CEJIL, and Mario Melo 2015).⁴⁸

Regarding the order to remove CGC’s explosives from Sarayaku territory, the situation continues practically unchanged. Throughout recent years, there have been various work meetings, field visits, and exchanges of proposals, as well as formulations and amendments of budgets by officers of the competent ministries and the Tayjasaruta. But not a single additional gram of pentolite has been removed. Currently, the Sarayaku

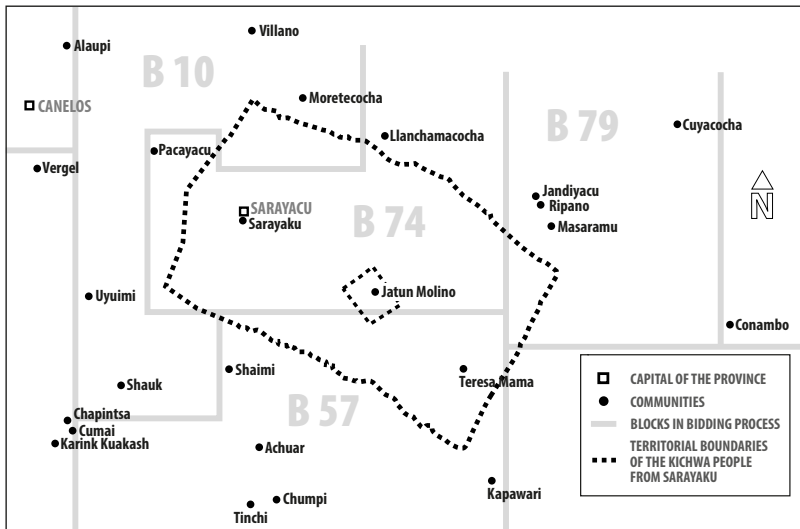
45 Answer to the press release issued by the Secretariat of Hydrocarbons on June 1, 2015, by Félix Santi, President of the Tayjasaruta.

46 Report of the illegal and arbitrary entry of the Secretariat of Hydrocarbons and the environmental consultancy companies Enrix and Abrus to the sacred territory of the Kichwa Indigenous People of Sarayaku, and to the communities of Teresa Mama and Chuva Kucha.

47 Ibid; Response to the press release issued by the Secretariat of Hydrocarbons on June 1, 2015, by *Tayak Apu* Félix Santi.

48 As mentioned by *Tayak Apu* Félix Santi in a press release published on May 23, 2015.

Map 3 Territory of the Kichwa people from Sarayaku regarding the oil blocks



SOURCE: Carlos Mazabanda, Fundación Pachamama 2013.

people see no political will on the part of the state to comply with this order (Sarayaku, CEJIL, and Mario Melo 2015).

Finally, the order to hold a public responsibility recognition act in Sarayaku was extensively discussed. Sarayaku requested that the person publicly apologizing should be the first authority of the state, but President Rafael Correa repeatedly refused to attend in person, delegating the responsibility to one or more of his ministers. In an interview during the program “Saturday Link,”⁴⁹ Correa said, “They want the President of the Republic to apologize, but the judgement does not provide for that, and I will not do it for one reason: because some of the Sarayaku leaders have misbehaved and deliberately allowed this lie.”⁵⁰ Regarding this position, and with closing the cycle in mind, Sarayaku accepted that a delegation of state ministers would visit the community to fulfill this promise.

49 See <https://www.youtube.com/watch?v=NhQkRxgt7KU> starting at the 2:43:00 mark

50 “Ministro de Justicia pedirá disculpas al pueblo Sarayaku,” *Ecuador en vivo*, August 3, 2013, <http://www.ecuadorenvivo.com/politica/24-politica/2907-ministro-de-justicia-pedira-disculpas-al-pueblo-sarayaku.html#.V22LG46wIkW>

The negotiation of the apologies text was complex, with Sarayaku preferring it to be short and concise. In the end, the flowing statement was approved.

On October 2, 2015, at around 9:00 a.m., the community square was full of people. Journalists from all over the world, delegates from Indigenous organizations, NGOs, and international bodies waited impatiently for the large delegation of high officials of the Ecuadorian state come to visit Sarayaku. Finally, the ministers, vice-ministers, generals, and more arrived and sat in a tight line under the sultry sun, in front of the Tayjasaruta Government Council. With my face painted with *huito* by the Sarayaku women, I had the honor of sitting next to the *Tayak Apu*.

The tension and expectation were palpable. Until the last minute, the proceedings threatened to abort. There was disagreement about the commitments unfulfilled. Not everyone who should have been there was there. I talk, negotiate, work as liaison, call for calm. Finally, after some debate, they agree to continue.

The climax arrived. The Minister of Justice took the stage, gave an unexpected speech, and the people grew impatient once more. Finally, she read the official public apology of the Ecuadorian state to the Sarayaku people for the human rights violations against them, as ordered by the Inter-American Court of Human Rights. This, without a doubt, was a transcendental moment in the history of the defense of collective rights of Indigenous people in the Americas. For the first time ever, a high-level state delegation traveled to Indigenous territory to apologize in person to an entire nation. Despite its importance, however, this act was not as meaningful as the one immediately following.

Next, *Tayak Apu* Félix Santi spoke on behalf of his people. Despite the discomfort and disagreement due to unfulfilled commitments, he said, Sarayaku forgave the Republic of Ecuador. Under these circumstances, forgiveness sealed the victory of a brave and dignified people who never learned how to surrender. Only a victor can accept the apologies and forgive those who have offended them.

The apology obviously implied a commitment to non-repetition. We understood that never again would workers of the state or a private company enter Sarayaku's sacred territory to conduct hydrocarbon activities without prior notification, consultation, and consent from the people. The State of Ecuador apologized because they had no intention of doing it again, and the Sarayaku people forgave it.

**KICHWA NATION OF SARAYAKU VS. ECUADOR,
INTERNATIONAL RESPONSIBILITY RECOGNITION ACT
BY THE ECUADORIAN STATE**

Dear Members of the Kichwa Indigenous Nation of Sarayaku:

On behalf of the Ecuadorian state, and in my capacity as Minister of Justice, Human Rights, and Worship, I address you solemnly in compliance with one of the compensation measures ordered by the Inter-American Court of Human Rights in a judgement dated June 27, 2012,* by declaring the following:

In this act, the authorities here present: Minister of Justice, Human Rights and Worship, Minister of the Environment, Minister of National Defense, Minister of Non-Renewable Natural Resources, former Minister of Mines and Oil, and the Comptroller General of the state, in compliance with the judgement of the Inter-American Court of Human Rights regarding the international recognition of responsibility of the Ecuadorian state for the violations of human rights suffered by the Kichwa Indigenous nation of Sarayaku during previous administrations, we offer the respective public apologies for the violation of Indigenous community property, the violation of cultural identity, the violation of the right to consultation, and for seriously compromising life and personal integrity, and for violating the right to judicial guarantees and judicial protection.

We confirm our firm commitment to the enforcement of human rights in our country and, especially, to the rights of the Kichwa Indigenous nation of Sarayaku, pursuant to international law and the treaties signed by the Republic of Ecuador.

Finally, for all the human rights violations suffered by the Kichwa Indigenous nation of Sarayaku during previous administrations, the Ecuadorian state expresses its unrestricted respect and consideration towards the women, men, the elderly, young people, boys and girls of Sarayaku, their elders, the living forest protective beings, and their commitment to ensuring the *Sumak kawsay* of the Sarayaku people.

—Issued and signed in *Casa del Medio Día* of the Sarayaku people, on October 1, 2014**

* Although dated June 27, the statement was released on July 27, 2012.

** **SOURCE:** Personal archives of the author.

However, this commitment, which seemed eternal, lasted only a few months. In May 2015, once again, workers of an oil consultancy company contracted by the state entered Sarayaku territory without prior notification, consultation, or consent from legitimate Sarayaku authorities. They entered for the same reasons as 13 or 14 years before: because the

decision makers had no regard for their commitments, responsibilities, rights, people, and dignity. They only cared about money.

Perhaps this new betrayal was foreshadowed by the ending of that day of apology. That festive day in which Sarayaku finally heard and accepted the apologies of the state ended in tragedy when a small airplane crashed, killing two communicators and two leaders leaving the community after fulfilling their duty of accompanying the people through such a transcendent moment. It was as if the cycle closed with a sacrifice, as my friend, anthropologist Roberto Narváz, told me that night, which touched me deeply.

Here is what I put on my Facebook page earlier that day:

Today was a very emotional day for me. After 12 years of fighting, Sarayaku showed its appreciation by gifting me a spear, a symbol of their warrior spirit, in the Public Apologies Act offered by the Ecuadorian state. I feel honored! When Marlon Santi gave the spear to me, I took it in my hands and raised in the air — a sign of victory. In my speech, I thanked the people, and said the words I am now writing here: “Thanks to my family, for all the essential emotional support, for suffering with us and following our case. To my wife — I’m sure she’s thinking about me right now — my daughters, who are with me right now, and my son who is far away. Thank you for all the love.”

I felt huge joy, satisfaction, and relief for all our work well done. But later, when death appeared, everything acquired a new meaning.

Summative Reflections: Sarayaku and the Integrity of Human Rights

One of the characteristics that made the Sarayaku case into a symbol is that it clearly shows how the public policies of countries highly dependent on the exploitation of natural resources privilege the interests of the extractive industries over the interests of the people affected by them. This situation violates the integrity of human rights. The gross violations to civil and political rights that can be seen in the Sarayaku case include the following:

- The non-consensual, arbitrary, and violent entry of oil workers, private security guards, and members of the Ecuadorian army into the community territory of the Sarayaku people, against their will.

- The arbitrary occupation of spaces in their territory by the company CGC and the army to build camps, heliports, trails, and seismic lines.
- The deforestation of extensive areas of the Amazon rainforest and the destruction of sacred trees and places.
- A six-month state of emergency, during which the population marched to defend their territory at the expense of their personal security and the exercise of their economic, social, and cultural rights. As well, they faced anxiety and psychological and spiritual suffering caused by the constant threat of the state to militarize their territory.
- Attacks and threats against the life and physical integrity of the members, allies, and advocates of the Sarayaku people.
- The Sarayaku people were prevented from traveling via the Bobonaza River, a traditional route from their territory to the provincial capital of Puyo, by people involved with CGC. This group prevented the people of Sarayaku from traveling upriver at the Canelos community until they withdrew the legal actions presented and reached an agreement with CGC.
- Moral and psychological suffering, as they felt attacked as a people through the constant statements of state authorities and CGC representatives, who used the media to denigrate Sarayaku, its members, and its way of life.

All these important facts were documented and used to justify our actions in Inter-American justice. What lies at the bottom of the case, however, is a debate that involves other rights. These can be summed up in one question: Is it legal for a state, against the explicit will of directly affected Indigenous people, to promote natural resource extraction in their sacred territory, to the detriment of the natural environment, the community, their culture, their values, and their spirituality, thus compromising their development as a people? This question, necessary to understanding the Sarayaku case from a human rights integrity approach, is also, sadly, valid in countless situations around the globe where cultural and biological diversity are sacrificed to extract non-renewable natural resources (Melo 2004). The people of Sarayaku and their allies tried to put a spotlight on the rights of their people whose sacred territories, way of living, values, culture, spirituality, and environment were threatened by a public policy aimed at promoting non-consensual extractive activities in their territory,

even by force. They pushed forward the conversation about what legal and effective mechanisms can enforce these rights.

Social Rights in the Midst of Conflict

The oil company's presence in Sarayaku territory subjected the people to several forms of violence. Of course, there was direct violence against the people, especially the four young people who were kidnapped. When the communities that sympathized with the oil company closed the river to prevent the Sarayaku people from traveling, however, they were violent in other ways. They cut the flow of products, damaging the subsistence economy of their Amazonian neighbors, and undermining their food safety. Further, the armed conflict limited access to health care, as the medical brigades that used to provide sporadic assistance withdrew, leaving the local dispensary devoid of basic medical supplies such as venom antiserum, which is vital in rainforest areas. In addition, classes at Sarayaku educational centers had to be closed for long periods because young people and children participated in the priority mission of patrolling their territory against armed entry into Sarayaku territory (Melo 2004).

The standard of living in Sarayaku systematically dropped during the conflict, partially because of limitations to freedom of movement and access to health care and education, which especially affected the most vulnerable groups: pregnant women, children, and the elderly. The anxiety caused by repeated threats from the authorities to force the entry of the oil company into their territory plunged the community into permanent tension, preventing the *Jista* celebration, the Great Festival of Spears, for three years. This spiritual ceremony invites the Sarayaku people to renew their culture and transmit their traditions to the next generation. The impact on the integrity of the culture is immeasurable (Melo 2005). Based on these impacts, we can draw three conclusions:

1. The decisions of the Inter-American Human Rights System in favor of Sarayaku, including the injunctions of 2003 and the temporary measures of 2004, scaled up public scrutiny on the case to the national and international level. Media monitoring and the concern of international organizations and social movements from all over the world surely contributed, for example, to the non-realization of the threats to militarize Sarayaku territory between 2003 and 2004, which would have resulted in a violent outcome to the conflict.



Welcoming ceremony for the Sarayaku case hearing before the Inter-American Court of Human Rights in San José de Costa Rica, July 6, 2011. Nina Gualinga, Bertha Gualinga, Cristina Gualinga, José Gualinga, Sabino Gualinga, and Humberto Cholango appear in the foreground.

2. Since the conflict escalated in late 2002, the Sarayaku community endured the integral violation of their human rights. These included violations of community property, illegal detention and torture of young people, attempted sexual assaults, repeated death threats to community leaders, and attacks against its leaders and allies. Moreover, successive government announcements of impending military force to ensure the entrance of the oil company into Sarayaku territory maintained a permanent state of anxiety, preventing the normal development of productive activities and undermining food security, access to education, and health care.
3. The impacts of the conflict on the free transit of the Sarayaku people to and from their territory via the Bobonaza River because of the armed blockade imposed by the allies of the oil company as well as army checkpoints deserve special mention.

Regarding the territorial defense strategies, I note six aspects:

1. The determination and protagonism of the Sarayaku people was paramount. We attorneys and advisors played our role, but the

people made all the decisions and made the case their own. This was clear from day one of dialogue with Sarayaku several years ago; their leaders proved completely capable of understanding the procedures, learning along the way (just like their attorneys and advisors) and making decisions.

2. The political strategy frames the legal strategy, and the legal strategy has an instrumental role in the broader political vision. The political vision upon which the legal strategy is based is the exercise of self-determination. Sarayaku consolidated itself as a self-determined, self-governed people during the litigation. They used the litigation with the significant political purpose of constructing popular power that would simply allow them to live a better life.
3. Sarayaku's capacity to establish and maintain alliances with local, national, and international actors was surprising. One might wonder how a small community of 1,200 humble inhabitants living in the Ecuadorian jungle, not many of whom speak Spanish or have university studies, has the capacity to defeat a consortium of transnational companies, call the state to stand accused and defeat it, and prevent their sacred territory from turning into an oil field. Many times, while talking about this experience with other interested communities, we have made an analogy with the spiders in the jungle, who weave their webs to catch insects who have many times their size and strength. The web created by Sarayaku was based on solidarity and friendship with people committed to the defense of nature and Indigenous people from all over the world. This big and important work garnered a lot of buy-in.
4. The participation of women was outstanding. Sarayaku has brave, strong, determined women. Men usually break. The male leaders of the Indigenous communities have been more exposed to the outside world than the women due to historical circumstances, and sometimes the external pressure breaks them. Women, on the other hand, have a closer commitment to the land and their children, being more involved with the family and its physical and cultural reproduction, making them vital in such a long process. The success of Sarayaku is the success of outstanding women like Patricia Gualinga, Ena Santi, and others who have become global advocates for Indigenous rights.

5. The process of demanding rights is also a victim rehabilitation process. Violations of human rights are, quite simply, violations of human dignity. In this case, the people rose up, sought justice, and framed a new political vision.
6. The official state apology began to close this cycle of rights violation. This was historic, as Ecuador has a colonial heritage with its historic disregard for Indigenous communities. The concept of the plurinational state mentioned in the Constitution of Ecuador may yet find its essence in these actions.

Participating in this entire legal cycle has been very exciting for me. For this reason, I cannot complete this document without acknowledging the fundamental support of the CDES team, with whom we started the defense of Sarayaku in 2002, the team of Fundación Pachamama, with whom we continued working until 2014, and the CEJIL team, who have provided extraordinary support throughout all these years. Once again, I want to thank the Sarayaku people for allowing me to be their attorney, and my family for sharing my story throughout this process filled with enormous personal and professional satisfaction, but also tension, fear, pressure, and risk.

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How could an Indigenous people in the middle

of the Amazon protect its life and territory from oil exploitation? What was the answer of the Ecuadorian government to the claims of the Sarayaku people? How can we develop a human rights strategy at different geographical levels? In this text, Mario Melo Cevallos, attorney of the Kichwa Nation of Sarayaku, addresses these questions by presenting his side of the story of resistance and mobilization of the Indigenous people against the state's plans to exploit the oil lying in the heart of the Amazon.

From the jungle, through the national courts, and reaching the Inter-American Human Rights System, the author presents the different foci of the political and legal mobilization of Sarayaku. Based on over ten years of work with the sons of the jaguar, Melo combines anecdotes about this massive social mobilization with judicial decisions to show the story behind one of the most important rulings by the Inter-American Court of Human Rights.

There is no doubt that the Sarayaku people are a symbol for other Indigenous peoples in the Global South. We hope that their experience is an example for all Indigenous people advocating against the expansion of extractive industries in their territories.

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