

*Forgotten Territories, Unrealized Rights:*  
**Rural Afro-Ecuadorians and their Fight for Land, Equality, and Security**



A Report from the Rapoport Delegation on Afro-Ecuadorian Land Rights

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**THE ROBERT S. STRAUSS CENTER**  
FOR INTERNATIONAL SECURITY AND LAW



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## **I. EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

In light of Ecuador's renewed recognition of Afro-Ecuadorians as a distinct people with individual and collective rights to their ancestral territory in its 2008 Constitution, the Bernard and Audre Rapoport Center for Human Rights and Justice carried out a legal and policy study on the land rights of rural Afro-Ecuadorian communities. The study included a fact-finding delegation that visited Quito, Esmeraldas and the Valle del Chota in spring 2009. This report draws from the Center's research and the delegation's meetings with Afro-Ecuadorian community members, activists, academics, and state officials with whom the delegation met in Ecuador. It examines the situation facing rural Afro-Ecuadorian communities and their struggle for land rights.

Despite the affirmation of their rights in Ecuador's 2008 Constitution, rural Afro-descendants face deeply entrenched obstacles to the realization of those rights. Afro-Ecuadorians struggle against pervasive and historical forms of structural discrimination, reflected in the disproportionate rates of poverty and inadequate access to basic social services that they face. Although Afro-Ecuadorians make substantial efforts to gain collective title and meaningful access to land, the imposition of inadequately regulated commercial development projects, irresponsible public policies, and violence towards their communities actively erodes Afro-Ecuadorians' ability to enjoy their nationally and internationally guaranteed right to property as well as their economic, cultural and civil rights.

Afro-descendants in the province of Esmeraldas face the destruction of their ancestral territories and environment due to aggressive and largely unregulated logging, oil palm and commercial shrimping practices, while land trafficking and violence from the war in Colombia present multiple forms of violence and instability along the province's border. In the Valle del Chota, unequal access to quality land and water resources continue to impede possibilities for community-driven development. In both regions, Afro-Ecuadorians report the impossibility of gaining access to credit, thwarting their attempts at sustainable development even on the land to which they do have access.

Despite its promises, the Ecuadorian state fails to give priority to the land rights of Afro-Ecuadorians, implementing neither the legislation nor regulations necessary for the protection of Afro-Ecuadorians' rights under domestic and international law. Ecuador is in a position to take a leading role in the formulation of economic and social policies regarding its Afro-descendant population, but it can do so only if it takes seriously the rights included in its intercultural Constitution, actively seeks the resolution of land conflicts that specifically attend to the rights of Afro-Ecuadorians, and makes policy decisions with the consultation and participation of Afro-descendant communities.

The Rapoport Center makes the following key recommendations to the Ecuadorian government and other parties whose actions affect the rights, resources, and titling efforts of Afro-Ecuadorians:

- The Ecuadorian government should immediately establish a program and assign institutional responsibility for the identification, titling and protection of Afro-Ecuadorian ancestral lands in Esmeraldas, giving clear priority to the rights of ancestral landowners over commercial interests.
- The Ecuadorian government should develop and assign institutional responsibility for a program to purchase or otherwise provide productive rural lands in the Valle del Chota and redistribute these lands to Afro-Ecuadorian families to ensure a more equitable management of local resources.
- The Ecuadorian government should support and promote local development for Afro-Ecuadorian communities by ensuring fair lending and credit practices to Afro-Ecuadorians and by adopting legislation and/or regulations that provide credit or other forms of assistance that do not require that land be used as collateral.
- The Ecuadorian government should enforce current legislation and adopt new legislation and regulations to ensure environmental protection and remediation for environmental harms, taking into particular consideration the protection of mangrove areas affected by the commercial shrimping industry and the contamination of the water, land, and air caused by the oil palm industry. All new policies and development projects should require environmental impact studies and the prior-consultation of Afro-Ecuadorian communities.
- The Inter-American Commission on Human Rights should conduct a study on Afro-descendant land rights in Latin America, strengthen the role of the Special Rapporteur on Afro-Descendant Issues, and actively promote the finalization of a Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. This Draft should include strong provisions guaranteeing the collective and other property rights of Afro-descendants.
- International and regional financial institutions such as the World Bank and the Inter-American Development Bank should ensure that all development and micro-credit programs affecting Afro-Ecuadorian communities are planned and implemented with the full participation of those communities.
- The United States government should reduce military and police aid to Colombia, which is increasing the militarization of the border with Ecuador, and increase funding for development projects by Afro-Ecuadorian communities.

## II. INTRODUCTION

On September 28, 2008, Ecuadorian citizens voted to adopt a new constitution that recognized their country as a “plurinational, intercultural, and inclusive nation.”<sup>1</sup> The new Constitution was heralded by many for its progressive provisions regarding the rights of indigenous peoples, Afro-Ecuadorians, and even of the mother earth (*Pacha Mama*). Most important for Afro-Ecuadorians, the Constitution criminalizes discrimination, provides for affirmative action policies, and guarantees a broad array of cultural, economic, and political rights for both individuals and communities.<sup>2</sup> It also recognizes Afro-Ecuadorian communities as distinct *pueblos*<sup>3</sup> and pledges to protect communal lands and communities’ ancestral territories.<sup>4</sup> Additionally, the state identifies Afro-Ecuadorian communities with collective territory as an ancestral form of territorial organization.<sup>5</sup> Through the guarantee of many of these rights, the Constitution acknowledges Afro-Ecuadorian communities’ legitimate, historical, and often pre-state claims to the land they have long occupied, used, and cultivated.

In ratifying this progressive social pact, which reflects and even expands upon many international human rights norms, Ecuador’s citizenry renewed its commitment to ensure Afro-descendants as integral and equal participants in Ecuadorian society. While the Constitution offers an opportunity for government and citizens to address the multifaceted invisibility, marginalization, and poverty that Afro-Ecuadorians have experienced for centuries, it is not the first constitution of Ecuador to recognize the rights, even the territorial rights, of Afro-descendants.

Thus, the challenge facing Afro-Ecuadorians is how to ensure that the commitments embodied in the 2008 Constitution are translated into practice. In the past, the state has failed to

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<sup>1</sup> Constitución Política del Ecuador 2008. Art 1. Article 1 of the Constitution reads: “Ecuador is a constitutional state of rights and justice, social, democratic, sovereign, independent, united, intercultural, plurinational, and secular.” Original: “El Ecuador es un Estado constitucional de derechos y justicia, social, democrático, soberano, independiente, unitario, intercultural, plurinacional y laico.” Constitución Política del Ecuador 2008. Art 1. Hereinafter, Constitution of 2008.

<sup>2</sup> Constitution of 2008. See, for example, Art. 11.2; Art. 57; Art. 65 and Art 203 No.4; Art. 6; Art. 10; Art. 11; Arts. 21-25; Art. 48; Arts. 56-58. These and other provisions discussed with regard to Afro-Ecuadorians also apply to indigenous and sometimes other communities, including *montubios* (used to refer to distinct *mestizo* communities along Ecuador’s central coast).

<sup>3</sup> Constitution of 2008, Art. 58.

<sup>4</sup> *Ibid.*, Art. 57 No. 4; “To conserve the indefeasible property of their communal lands, that are inalienable, unseizable and indivisible.” Original: “Conservar la propiedad imprescriptible de sus tierras comunitarias, que serán inalienables, inembargables e indivisibles;”; Art. 57 No. 5. “To maintain the possession of the land and ancestral territories and obtain its free adjudication. Original: “Mantener la posesión de las tierras y territorios ancestrales y obtener su adjudicación gratuita;” Art. 57 No. 9: “To conserve and develop their own forms of coexistence and social organization, and of generation and exercise of authority, in their legally recognized territories and communal territories of ancestral possession. Original: “Conservar y desarrollar sus propias formas de convivencia y organización social, y de generación y ejercicio de la autoridad, en sus territorios legalmente reconocidos y tierras comunitarias de posesión ancestral.”

<sup>5</sup> *Ibid.*, Art. 60, “It recognizes the communes that have collective property of the land as an ancestral form of territorial organization.” Original: “Se reconoce a las comunas que tienen propiedad colectiva de la tierra, como una forma ancestral de organización territorial.”



create legislation and provide administrative structures to enact the constitutional provisions most critical to Afro-Ecuadorians. The 1998 Constitution, for example, ensured some Afro-descendant communities collective title to ancestral lands as well as the right to develop their territories through a model known as *Circunscripciones Territoriales Afroecuatorianas* (Circumscription of Afro-Ecuadorian Territory-CTAs).<sup>6</sup> Despite the efforts of many organizations and multiple meetings to refine the CTAs, Afro-Ecuadorians have been provided no standard means by which to claim and receive recognition for their traditional lands. No Afro-Ecuadorian community has obtained recognition as a CTA.

Moreover, Afro-Ecuadorians face increasingly dire circumstances. Rural Afro-Ecuadorian communities along the northern coast of Esmeraldas struggle against commercial pressures, land trafficking, and multiple forms of violence. In the dry and mountainous Valle del Chota, land loss and lack of access to land and water underscore the profound socioeconomic disenfranchisement of the Afro-descendant communities that have resided there for centuries.

Ecuador stands at a critical juncture. If it takes seriously the commitments manifested in the intercultural Constitution in its restructuring of the state and its resolution of land conflicts, it could serve as a model for all of Latin America. Doing so, however, means combating and reversing centuries of bias against Afro-Ecuadorians, beginning by ensuring their full participation in the policy-making process.

This report, the third in a series of human rights reports by the Rapoport Center for Human Rights and Justice on Afro-descendant land rights in Latin America, examines the historical and current situation of rural Afro-Ecuadorians and their struggle for social, cultural, political, and territorial rights. While recognizing the troubling structural discrimination faced by all of Ecuador's Afro-descendants, the report focuses on the distinct experiences of rural Afro-Ecuadorians in the province of Esmeraldas and in the Valle del Chota, located in the provinces of Carchi, and Imbabura.

The report first assesses the broad historical and social context of rural Afro-Ecuadorians. It then analyzes the international and domestic legal frameworks for addressing Afro-Ecuadorian rights, detailing the different visions and challenges facing Afro-Esmeraldeños and Afro-Choteños. Additionally, it evaluates the role of government agencies and international institutions as it relates to Afro-Ecuadorians' struggle for recognition and rights. Finally, the report concludes by providing several recommendations for attending to the precarious economic and social positions of rural Afro-Ecuadorians and realizing their fundamental economic, social, political, and cultural rights.

The report is the product of a nearly year-long inquiry into the human rights situation of Afro-Ecuadorians primarily undertaken by a delegation from the Rapoport Center, which

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<sup>6</sup> Constitución Política de 1998. Capítulo 3, Art. 224, Capítulo 4, 241, Capítulo 5, Arts. 83, 84, 85. <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html> (accessed August 20, 2009). Hereinafter, Constitution of 1998.

included Rapoport Center faculty and staff and a multidisciplinary group of students and faculty from the University of Texas School of Law, the Lozano Long Institute for Latin American Studies, and the LBJ School of Public Affairs. As a part of their research, the delegation carried out a ten-day fact-finding visit to Ecuador from March 13-22, 2009, during which members conducted interviews and meetings with government officials, non-governmental organizations, Afro-Ecuadorian community members, and academics in Esmeraldas, the Valle del Chota, and Quito. This report is closely informed by the delegation's investigation in Ecuador.

Previous reports about Afro-descendant land rights in Latin America focused on the experience of communities in Colombia and Brazil. During 2007, the Rapoport Center investigated the successes and failures of the implementation of Ley 70, a Colombian law aimed at securing collective land title for rural Afro-descendant communities in that country. The following year, the Rapoport Center team studied the struggle for collective land rights and cultural recognition of Afro-descendant *quilombo* communities in Brazil. The reports from these studies, *Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians*, and *Between the Law and Their Land: Afro-Brazilian Quilombo Communities' Struggle for Land Rights* are published on the Rapoport Center website at [www.rapoportcenter.org](http://www.rapoportcenter.org).

The Rapoport Center would like to thank the Robert Strauss Center for International Security and Law and the Lozano Long Institute of Latin American Studies for their support. The delegation would also like to express its gratitude to the countless community leaders, activists, government officials, and academics who provided insight and guidance throughout the research and writing process. The views expressed herein are those of the Rapoport Center and do not reflect the institutional position of the University of Texas at Austin.

### **III. AFRO-ECUADORIANS' HISTORICAL STRUGGLE FOR AUTONOMY, LAND, AND EQUALITY**

Land has always been central to Afro-Ecuadorian rural communities, forming an important basis of their economic livelihood and cultural reproduction. Today, as rural Afro-Ecuadorians advocate for economic development and state recognition of their collective property rights through renewed constitutional guarantees, a view of the historical development of Afro-Ecuadorian communities highlights why land remains key to their political, social and economic empowerment and full inclusion into Ecuadorian society.

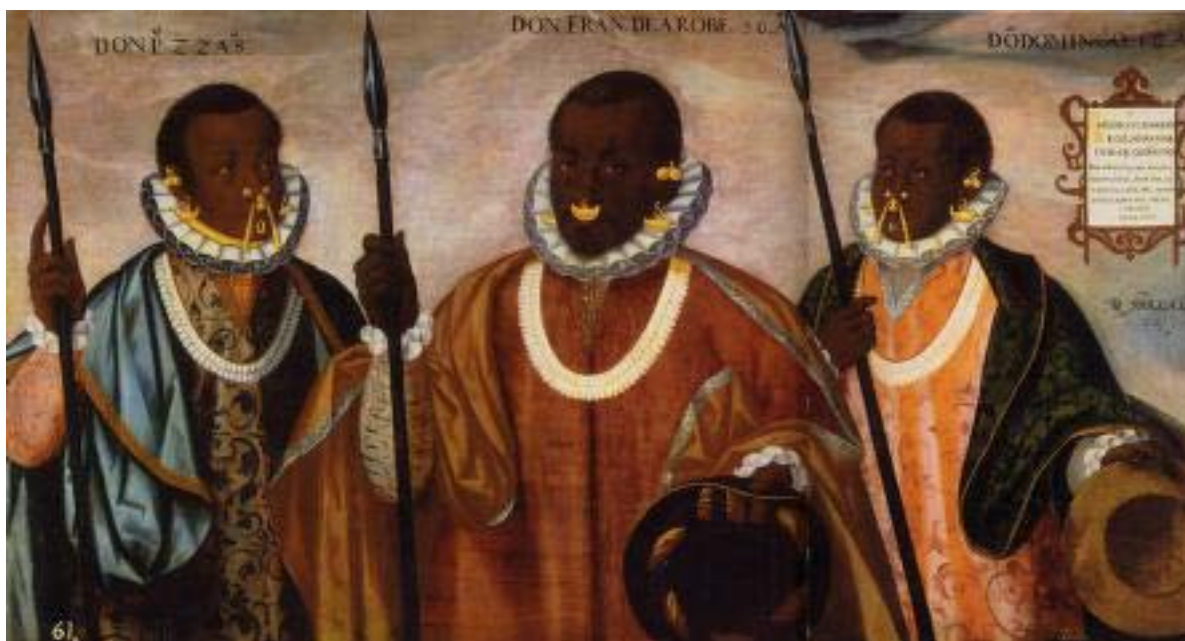
#### **A. ESMERALDAS: ROOTS OF TERRITORY, RESISTANCE, AND AUTONOMY**

The province of Esmeraldas, along the northern coast of present-day Ecuador, has long been regarded as a historic homeland for Afro-Ecuadorians, whose claims to ancestral collective lands date back to 1532, when the Spanish slave traders brought the first Africans to Ecuador. Enslaved Africans were bought, sold, and transported to work in all regions of the country, both rural and urban. In Esmeraldas, many slaves worked in gold mines. The province also became home to escaped and freed African and Afro-descendant peoples who established autonomous

settlements.

In 1540, the first free Africans settled in the San Mateo parish of modern Esmeraldas after escaping from the shipwreck of a slave ship off the Ecuadorian coast. A second shipwreck in 1553 brought another group of twenty-three Africans from Guinea,<sup>7</sup> including Alonso de Illescas, an important African leader, to the area.<sup>8</sup>

**Figure 1:** Adrián Sánchez Galque. “Los mulatos de Esmeraldas,” 1599.<sup>9</sup>



Gradually, many African and Afro-descendant peoples who escaped from captivity settled the area from northern Manabí into present day Barbaxoas, Colombia, forming free communities often called *palenques*.<sup>10</sup> Through the joining of these groups and indigenous

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<sup>7</sup> Charles Beatty Medina, “Caught between Rivals: The Spanish-African Maroon Competition for Captive Indian Labor in the Region of Esmeraldas During the Late Sixteenth and Early Seventeenth Centuries,” *The Americas*: 63.1 (2006): 113-136.

<sup>8</sup> On October 2, 1997, the Ecuadorian government declared Alonso de Illescas a national hero. “Personajes Afroecuatorianos Históricos: Alonso de Illescas (Siglo XVI),” <http://afros.wordpress.com/historia/personajes-afroecuatorianos-historicos/> (accessed August 18, 2009).

<sup>9</sup> Elizabeth P. Benson, et al. *Retratos: 2000 Years of Latin American Painting* (New Haven and London: Yale University Press, 2005), 114-115, depicting painting by Andres Sanchez Galque, “Los Mulatos de Esmeraldas,” from 1599. This is the oldest existing signed and dated American painting. It depicts Francisco de Arrobe, a leader of San Mateo, and his sons Pedro and Domingo. “Biografías de personajes Afro Ecuatorianos” <http://www.edufuturo.com/educacion.php?c=427> (accessed August 16, 2009).

<sup>10</sup> Norman E. Whitten, Jr. and Diego Quiroga, “To Rescue National Dignity: Blackness as a Quality of Nationalist Creativity in Ecuador,” in *Blackness in Latin America and the Caribbean: Social Dynamics and Cultural Transformations*, ed. Norman E. Whitten, Jr. and Arlene Torres (Bloomington: University of Indiana Press, 1998), 79-8; Jhon Antón Sánchez and Gary A. Puckrein, *Afroecuatorianos y Afronorteamericanos: Dos lecturas para una*

peoples throughout the region, an autonomous confederation of a reported one hundred thousand people in 1599 was formed, and came to be known as the *República de Zambos*, or “Zambo Republic,” referring to the mixing of Afro-descendant and indigenous people.<sup>11</sup>

Although the Spanish Crown initially took little interest in the Esmeraldas region, by 1563 the *Audiencia Royal* (colonial court) of Quito began seeking the development of a new port on the Pacific coast of Esmeraldas. Quiteño authorities looked to Afro-descendants to act as intermediaries and peacekeepers between them and indigenous inhabitants of the area. Through a bargain with the Spanish in Quito, Afro-descendant communities pledged loyalty to the Crown, while maintaining political control over the region and exemption from tribute and labor obligations.<sup>12</sup> Escaped slaves from Colombia and Panama continued to contribute to the number of Afro-descendants in the region. Despite the existence of politically autonomous Afro-descendant communities, slavery continued to persist in Esmeraldas through the 19<sup>th</sup> century. Free and slave Afro-descendants in Esmeraldas joined with Afro-descendants throughout the national territory in the independence movements from Spain and Ecuador’s separation from *Gran Colombia* in the 1830s.<sup>13</sup>

Following the abolition of slavery in 1852, some Afro-descendant communities in Esmeraldas petitioned the state for the recognition of their collective territories, in some cases having collectively purchased lands directly.<sup>14</sup> One of the communities with which the Rapoport delegation met, *Comuna Rio Santiago de Cayapas*, claims to have purchased some of its lands in this way.<sup>15</sup>

In 1937, the Ecuadorian government established the *Ley de Organización y Régimen de Comunas*, (commonly known as the *Ley de Comunas* or Law of Communes) by which communities of more than fifty people who collectively used land or water could apply for legal recognition as *comunas*.<sup>16</sup> Today, of the 38 Afro-Ecuadorian communities in Esmeraldas that have obtained collective title for their ancestral lands, a number are registered as *comunas*.<sup>17</sup> Contemporary *comunas* struggle against mandatory annual elections and other requirements imposed by the 1937 legislation that arguably weaken the ability of *comuna* leadership to

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*aproximación a su identidad, historia y lucha por los derechos ciudadano* (Quito: Fundación Museos de la Ciudad, 2007), 36.

<sup>11</sup> Whitten and Quiroga, 80; Franklin Miranda, *Hacia una Narrativa Afroecuatoriana: cimarronaje cultural en América Latina* (Quito: Casa de la Cultura Ecuatoriana “Benjamín Carrión”, Núcleo de Esmeraldas, Abya-Yala, 2005), 43.

<sup>12</sup> Charles Beatty Medina, 118-124.

<sup>13</sup> Norman E. Whitten, *Black Frontiersmen: A South American Case* (Cambridge, Mass.: Schenkman Pub. Co., 1974), 47. The republic of Gran Colombia comprised the present day nations of Colombia, Venezuela, Ecuador and Panama from 1819-1830.

<sup>14</sup> *Ibid.*, 41.

<sup>15</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>16</sup> Ecuador. *Ley de organización y régimen de las comunas* (Quito: Talleres Gráficos de Educación, 1937).

<sup>17</sup> Jhon Antón Sánchez, *Corporación de Desarrollo Afroecuatoriano (CODAE) - Circunscripciones Territoriales*. Quito, Ecuador (Pamphlet), 5-6. According to this report, these 38 communities received collective title as a result of the 1994 agrarian reform law.

organize on behalf of communities.<sup>18</sup>

## B. VALLE DEL CHOTA: AN UNJUST HISTORY OF LABOR AND LAND

The Valle del Chota region, through which the Chota-Mira River runs, is the historic center of the Afro-Ecuadorian population in the northern highlands of Ecuador. Located between the capital city of Quito and the Colombian border, the Valle del Chota forms part of the provinces of Imbabura and Carchi. Well suited to grape, cotton, and sugarcane cultivation, the region was occupied by Spanish colonists in the early 16<sup>th</sup> century and, by the mid-1500s, large *haciendas* (plantations) dominated the valley.<sup>19</sup> A century later, Jesuits arrived in the region, transporting with them large numbers of African slaves to work on their sugarcane, tobacco, and grapevine plantations.<sup>20</sup> After the expulsion of the Jesuits from the Spanish colonies in 1767, the Spanish Crown first assumed control of their lands, but then quickly sold them to private landowners, who continued the slave-based system of agriculture in the region. Slaves in the Valle del Chota resisted their bondage in multiple ways, and some escaped, often fleeing west to Esmeraldas.<sup>21</sup>

After the abolition of slavery in 1852, former slaves from the Valle del Chota found themselves without money, land, or any form of reparations, leaving them with few choices with respect to how they would carry on their lives. Many continued to work the lands of their former masters, entering into a system of indentured servitude known as *huasipungo*, or sharecropping. Post-abolition, *huasipungo* came to characterize the work relations for Afro-descendants in the Valle del Chota. *Huasipungueros* worked the land of *hacendados* (large plantation owners) in exchange for the right to small farm plots used for subsistence and small-scale commercial crops. Into the twentieth century, *huasipungueros* were bought and sold as part of *hacienda* property.<sup>22</sup>

The *huasipungo* system lasted into the 1960s. Continuing to work the same land as their ancestors who had arrived as slaves, Afro-Choteños remained tied to an unjust social and economic system.

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<sup>18</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

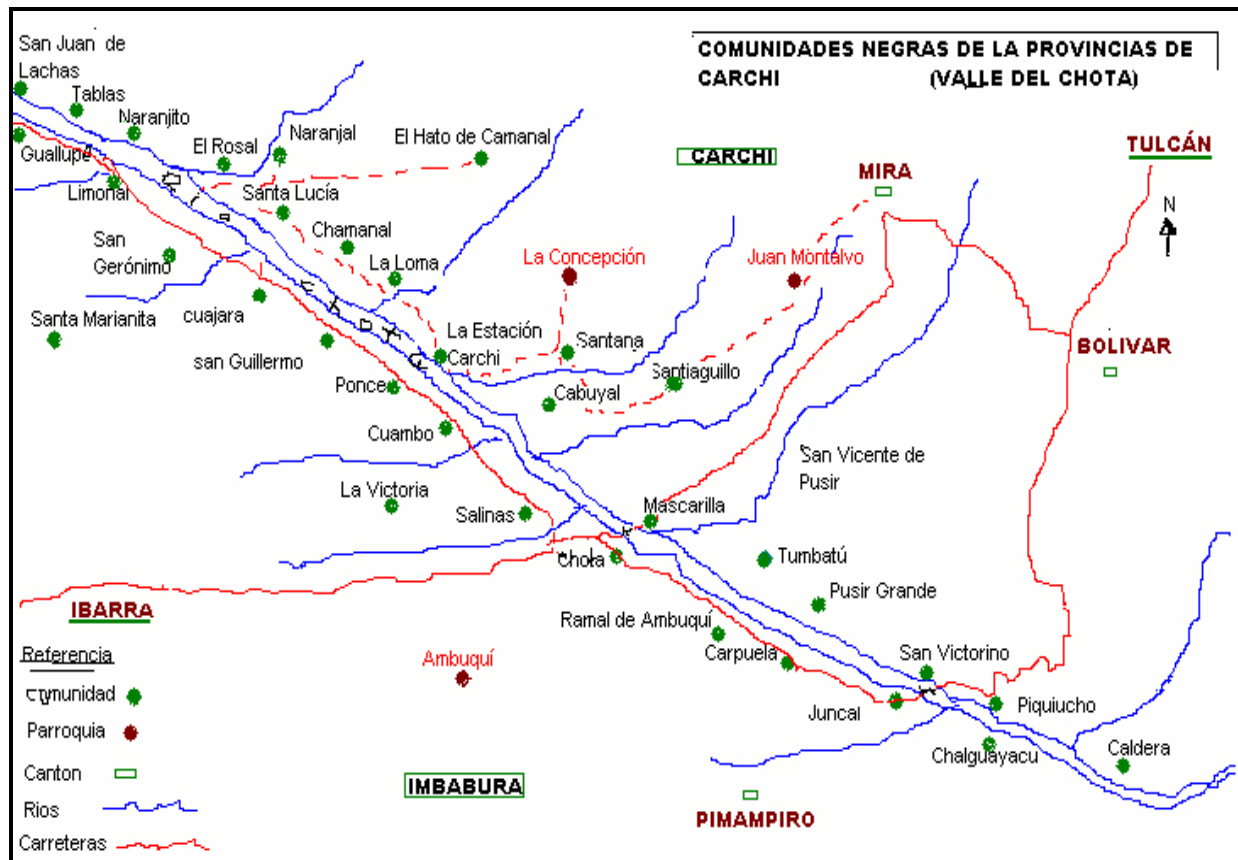
<sup>19</sup> Rosario Coronel, *El Negro en la Historia del Ecuador y del Sur de Colombia* (Quito: Centro Cultural Afroecuatoriano, 1988), 174.

<sup>20</sup> *Ibid.*, 178, 183.

<sup>21</sup> Whitten and Quiroga, "To Rescue National Dignity," 82.

<sup>22</sup> Dennis M. Hanratty, *Ecuador: A Country Study* (Washington, D.C.: Federal Research Division, Library of Congress, 1991) [http://leweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+ec0058\)](http://leweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+ec0058)) (accessed August 9, 2009). In addition to *huasipungo*, Afro-Choteños also sometimes entered into a forced labor arrangement known as *concertaje*, through which they worked for very low daily wages, incurring debts that would be passed down through generations - often forcing Afro-Choteños back into the *huasipungo* system. See José F. Chalá Cruz, *Chota profundo: antropología de los afrochoteños* (Chota: Centro de Investigaciones Familia Negra, CIFANE, 2006), 97.

Figure 2: Communities of the Valle del Chota<sup>23</sup>



In 1964, Ecuador’s military government enacted the first *Ley de Reforma Agraria* (Agrarian Reform Law) in an effort to modernize the agricultural system, reduce the power of the large landowning class and improve the conditions of many agricultural laborers and small farmers.<sup>24</sup> Studies in the 1950s had revealed the highly unequal distribution of land and wealth in Ecuador. In 1954, for example, a minority of large landowners controlled 64% of all arable land in Ecuador, while the majority of plots (73%), which were five hectares or smaller, comprised only 7.2% of all land.<sup>25</sup> The *Comité Interamericano de Desarrollo Agrícola* (Interamerican Committee on Agricultural Development-CIDA) determined that 90% of these

<sup>23</sup> CODAE, “Los afroecuatorianos en cifras,” (Quito: September 2003), 25.

<sup>24</sup> María Julianna Zambrano Murillo, “Resignificando la cultura negra: Esfuerzos del movimiento Afrochoteño,” (Quito: Investigation sponsored by The Ministry of Culture, 2009), 7; Charles S. Blankenstein and Clarence Zuvekas, Jr., “Agrarian Reform in Ecuador: An Evaluation of Past Efforts and the Development of a New Approach,” *Economic Development and Cultural Change* 22:1 (October 1973): 79.

<sup>25</sup> Victor Breton Solo de Zaldivar, “From Agrarian Reform to Ethnodevelopment in the Highlands of Ecuador,” *Journal of Agrarian Change* 8:4 (2008): 591.

small plots were too small to employ even two people.<sup>26</sup>

The Agrarian Reform brought change to Afro-Ecuadorians in Valle del Chota because it marked the formal end of the *huasipungo* system, placed limits on the size of land tracts, and distributed expropriated lands to former male *huasipungueros* in the form of small farm plots.<sup>27</sup> Some *huasipungueros* obtained land they had worked for more than ten years, although many others did not.<sup>28</sup> In other key ways, the Agrarian Reform had a limited impact on Afro-Choteño families because important aspects of the initiative, such as the provision of credit and infrastructure, were simply not implemented.<sup>29</sup> The *Instituto Ecuatoriano de Reforma Agraria y Colonización* (Ecuadorian Institute of Agrarian Reform and Colonization-IERAC), the government agency created to administer and implement the reforms, lacked cooperation from other governmental entities and financial resources for carrying out agrarian reform goals, and possessed little authority to expropriate certain large landowners. Subsequent governments between 1966 and 1968 were less supportive of the reform, further reducing its impact.<sup>30</sup>

Even when redistribution occurred, land that was distributed generally went to older community members.<sup>31</sup> Reformers privileged for disbursement unused or what they deemed underdeveloped lands. Therefore, the land that was redistributed was often of poor quality and without access to water.<sup>32</sup> The most fertile soils remained concentrated in the hands of *hacendados*.<sup>33</sup> Although the Agrarian Reform intended to end *minifundios* (plots of less than 4.8 hectares), families in Chota received an average of just five hectares, the minimum awarded by IERAC and arguably only a nominal change based on the reform's stated goals.<sup>34</sup> Over time, families subdivided these original plots further among subsequent generations, with the decreasing plot size proving inadequate to sustain most families' basic needs.<sup>35</sup> Summing up his views of the effects of the 1964 Agrarian Reform, an Afro-Choteño community member described that it "bequeathed poverty to our parents and generations to follow."<sup>36</sup>

The government passed the *Ley de Reforma Agraria* in 1973, framing this second

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<sup>26</sup> Charles S. Blankenstein and Clarence Zuvekas, Jr. "Agrarian Reform in Ecuador: An Evaluation of Past Efforts and the Development of a New Approach," *Economic Development and Cultural Change* 22:1 (1973): 74-75.

<sup>27</sup> Hanratty, *Ecuador*.

<sup>28</sup> Zambrano, "Resignificando la cultura negra," 10.

<sup>29</sup> Ivan Pabón, *Identidad Afro: Procesos de construcción en las comunidades negras de Cuenca Chota-Mira* (Quito: Ediciones Abya-Yala, 2007), 68; Charles S. Blankenstein and Clarence Zuvekas, Jr. "Agrarian Reform in Ecuador: An Evaluation of Past Efforts and the Development of a New Approach," *Economic Development and Cultural Change* 22:1 (1973): 73-94.

<sup>30</sup> Blankenstein and Zuvekas, 82-83.

<sup>31</sup> Zambrano, 10.

<sup>32</sup> de Zaldívar, "From Agrarian Reform," 592; Zambrano, "Resignificando la cultura negra," 15; Pabón, *Identidad Afro*, 68; Renán Tadeo. Interview by Rapoport delegation, March 20, 2009.

<sup>33</sup> Meeting with Federación de Comunidades Negras de Imbabura y Carchi (FECONIC) in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>34</sup> Blankenstein and Zuvekas, "Agrarian Reform in Ecuador," 80.

<sup>35</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>36</sup> *Ibid.*

agrarian reform around increasing the land's "social function," a term based on an ambiguous and pliable interpretation of land "productivity."<sup>37</sup> While the legislation was not couched in the language of expropriation, government agencies, in theory, could expropriate and redistribute plots if more than half of the holdings remained "unproductive" over a five-year period.<sup>38</sup> To protect their property rights, large *latifundio* (large rural estate) owners developed a competing definition of social function that calculated the total productivity of land, a calculation that was generally higher on large farms aided by industrial technology.<sup>39</sup> Political pressures from large landowners meant that in practice, the reform favored those who used technology and produced large quantities of goods for export or the domestic market.<sup>40</sup> Small producers were largely excluded from access to credit<sup>41</sup> and, ultimately, the effect of the 1973 land reform for residents of Valle del Chota was limited. Despite the failures of the 1964 and 1973 Agrarian Reforms to fundamentally change Ecuador's land tenure system, these first steps did spur many people to begin organizing politically for greater access to productive lands and basic rights, laying the foundation for the work of many Afro-Choteño organizations today.<sup>42</sup>

For Afro-Ecuadorian communities of Esmeraldas, the agrarian reforms also negatively impacted their traditional collectively held lands. To relieve demographic pressures in other regions, the 1964 and 1973 reforms<sup>43</sup> designated certain areas of Esmeraldas as empty land, and therefore a destination for landless farmers.<sup>44</sup> This designation marked the beginning of an influx of *mestizo* landless immigrants, known as "*colonos*," (colonists or settlers), to the region that would last for decades.<sup>45</sup> Large-scale logging, new highways, and the construction of an oil refinery attracted migrants to the province as well.<sup>46</sup> *Colonos* arrived from rural areas throughout Ecuador and Colombia, and many came from Manabí, the province located just south of Esmeraldas.<sup>47</sup> These landless immigrants obtained land awarded by the government,

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<sup>37</sup> Land's "social function" referred to its capacity to benefit members of society and the nation. Large land tracts not being cultivated or ones that did not utilize modern technology became the targets of agrarian reformers. See Amalia Pallares Ayala, "Construcciones raciales, reforma agraria y movilización indígena en los años setenta," in *Ecuador racista, imágenes e identidades*, ed. Fredy Rivera and Emma Cervone (Quito: FLACSO, 1999), 162.

<sup>38</sup> Juan Luque, "An Emergent Ecuadorian Quichua Foundation: Conservation Planning in Grassroots Development," (paper, Latin American Studies Association meeting, Chicago, IL., September 1998), 6.

<sup>39</sup> Thomas T. Ankersen, "Tierra y Libertad: The Social Function Doctrine and Land Reform in Latin America," *Tulane Environmental Law Journal*: 19 (2006).

<sup>40</sup> Ayala, "Construcciones raciales, reforma agraria y movilización indígena en los años setenta," 164.

<sup>41</sup> *Ibid.*, 163-164. Rather, credit went to those who produced goods for export or those producing large quantities for the domestic market.

<sup>42</sup> Zambrano, 15-16.

<sup>43</sup> Carmen Diana Deere and Magdalena León de Leal, *Empowering women: land and property rights in Latin America* (Pittsburgh: University of Pittsburgh Press, 2001), 84.

<sup>44</sup> Galo Viteri Díaz, "Evolución del Marco Legal de la Reforma Agraria en el Ecuador," Universidad de Málaga <http://www.eumed.net/libros/2007b/298/ley-1964.htm> (accessed April 12, 2009).

<sup>45</sup> Paloma Fernandez-Rasines, *Afrodscendencia en el Ecuador: raza y género desde los tiempos de la colonia*. (Quito: Abya-Yala, 2001), 82.

<sup>46</sup> Hanratty, *Ecuador*.

<sup>47</sup> Rodrigo Sierra and Jody Stallings, "The Dynamics and Social Organization of Tropical Deforestation in Northwest Ecuador, 1983-1995," *Human Ecology* 26:1 (1998): 140.



sometimes consisting of individual plots of 50 hectares or more.<sup>48</sup> Additionally, *colonos* purchased ancestral lands that were meant to be communal from individual Afro-descendant families.<sup>49</sup> The legal recognition of Afro-Ecuadorian collective or ancestral titles did not occur as part of the agrarian reforms, so the effect of the government's titling procedures for *colonos* was to reduce the amount of land available for Afro-Esmeraldan ancestral communities.

Due to the fact that Afro-Ecuadorian descendant communities, like other rural groups, often did not possess formal title to traditional lands in the 1960s or 1970s, it is difficult to find data about how much collective or individual land Afro-descendants lost in the decades following the agrarian reforms. Along with economic hardship, the changes brought by the combination of emigration and development threatened the ability of Afro-Ecuadorians to remain on their traditional lands. Thus, many Afro-descendants in Esmeraldas became migrants themselves, seeking manufacturing jobs in urban centers.<sup>50</sup>

In both Esmeraldas and Valle del Chota, land remains at the center of Afro-Ecuadorian communities' historical and present struggles. Today's rural Afro-Esmeraldeños fight against displacement from their land by commercial agriculture, extractive industries, continuing pressures from migration, and increasing violence around the Colombian border. Meanwhile, for Afro-descendant communities in Valle del Chota, the lack of access to productive lands, inadequate water supplies, discriminatory credit practices, and a need for basic services push community members off their lands and into urban areas. To better understand these current obstacles, we turn to a discussion of how longstanding racial discrimination impacts rural Afro-Ecuadorians' struggles to remain in their territorial spaces.

#### IV. STRUCTURAL RACISM

Structural racism represents a central barrier to the effective guarantee of Afro-Ecuadorians' human rights. As used here, "structural racism" refers not only to direct discrimination based on race, but also to broad social and institutional practices that cause the unequal distribution of resources and social opportunities along racial lines.<sup>51</sup> Moreover, structural racism results from the interplay of historical legacies and the behavior of institutions and individuals.<sup>52</sup>

Recently, the Ecuadorian government has acknowledged the existence of such structural

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<sup>48</sup> Ibid., 135-145. Also note that *colonos* were at an advantage to access opportunities for economic development because they fit easily into the standard form of individual land ownership and were also able to access credit, in contrast to collective land which may not serve as collateral or security in accessing credit.

<sup>49</sup> Ibid.

<sup>50</sup> Fernandez-Rasines, *Afrodescendencia en el Ecuador*, 81-83; CODAE. "CODAE: Asentamientos," [http://www.codae.gov.ec/index.php?option=com\\_content&task=view&id=8&Itemid=14](http://www.codae.gov.ec/index.php?option=com_content&task=view&id=8&Itemid=14) (accessed April 24, 2009).

<sup>51</sup> Andrew Grant-Thomas and John A. Powell, "Toward a Structural Racism Framework," *Poverty & Race*: 15. 6 (2006): 3-6.

<sup>52</sup> Ibid.

bias in Ecuador and the state's failure to remedy it. The state's 2007 National Development Plan (PND-*Plan Nacional de Desarrollo 2007-2010*),<sup>53</sup> for example, is explicitly aimed at greater inclusion and participation in policymaking. It notes that, along with indigenous people, Ecuador's Afro-descendants experience greater poverty and inequality than whites or *mestizos*.<sup>54</sup> According to the PND, "[t]he relationship between poverty and ethnicity has its basis in structural racism" dating back to the colonial era.<sup>55</sup> It prioritizes the participation of Afro-descendants and indigenous people (as well as women and children from all racial and ethnic groups) in implementing socio-economic programs.<sup>56</sup> With similar acknowledgement, in preparation for the United Nations Durban Review Conference, the Ecuadorian government recognized that its "initiatives to address [the multiple] contemporary forms of racism had been clearly insufficient."<sup>57</sup> Thus, while the official recognition of persistent structural racism in Ecuador is an important first step, it is not alone adequate to attend to the longstanding marginalization of Afro-Ecuadorians.

The historical processes shaping Ecuadorian national identity illustrate the power and persistence of structural racism. During the twentieth century, elites in many Latin American countries constructed nationalistic ideologies of *mestizaje*, by which it was understood that indigenous people would biologically and culturally mix with Europeans, but with the aim of whitening (*blanqueamiento*) and assimilating indigenous people into the dominant white culture.<sup>58</sup> While the ideologies of *mestizaje* have been the subject of much important critique, so has the exclusion of Afro-descendants from its purview.

Specifically with regard to Ecuador, Jean Rahier affirms that "in this imagining of Ecuadorian identity, there is not, logically speaking, any place for Afro-descendants."<sup>59</sup> This

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<sup>53</sup> Secretaría Nacional de Planificación y Desarrollo (SENPLADES), *Plan Nacional de Desarrollo 2007-2010*, 85, <http://www.senplades.gov.ec/images/stories/descargas/2snp/1pnd/DLFE-205.pdf>.

<sup>54</sup> *Ibid.*, 84, 90. Ecuador's indigenous people number 830,418 or seven percent of the total population, according to the 2001 Census. In nearly all socioeconomic indicators, indigenous people fare the worst, followed by Afro-Ecuadorians.

<sup>55</sup> *Ibid.*, 85. "The relation between poverty and ethnicity has its roots in the structural racism that has been developing since the colonial era and which has relegated these actors as inferior subjects with restricted citizenship." Original: "La relación entre pobreza y etnicidad tienen su fundamento en el racismo estructural que se incubó desde la Colonia y que relegó a estos actores como sujetos inferiores y con ciudadanía restrictiva."

<sup>56</sup> *Ibid.*, 64. "The priority of the indigenous and Afro-Ecuadorian peoples, women, girls, and boys, in the implementation of programs of social inclusion." Original: "La prioridad de los pueblos indígenas y afroecuatorianos, mujeres, niñas y niños, en la implementación de programas de inclusión socio-económica."

<sup>57</sup> U.N. General Assembly, *Cuestionario para los Estados Miembros Preparando la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos con Arreglo a la Decisión PC.1/10 del Comité Preparatorio de la Conferencia de Examen de Durban en su Primer Periodo de Sesiones (A/62/375) (A/CONF.211/PC.2/2) January 9, 2008 (Masthead)*, 4, "In Ecuador, the initiatives for eliminating these contemporary forms of racism was clearly insufficient." Original: "En Ecuador, las iniciativas para eliminar estas formas contemporáneas del racismo han sido claramente insuficientes."

<sup>58</sup> Norman E. Whitten, *Cultural transformations and ethnicity in modern Ecuador* (Urbana: University of Illinois Press, 1981).

<sup>59</sup> Jean Rahier, "¿Mami, que será lo que quiere el negro?: representaciones racistas en la revista *Vistazo*, 1957-1991," in *Ecuador Racista: Imágenes e Identidades*, ed. Emma Cervone and Fredy Rivera (Quito: FLACSO, 1999), 77. Original: "en esta imaginación de la 'ecuatorianidad' no hay, lógicamente, ningún lugar para los negros." For a

concept of the Ecuadorian nation and the negation of the country's Afro-descendants pervade contemporary culture. In his analysis of the country's 102 museums, for instance, Jhon Antón contends that only four have any representation of Afro-descendants, and that the information the museums provide about Afro-Ecuadorians is often misleading or incorrect.<sup>60</sup> At Quito's prominent *Museo del Banco Central* (Central Bank Museum), Antón notes, Afro-Ecuadorians are entirely absent from the museum's halls, save for a small, inaccurate reading at an exhibit entrance.<sup>61</sup> Elementary school textbooks used in rural areas of Esmeraldas likewise do not depict Afro-descendants, but only indigenous, white, and *mestizo* national heroes.<sup>62</sup>

The invisibility of Afro-Ecuadorians in national discourse contributes to problematic misinformation and stereotyping. People in cities, for example, often view rural areas where Afro-Ecuadorians live as backward and savage.<sup>63</sup> Moreover, stereotypes about Afro-Ecuadorians' criminal tendencies, laziness, innate musical skill, sexuality, and preternatural soccer abilities distort their longstanding presence and multifaceted contributions throughout society.<sup>64</sup> These stereotypes often feed into overt forms of racism, as illustrated by a campaign tactic during Ecuador's most recent electoral cycle, in which a number of Afro-Ecuadorians in Esmeraldas were running for political posts. Just weeks before election day, a song called "*Negros de Mierda*" ("blacks of shit") was widely distributed and frequently played over radios throughout the country in an attempt to undermine these candidates.<sup>65</sup>

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similar analysis that considers Latin America more generally, see Juliet Hooker, "Indigenous Inclusion/Black Exclusion: Race, Ethnicity and Multicultural Citizenship in Latin America," *Journal of Latin American Studies* 37 (2005): 300-302.

<sup>60</sup> Jhon Antón Sánchez, "Museos, memoria e identidad afroecuatoriana," *Iconos: Revista de Ciencias Sociales*: 29 (2007): 124-125.

<sup>61</sup> *Ibid.*, 125.

<sup>62</sup> Adam Halpern and France Widdance Twine, "Antiracist Activism in Ecuador: Black-Indian Community Alliances," *Race & Class*: 42 (2000): 26.

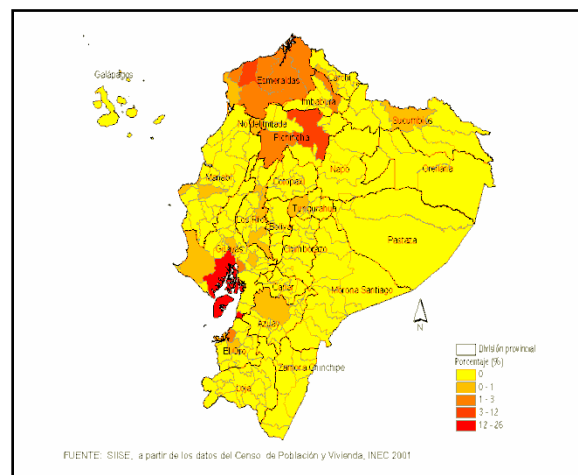
<sup>63</sup> Jean Rahier, "Racist Stereotypes and the Embodiment of Blackness," in *Millennial Ecuador: Critical Essays on Cultural Transformations and Social Dynamics*, ed. Norman E. Whitten (Iowa City: University of Iowa Press, 2003) 299.

<sup>64</sup> For discussions about racial stereotypes of Afro-Ecuadorians, see, Xavier Andrade, "'Culture' as Stereotype: Public Uses in Ecuador," 251, [http://www.flacsoandes.org/antropologia\\_visual/audiovisuales/public\\_uses\\_of\\_culture.pdf](http://www.flacsoandes.org/antropologia_visual/audiovisuales/public_uses_of_culture.pdf) (accessed August 19, 2009); Jean M. Rahier, "Race, Fútbol, and the Ecuadorian Nation: the Ideological Biology of (Non)Citizenship," *E-Misférica* 5.2, Race and its Others, <http://www.hemisphericinstitute.org/hemi/en/e-misferica-52/rahier> (accessed August 18, 2009); Jean Rahier, "¿Mami, que será lo que quiere el negro?", 73-109; Tokunbo Ojo, "El Chota, Soccer Valley of Ecuador, Gets Global Attention," CBC.ca, 2006, <http://www.cbc.ca/sports/worldcup2006/features/ecuador.html> (accessed August 9, 2009) "The World Cup has served to deepen stereotypes. The people think that we only serve to play football, and it's not like that." Original: "El Mundial ha sido utilizado para profundizar los estereotipos. La gente piensa que sólo servimos para jugar fútbol y no es así." "100 dirigentes negros analizaron su ley," *El Comercio*, May 22, 2006 <http://www.llaacta.org/notic/2006/not0522a.htm> (accessed August 18, 2009).

<sup>65</sup> César Ricaurte, "Racismo," hoy.com.ec, 2009, <http://www.explored.com.ec/noticias-ecuador/racismo-343638.html> (accessed August 20, 2009). To hear parts of the song that was played, see Mariana Sanchez, "Afro-Ecuadorians battle against racism," Al Jazeera, April 23, 2009, <http://english.aljazeera.net/news/americas/2009/04/%202009423205035744861.html> (accessed August 24, 2009).

These historical and cultural processes continue to influence the actions and policies of governmental institutions today. Until 2001, the national census did not include categories for Afro-descendants, further marginalizing an already invisible population from national discourse.<sup>66</sup> According to the most recent census (2001), approximately five percent of the Ecuadorian population identified as Afro-Ecuadorian, either as “negro” (2.2 percent) or “mulato” (2.7 percent).<sup>67</sup> Some non-governmental organizations and activists, however, have contended that the five percent figure significantly underestimates the total number of Afro-Ecuadorians, and that a more accurate figure is closer to ten percent.<sup>68</sup> They argue that the persistence of racial discrimination against Afro-Ecuadorians makes it less likely for members of these groups to self-identify as such. Minority Rights Group International has attributed the discrepancy to questions of categorization as well as region and marital status.<sup>69</sup> The Committee on the Elimination of Racial Discrimination (CERD) similarly found the 2001 Census data for Afro-descendants limited.<sup>70</sup>

**Figure 3: Distribution of the Afro-Ecuadorian Population (according to the 2001 census)<sup>71</sup>**



<sup>66</sup>Adam Halpern and France Winddance Twine, “Antiracist Activism in Ecuador: Black-Indian Community Alliances,” *Race & Class*: 42 (2000): 21-22.

<sup>67</sup>United Nations, and Inter-American Development Bank, *Población indígena y afroecuatoriana de Ecuador: diagnóstico sociodemográfico a partir del censo de 2001*, 23. According to the 2001 census, Ecuador is home to 604,009 Afro-descendants. Indigenous people comprise nearly seven percent of the total population, while mestizos are counted at 77.4 percent, and whites at 10.5 percent.

<sup>68</sup>See, for example, Minority Rights Group International, “Ecuador Overview,” <http://www.minorityrights.org/?lid=4133&tmpl=printpage> (accessed July 20, 2009). The NGO contends that indigenous people are undercounted as well, and constitute closer to 30 percent (rather than seven percent) of the total population.

<sup>69</sup>Ibid. People in urban areas were less likely to identify as Afro-descendant or indigenous, and those who married a non-indigenous or non Afro-descendant person were likely to identify with the classification of their spouse.

<sup>70</sup>U.N. Committee on the Elimination of Racial Discrimination, 73rd Session. *Consideration of reports submitted by States parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination*. (CERD/C/ECU/CO/19). September 22, 2008. No. 8-10, 2-3.

<sup>71</sup>CODAE, *Los afroecuatorianos en cifras*, (Quito: September 2003), 25.

Even if the government has undercounted Afro-Ecuadorians, its own data suggests the disparities identified in the National Development Plan. PND and census information demonstrate that, by a variety of socio-economic measures, Afro-descendants fare poorly, second only to indigenous people. According to the PND, 43 percent of Afro-descendants live in poverty, compared to the national average of 34 percent.<sup>72</sup> Eleven percent live in extreme poverty.<sup>73</sup> Another study indicates that more than seventy percent of Afro-Ecuadorians do not have their basic needs met.<sup>74</sup>

Additionally, when compared to whites and *mestizos*, Afro-Ecuadorians are disadvantaged with regard to education. In rural areas, 16.8 percent of Afro-descendants over the age of fifteen are illiterate; the national average is 9 percent.<sup>75</sup> Only 17 percent of Afro-Ecuadorians have had twelve or more years of school compared with 28 percent of *mestizos* and whites.<sup>76</sup> Rapoport delegation interviews with rural Afro-Ecuadorians confirmed problems with the education system that Afro-descendants experience on a daily basis.<sup>77</sup> Teachers generally reside outside the areas in which they teach, and therefore must travel long distances to school. Often they arrive late and depart early in the week, leaving students already in overcrowded classrooms with school weeks as short as two or three days.<sup>78</sup> With a scarcity of schools, children in rural Esmeraldas are often forced to travel to nearby communities for primary school, and almost always must go to larger cities, such as San Lorenzo or Esmeraldas, for secondary school.<sup>79</sup>

With regard to health, Afro-Ecuadorians face a 15.8 percent rate of chronic malnutrition and a higher than average infant mortality rate, especially in rural areas.<sup>80</sup> Afro-Ecuadorians in rural areas are the least likely to have running water, compared with other population groups

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<sup>72</sup> Secretaría Nacional de Planificación y Desarrollo (SENPLADES), *Plan Nacional de Desarrollo 2007-2010*, 87.

<sup>73</sup> *Ibid.*, 83.

<sup>74</sup> Jhon Antón Sánchez, "Afroecuatorianos: Reparaciones y Acciones Afirmativas," in *Memorias de la Esclavitud y Justicia Reparativa para negros, afrocolombianos y raizales*, ed. Claudia Mosquera Rosero and Luiz Claudio Barcelos (Bogotá: Universidad Nacional de Colombia, Facultad de Ciencias Humanas, Departamento de Trabajo Social [y] Centro de Estudios Sociales, Grupo de Estudios Afrocolombianos, 2007), 168.

<sup>75</sup> United Nations and Inter-American Development Bank, *Población indígena y afroecuatoriana de Ecuador: diagnóstico sociodemográfico a partir del censo de 2001* (Santiago de Chile: Naciones Unidas, Cepal, 2005.), 63. In rural areas, indigenous people's illiteracy rate was 31 percent.

<sup>76</sup> *Ibid.*, 69. Only 5.3 percent of indigenous people had attained twelve years of schooling.

<sup>77</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>78</sup> *Ibid.*

<sup>79</sup> Margarita Sánchez and Michael J. Franklin, "Communities of African Ancestry in Latin America: History, Population, Contributions & Social Attitudes, Social and Economic Conditions," in *Poverty Alleviation Program for Minority Communities in Latin America* (New York: Inter-American Development Bank, 1996), 123.

<sup>80</sup> Juan Ponce, *Más Allá de Los Promedios: Afrodescendientes en América Latina* (Washington, DC: World Bank, 2006), 36. The infant mortality rate for rural Afro-Ecuadorians is 39.4 percent, for indigenous people, 64.8 percent.

including indigenous people.<sup>81</sup> Only 15.5 percent have sewage systems.<sup>82</sup> These figures depict an Afro-Ecuadorian population that lacks opportunities and has unmet needs for health services. Indeed, the Rapoport delegation listened firsthand to concerns about inadequate medical care during its community visits. In the Valle del Chota, 60 percent of Afro-Ecuadorian communities do not have any kind of health center, and community members must go to San Juan de Lachas, a community whose health clinic serves a large part of the Afro-descendant populations in the Valle del Chota.<sup>83</sup> In some rural areas of Esmeraldas, members of Afro-descendant communities must travel by canoe to reach emergency health services in the distant towns of Borbón or Limones.<sup>84</sup>

Finally, many rural Afro-descendant communities do not have access to means of basic communication, including telephone, postal, and internet service. Community members told the Rapoport delegation that barriers to communication impede community efforts for outreach, organization, and development.<sup>85</sup> For example, the Afro-Choteño community newspaper, *El Griot*, the only printed source of community news and information, recently shut down due to lack of financial resources.<sup>86</sup>

As described above, the structural racism and social inequalities faced by Afro-Ecuadorians can be located throughout their history, as well as in popular culture and institutions today. Daily interactions in society act as weighty obstacles to social mobility, poverty reduction, cultural empowerment, and meaningful integration into the national political process.<sup>87</sup> The following section examines the rights recognized through international human rights law and the 2008 Constitution, which, if properly implemented, could serve as important building blocks for dismantling centuries of structural bias.

## V. AFRO-ECUADORIAN RIGHTS UNDER INTERNATIONAL & DOMESTIC LAW

As a people with strong cultural and economic ties to the lands they have historically occupied, rural Afro-Ecuadorian communities are entitled to collective rights to territory, culture, and non-discrimination under international and Ecuadorian law. As individuals, all Afro-

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<sup>81</sup> United Nations, and Inter-American Development Bank. *Población indígena y afroecuatoriana de Ecuador: diagnóstico sociodemográfico a partir del censo de 2001*. (Santiago de Chile: Naciones Unidas, Cepal: 2005), 80. 33.5 percent for rural Afro-Ecuadorians and 38.4 percent for indigenous people in rural areas.

<sup>82</sup> *Ibid.*, 81.

<sup>83</sup> Renán Tadeo and others, “Diagnóstico de la Problemática Afroecuatoriana y Propuestas de Acciones Prioritarias. Cooperación Técnica BID ATN/SF-7759-EC, Diagnóstico General” (Quito: September 2, 2003), 35-37. <http://www.codae.gov.ec/documentos/cifras.doc> (accessed August 25, 2009).

<sup>84</sup> Sánchez and Franklin, “Communities of African Ancestry in Latin America,” 124.

<sup>85</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009; Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>86</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>87</sup> United Nations Human Settlements Programme, *Secure Land Rights for All*, The Human Settlements Finance Systems Series (Nairobi, Kenya: United Nations Human Settlements Programme, 2008), 5, 13.

Ecuadorians possess the right to non-discrimination based on race. Likewise, they are guaranteed economic, social, and environmental rights that provide critical protections with regard to, among other issues affecting their communities, the management of natural resources, labor practices, and community-based development. These collective and individual rights are found in a number of international human rights agreements to which Ecuador is a party,<sup>88</sup> and in a growing body of case law from the Inter-American Court of Human Rights.<sup>89</sup> Moreover, for over a decade, Ecuador has incorporated international human rights law into its 1998 and 2008 Constitutions,<sup>90</sup> and has also provided its own set of guarantees to Afro-Ecuadorian communities.

For Afro-Ecuadorians, however, these guarantees have long gone unfulfilled. Thus, while the inclusion of Afro-Ecuadorians' collective rights in the 2008 Constitution represents a critical reiteration of its promises, the Ecuadorian state must take seriously its international and domestic legal obligations to realize those promises. Otherwise, Ecuador risks continuing on a course that reflects a lack of political will, pervasive structural racism, and disinterest regarding the full inclusion of Afro-Ecuadorians in a meaningful pluricultural democracy.

#### **A. INTERNATIONAL HUMAN RIGHTS GUARANTEES FOR AFRO-ECUADORIANS**

While many international and regional human rights agreements and decisions regarding collective rights were initially interpreted in reference to indigenous groups, they have gradually been extended to certain Afro-descendant groups with collective cultural and economic ties to their traditional and ancestral lands. That is, many Afro-descendant groups whose livelihoods and cultural wellbeing depend on the integrity of their ancestral territory are seen as recipients of collective rights to territory and the right to prior consultation.

International Labour Organization Convention No.169 on Indigenous and Tribal Peoples (ILO 169) has, since its ratification in 1989, served as the principal agreement for indigenous and tribal peoples' collective rights to land. In particular, the Convention recognizes the right to collective ownership of land, based on the vital ties that exist between land and the economic and cultural reproduction of traditional peoples. The Convention states that "governments shall

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<sup>88</sup> Ecuador is a party to, among other international accords, the International Convention on the Elimination of Racial Discrimination (ICERD, ratified by Ecuador on September 22, 1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR, ratified on January 3, 1976); the International Covenant on Civil and Political Rights (ICCPR, ratified by Ecuador on March 23, 1976); the American Convention on Human Rights ("American Convention," ratified by Ecuador on December 8, 1977); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador," ratified by Ecuador on February 10, 1993); International Labour Organization Convention No.169 on Indigenous and Tribal Peoples ("ILO 169," ratified by Ecuador on May 5, 1998).

<sup>89</sup> Ecuador is subject to the Court's jurisdiction as a result of its ratification of the American Convention.—Ed.

<sup>90</sup> The Constitution of 2008 establishes the applicability of international law in a number of articles. Art. 10 reads: "Persons, communities, national peoples and collectivities possess and will enjoy the rights guaranteed in the Constitution and in international instruments." Original: "Las personas, comunidades, pueblos, nacionalidades y colectivos son titulares y gozarán de los derechos garantizados en la Constitución y en los instrumentos internacionales." See also Constitution of 2008, Arts. 3.1, 11.3, and Constitution of 1998, Art. 17.

respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories... and in particular the collective aspects of this relationship.”<sup>91</sup> ILO 169 requires governments to “take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession”<sup>92</sup> and declares that “[a]dequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.”<sup>93</sup> Importantly, territory protected under ILO 169 includes not only those lands presently occupied by indigenous and tribal peoples, but the entirety of lands traditionally used.<sup>94</sup>

Since the groundbreaking case of *Awes Tingni v. Nicaragua* (2001), the Inter-American Commission on Human Rights and Inter-American Court of Human Rights have steadily contributed to a series of standard-setting decisions for the protection of indigenous and certain Afro-descendants’ rights to culture and collective property. In *Awes Tingni*, the Inter-American Court ruled that Article 21 of the American Convention, which protects the right to property, should be interpreted to protect collective forms of property ownership of traditional communities, in addition to individual private property rights.<sup>95</sup> Likewise, in *Sawhoyamaya Indigenous Community v. Paraguay* (2006), the Court stated that “communities might have a collective understanding of the concepts of property and possession,” which deserves protection under the American Convention’s right to property.<sup>96</sup> Not respecting that understanding of property, the Court continued, “would be tantamount to holding that there is only one way of using and disposing of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of persons.”<sup>97</sup>

The Inter-American Court has also applied the right to collective property to Afro-descendant maroon (escaped or freed slaves) communities in Suriname. In *Moiwana Village v. Suriname* (2005), the Court ruled that the right to property should be applied to a maroon community that had an “‘all-encompassing relationship’ to their traditional territories.”<sup>98</sup> In *Saramaka People v. Suriname* (2007), the Court held that the maroon, Afro-descendant communities concerned received the protections for collective property ownership given their “distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories.”<sup>99</sup> States therefore have “a positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right

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<sup>91</sup> ILO 169, Art. 13.

<sup>92</sup> ILO 169, Art. 14.2.

<sup>93</sup> ILO 169, Art. 14.3.

<sup>94</sup> ILO 169, Art. 14.1.

<sup>95</sup> *Mayagna (Sumo) Awes Tingni Community v. Nicaragua*, Inter-American Court of Human Rights, Judgment of 31 August 2001 (Series C, No. 79).

<sup>96</sup> *Sawhoyamaya Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Judgment of 29 March, 2006, (Series C, No. 146) at para 120.

<sup>97</sup> *Ibid.*, at para 120.

<sup>98</sup> *Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Judgment of 15 June, 2005 (Series C, No. 124) at para. 133, quoting *Mayagna (Sumo) Awes Tingni Community*, at para. 149.

<sup>99</sup> *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of 28 November, 2007 (Series C, No. 172) at para. 86.



to the territories they have traditionally used and occupied,”<sup>100</sup> including to the natural resources within those territories “that are necessary for their survival.”<sup>101</sup>

In these decisions regarding Afro-descendant maroon communities, the Court reaffirmed its past decisions and acknowledged the applicability of ILO 169. It also based some of its reasoning on the right to culture recognized in the International Covenant on Civil and Political Rights (ICCPR). Article 27 of that Covenant provides that ethnic, religious, and linguistic minorities within a state “not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” In particular, the Inter-American Court highlighted the United Nations Human Rights Committee’s interpretation of Article 27, in which the right to culture “may consist in a way of life which is closely associated with territory and use of its resources.”<sup>102</sup>

Another cornerstone of international protections for indigenous and tribal peoples is the right to prior consultation and, at times, informed consent of communities. ILO 169 obligates states to consult with indigenous and tribal peoples before the development of any activity or policy that would impact their communities, lands, or resources. Such consultations should be “undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”<sup>103</sup>

Decisions from the Inter-American Court have reinforced state obligations to engage in prior consultation with certain Afro-descendant groups. The Court’s decision in *Saramaka*, for example, establishes that the “effective participation” of an indigenous or tribal community imposes upon the state “a duty to actively consult with said community according to their customs and traditions,” and that “[t]hese consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.”<sup>104</sup> The Court further held that states have a duty to obtain free, prior, and informed consent from the community concerned in cases of “large-scale development or investment projects” that would have a major impact on the group’s territory.<sup>105</sup> Increasingly, the right to prior consultation is becoming part of the domestic laws of many countries in the region for the protection of collective property and cultural rights. In 2006, for example, the Colombian Constitutional Court struck down the proposed General Forestry Law (*Ley General Forestal*), in part for its failure to inform and consult indigenous and Afro-Colombian communities that would be affected by the law.<sup>106</sup>

Alongside these specific collective rights, Afro-Ecuadorians are, as individuals and as a

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<sup>100</sup> *Ibid.*, at para. 91.

<sup>101</sup> *Ibid.*, at para. 158.

<sup>102</sup> *Ibid.*, at para. 94, citing United Nations Human Rights Council (UNHRC), General Comment No. 23: The Rights of Minorities (Art. 27) (Fiftieth session, 1994), U.N. Doc. CCPR/C/21Rev.1/Add.5, August 4, 1994, at paras. 1 and 3.2.

<sup>103</sup> ILO 169, Art. 6.2.

<sup>104</sup> *Saramaka People v. Suriname*, at para. 133.

<sup>105</sup> *Ibid.*, at para. 134. The Court considered that the difference between “consultation” and “consent” in this context requires further analysis.

<sup>106</sup> Sentencia C-030/08- Ley 1021 de 2006 (Comunicado No. 01). Corte Constitucional de Colombia.

community, guaranteed protections for their economic, social, and cultural rights, including the right to a healthy environment. These rights are of particular salience for rural Afro-Ecuadorians who, as discussed in the next section, face severe obstacles to the realization of community-based development, including harmful labor practices and environmentally destructive practices affecting the lands they have traditionally used and occupied. Importantly, the Protocol of San Salvador establishes that “[e]veryone shall have the right to live in a healthy environment and to have access to basic public services,”<sup>107</sup> and that “the States Parties shall promote the protection, preservation, and improvement of the environment.”<sup>108</sup> Likewise, Article 7.b of the ICESCR guarantees, with respect to labor, “the right of everyone to the enjoyment of just and favourable conditions,” including “safe and healthy working conditions.”<sup>109</sup>

Closely intertwined with its duties concerning the protection of Afro-Ecuadorian communities’ territorial, economic, environmental and cultural rights is the state’s obligation to combat racial discrimination toward individuals. Key international human rights treaties to which Ecuador is a party prohibit discrimination in the guarantee of civil and political as well as economic and social rights.<sup>110</sup> One such convention, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which Ecuador signed in 1966, defines racial discrimination as:

any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”<sup>111</sup> (emphasis added).

Racial discrimination need not be intentional or a result of disparate treatment; this definition also includes forms of disparate impact and structural discrimination.

## **B. ECUADORIAN LEGAL GUARANTEES FOR AFRO-ECUADORIANS**

As mentioned in the Introduction, for at least a decade, the Ecuadorian state has provided specific guarantees for Afro-Ecuadorian collective rights, sometimes making commitments that are arguably broader than international human rights law. Moreover, Ecuadorian law clearly

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<sup>107</sup> “Protocol of San Salvador,” Art. 11.1.

<sup>108</sup> *Ibid.*, Art. 11.2.

<sup>109</sup> ICESCR, Art. 7b.

<sup>110</sup> The ICCPR (Art.2.1) and ICESCR (Art. 2.2), for example, establish that these Conventions should be applied without discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Likewise, Articles 2.1 and 24 of the American Convention state, respectively, that “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition” and that “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

<sup>111</sup> ICERD, Art. 1.1.

establishes Afro-Ecuadorian individuals' and communities' rights to non-discrimination.

Ecuador's 1998 Constitution recognized Afro-Ecuadorians as a *pueblo* (a culturally and politically distinct people),<sup>112</sup> and outlined a series of collective rights for them, including the right to collective ownership of their ancestral lands,<sup>113</sup> the right not to be displaced from their lands,<sup>114</sup> and the rights to participate in the development of renewable resources and be consulted prior to the extraction of non-renewable resources on from their lands.<sup>115</sup>

Afro-Ecuadorians were also guaranteed the right to their identity and cultural practices, and to administer the preservation and development of their traditional forms of social organization and local authority.<sup>116</sup> The 1998 Constitution promised the creation of laws that would allow for *Circunscripciones Territoriales Afroecuatorianas* (Afro-Ecuadorian Territorial Circumscriptions, or CTAs),<sup>117</sup> effectively offering the most viable route yet for the collective titling of their ancestral territories and the establishment of a greater form of local autonomy for their communities.

The 1998 Constitution, however, failed to include a clear definition of which lands and communities would qualify as CTAs, and additionally neglected to specify what CTA status might mean for communities' role in local governance. Afro-Ecuadorian leaders and organizations have since made a number of policy proposals for the establishment of a law to implement territorial circumscriptions,<sup>118</sup> but to no avail. To date, no CTA has been recognized.

Afro-Ecuadorian communities in different parts of the country expressed differing views to the Rapoport delegation about whether and how the CTA model might be useful for local development. Communities in Esmeraldas seem to find the greatest promise in the CTA model, while Afro-Ecuadorians in the Valle del Chota often see the need for a policy that would allow for new land acquisition and a mixed form of individual and collective ownership. Those who argue broadly for the CTA model assert that it would, for both parts of the country, pave the way for communities to set priorities for community planning and development, administer justice, manage natural resources, and play a significant role in the administration of local economic,

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<sup>112</sup> Constitution of 1998, Art. 83.

<sup>113</sup> Ibid., Arts. 84.2 and 84.3. This ownership is inalienable, indivisible, and cannot be used as collateral.

<sup>114</sup> Ibid., Art. 84.8.

<sup>115</sup> Ibid., Arts. 84.4 and 84.5.

<sup>116</sup> Ibid., Art. 84.7.

<sup>117</sup> Ibid., Arts. 224, 228, 241. Article 224 puts territorial circumscriptions for Afro-descendants and indigenous peoples in the context of other forms of local government: "For the administration of the State and political representation, there will be provinces, cantons, and parishes. There will be indigenous and Afro-Ecuadorian territorial circumscriptions established by the law." Original: "Para la administración del Estado y la representación política existirán provincias, cantones y parroquias. Habrá circunscripciones territoriales indígenas y afroecuatorianas que serán establecidas por la ley."

<sup>118</sup> See, for example, Juan García Salazar, Confederación Nacional Afroecuatoriana (CNA) and the Confederación Afroecuatoriana del Norte de Esmeraldas (CANE), "Propuesta de ley del pueblo negro y de las Circunscripciones Territoriales Afroecuatorianas," (1999-2000).

health, and educational programs.<sup>119</sup>

Even given differences between Esmeraldas and Valle del Chota with respect to how Afro-Ecuadorian communities view the potential of the CTA model, its lack of implementation thus far can be seen as emblematic of Ecuador's failure to ensure the development of legislation pertaining to Afro-descendant communities. Indeed, it highlights a pattern of constitutional promises made to Afro-Ecuadorians, but which fail to be legislated, regulated, or otherwise applied in practice.

The same pattern is evident in legislative promises. The 2004 *Ley de Desarrollo Agrario* (Agrarian Development Law), for example, promised that the *Instituto Nacional de Desarrollo Agrario* (INDA, or National Institute of Agrarian Development) would legalize and protect Afro-Ecuadorians' "lands of ancestral possession," and promote the development of traditional technologies.<sup>120</sup> As discussed later in the report, however, the Rapoport delegation was told in meetings with the INDA that the institution has made no systematic efforts to legalize Afro-descendant lands, nor has it created any programs that target the needs of Afro-Ecuadorian communities.

Similarly, the 2006 Law of Collective Rights of the Afro-Ecuadorian *Pueblo* (*Ley de Derechos Colectivos del Pueblo Negro*) was drafted to implement the 1998 Constitution's provisions on collective rights for Afro-Ecuadorians. Although the law passed in the legislature, the approved version failed to include any provisions about the recognition or titling of Afro-descendant territory.<sup>121</sup> Furthermore, the law was never implemented due to its lack of a clear administrative regulatory framework, leaving even its incomplete version of collective rights for Afro-Ecuadorians without force.<sup>122</sup>

After much involvement of and pressure from Afro-Ecuadorian organizations, Ecuador's 2008 Constitution once again recognized Afro-Ecuadorians as a distinct *pueblo*<sup>123</sup> with applicable individual and collective rights developed under international law.<sup>124</sup> Additionally, the 2008 Constitution again recognizes the rights of *pueblos* to collective property ownership of their traditional territory, affirming that community lands are inalienable, cannot be taken away,

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<sup>119</sup> Ibid.

<sup>120</sup> *Ley de Desarrollo Agrario 2004*, Art. 49.

<sup>121</sup> *Ley de Derechos Colectivos del Pueblo Negro 2006*.

<sup>122</sup> Alexandra Ocles, "Derechos Colectivos: Los Afroecuatorianos deben ser titulares (Parte II)", CODAE, [http://www.codae.gov.ec/index.php?option=com\\_content&task=view&id=80&Itemid=1](http://www.codae.gov.ec/index.php?option=com_content&task=view&id=80&Itemid=1). Ocles states that "The law in question was never put into practice because of a lack of regulation." Original: "La ley en cuestión nunca fue puesta en ejecución por falta de un reglamento."

<sup>123</sup> Constitution of 2008, Art. 56.

<sup>124</sup> Ibid., Art. 58, "For the strengthening of its identity, culture, traditions, and rights, the Afro-Ecuadorian people are granted the collective rights established in the Constitution, the law and the pacts, agreements, declarations, and other international human rights instruments." Original: "Para fortalecer su identidad, cultura, tradiciones y derechos, se reconocen al pueblo afroecuatoriano los derechos colectivos establecidos en la Constitución, la ley y los pactos, convenios, declaraciones y demás instrumentos internacionales de derechos humanos."

and cannot be divided or used for collateral.<sup>125</sup>

In accordance with these guarantees, the 2008 Constitution establishes broad protections for Afro-Ecuadorians' economic, social, and cultural rights within the state's development plans. Among the state's "primordial obligations" established by the Constitution is "[t]o guarantee without discrimination the effective enjoyment of the rights established in the constitution and international instruments, in particular education, health, food, social security and water for its inhabitants,"<sup>126</sup> as well as "[t]o promote the equitable and solidarity-based development of the entire territory through the strengthening of process of autonomy and decentralization."<sup>127</sup>

While the 1998 Constitution laid out a number of protections for environmental rights, the 2008 Constitution strongly reaffirms and expands upon these rights, linking guarantees for environmental protection with community consultation,<sup>128</sup> and even establishing a series of rights belonging to *Pacha Mama*.<sup>129</sup> Article 14 recognizes the right "to live in a healthy and ecologically balanced environment" and declares "environmental preservation, ecosystem conservation, biodiversity and integrity of genetic patrimony of the country, the prevention of environmental harm, and the recuperation of degraded natural spaces" to be of "public interest."<sup>130</sup> Additionally, the Constitution specifically establishes that one of the objectives of national development is to "recover and conserve nature and maintain a healthy and sustainable environment that guarantees to persons and collectivities equitable, permanent and quality access

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<sup>125</sup> Ibid., Art. 57.4, Original: "Conservar la propiedad imprescriptible de sus tierras comunitarias, que serán inalienables, inembargables e indivisibles."

<sup>126</sup> Ibid, Art. 3.1. Original: "Son deberes primordiales del Estado: 1. Garantizar sin discriminación alguna el efectivo goce de los derechos establecidos en la Constitución y en los instrumentos internacionales, en particular la educación, la salud, la alimentación, la seguridad social y el agua para sus habitantes..."

<sup>127</sup> Ibid., Art. 3.6. Original: "Promover el desarrollo equitativo y solidario de todo el territorio, mediante el fortalecimiento del proceso de autonomías y descentralización."

<sup>128</sup> Ibid., Art. 398, for example, establishes that: "All decisions or state authorizations that could affect the environment must be consulted with the community, who will be sufficiently and opportunely informed. The consultor will be the state. The law will regulate prior consultation, citizen participation, timeframes, the consulted individuals and the criteria for evaluation and objection regarding the activity submitted to consultation. The state will value the opinion of the community according to the criteria established in the law and international human rights instruments," Original: "- Toda decisión o autorización estatal que pueda afectar al ambiente deberá ser consultada a la comunidad, a la cual se informará amplia y oportunamente..." El sujeto consultante será el Estado. La ley regulará la consulta previa, la participación ciudadana, los plazos, el sujeto consultado y los criterios de valoración y de objeción sobre la actividad sometida a consulta. El Estado valorará la opinión de la comunidad según los criterios establecidos en la ley y los instrumentos internacionales de derechos humanos."

<sup>129</sup> Ibid., Arts. 71-74.

<sup>130</sup> Ibid., Art. 14. "Recognizes the right of the population to live in a healthy and ecologically balanced environment, that guarantees sustainability and the right to good living, *sumac kawsay*. It declares of public interest the preservation of the environment, the conservation of ecosystems, biodiversity, and the integrity of the genetic heritage of the country, preservation from environmental damage and the recuperation of diminished natural species." Original: "Se reconoce el derecho de la población a vivir en un ambiente sano y ecológicamente equilibrado, que garantice la sostenibilidad y el buen vivir, *sumak kawsay*. Se declara de interés público la preservación del ambiente, la conservación de los ecosistemas, la biodiversidad y la integridad del patrimonio genético del país, la prevención del daño ambiental y la recuperación de los espacios naturales degradados."

to water, air and soil, and to the benefits of subsoil resources and natural heritage.”<sup>131</sup>

Under Article 57, the Constitution outlines a series of collective rights that reaffirm the protections for Afro-Ecuadorians included in the 1998 Constitution,<sup>132</sup> while also broadening and strengthening collective rights, particularly regarding prior consultation, local political autonomy, and racial discrimination. The 2008 Constitution, for example, while falling short of requiring prior consent of Afro-Ecuadorian communities with regard to matters affecting their communities, does strengthen the right to prior consultation set forth in the 1998 Constitution. The 2008 Constitution closely follows the language of ILO 169, establishing that prior consultation must be “obligatory and timely” as well as “free and informed, within a reasonable timeframe, about plans and programs for prospecting, exploitation, and commercialization of non-renewable resources on their lands and which could affect them environmentally or culturally.”<sup>133</sup> Afro-Ecuadorian communities, according to the Constitution, also have the right to participate in the benefits that these projects might bring, and receive compensation when negatively affected.<sup>134</sup> Beyond requirements for consultation regarding the use of renewable and non-renewable resources, Afro-Ecuadorians are also guaranteed the right “to be consulted before the adoption of any legislative measure that could affect any of their collective rights.”<sup>135</sup>

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<sup>131</sup> Ibid., Art. 276.4. Original: “El régimen de desarrollo tendrá los siguientes objetivos: ...4. Recuperar y conservar la naturaleza y mantener un ambiente sano y sustentable que garantice a las personas y colectividades el acceso equitativo, permanente y de calidad al agua, aire y suelo, y a los beneficios de los recursos del subsuelo y del patrimonio natural.”

<sup>132</sup> The 2008 Constitution again guarantees, for example, rights to: “Maintain, develop, and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization” (Art. 57.1), “Preserve inviolable property of their communal lands, which will be inalienable, cannot be used as collateral and are indivisible.” (57.4); “Maintain possession of ancestral lands and territories and obtain their free adjudication” (57.5); “Participate in the use, usufruct, administration and conservation of renewable natural resources on their territory” (57.6); “Conserve and promote their management practices for biodiversity and for their natural environment.” (57.11); “Maintain, recuperate, protect, develop, and preserve their cultural and historical heritage an indivisible part of Ecuadorian heritage.” (57.13); “Develop, strengthen, and fully realize a bilingual education system” (57.14); and “Promote the use of dress, symbols, and emblems that identify them” (Art. 57.19). Original: “Mantener, desarrollar y fortalecer libremente su identidad, sentido de pertenencia, tradiciones ancestrales y formas de organización social” (Art. 57.1); “Conservar la propiedad imprescriptible de sus tierras comunitarias que serán inalienables, inembargables e indivisibles” (Art. 57.4); “Mantener la posesión de las tierras y territorios ancestrales y obtener su adjudicación gratuita” (Art. 57.5); “Participar en el uso, usufructo, administración y conservación de los recursos naturales renovables que se hallen en sus tierras” (Art. 57.6); “Conservar y promover sus prácticas de manejo de la biodiversidad y de su entorno natural” (Art. 57.8); “No ser desplazados de sus tierras ancestrales” (57.11); “Mantener, recuperar, proteger, desarrollar y preservar su patrimonio cultural e histórico como parte indivisible del patrimonio del Ecuador” (Art. 57.13); “Desarrollar, fortalecer y potenciar el sistema de educación intercultural bilingüe” (Art. 57.14); “Impulsar el uso de las vestimentas, los símbolos y los emblemas que los identifiquen” (Art. 57.19).

<sup>133</sup> Ibid., Art. 57.7. “Prior consultation, free and informed, within a reasonable period of time, about plans and programs of prospecting, exploitation, and commercialization of non-renewable resources that are found in their lands and that may have environmental or cultural effects.” Original: “La consulta previa, libre e informada, dentro de un plazo razonable, sobre planes y programas de prospección, explotación y comercialización de recursos no renovables que se encuentren en sus tierras y que puedan afectarles ambiental o culturalmente.”

<sup>134</sup> Ibid., Art. 57.7.

<sup>135</sup> Ibid., Art. 57.17. Original: “Ser consultados antes de la adopción de una medida legislativa que pueda

The 2008 Constitution also expands the right to autonomy, recognizing Afro-Ecuadorian communities' rights to conserve and develop their own forms of social and political organization<sup>136</sup> as well as their proper systems for local authority and the administration of justice.<sup>137</sup> It also guarantees that Afro-Ecuadorians are given a key role in the development of a suitable and participatory educational system for their communities.<sup>138</sup> Moreover, the Constitution grants them the right to maintain contact, relationships and cooperation when divided by international boundaries,<sup>139</sup> which Afro-Ecuadorians see as important for maintaining their centuries-old economic, cultural, and territorial ties with Afro-Colombians.

The promises of local autonomy are also furthered by more precise provisions for CTAs. Whereas the 1998 Constitution stated only that Afro-Ecuadorian communities would be allowed to form territorial circumscriptions, Article 257 of the 2008 Constitution specifies that Afro-Ecuadorian communities can denominate themselves as a Territorial Circumscription when two-thirds of a given community vote in favor,<sup>140</sup> thereby providing new promise for Afro-Ecuadorian communities seeking to use the CTA model as the basis for local political autonomy and legal title to their traditional lands. The 2008 Constitution additionally recognizes *comunas* (discussed in the history section) as an “ancestral form of territorial organization.”<sup>141</sup>

Finally, while the 1998 Constitution's only mention of racism was in its prohibition of the promotion of racism in the media,<sup>142</sup> the 2008 Constitution provides Afro-Ecuadorians with bold promises with regard to both collective and individual discrimination. It states that Afro-Ecuadorians have a collective right to be “neither an object of racism nor of any kind of discrimination based on their origin, ethnic or cultural identity.”<sup>143</sup> Further, “groups affected by racism, xenophobia and other related forms of intolerance and discrimination” are entitled to “recognition, reparations, and redress.”<sup>144</sup> The Constitution also guarantees that the “dignity and

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afectar cualquiera de sus derechos colectivos.

<sup>136</sup> Ibid., Arts. 57.9, 57.15.

<sup>137</sup> Ibid., Art. 57.10.

<sup>138</sup> Ibid., Art. 57.14.

<sup>139</sup> Ibid., Art. 57.18.

<sup>140</sup> Ibid., Art. 257, which reads in part: “The parishes, districts or provinces comprised of indigenous, Afro-Ecuadorian, *montubio*, or ancestral communities, *pueblos* or nationalities, can adopt this special system after a consultation approved by no less than two-thirds of all valid votes.” Original: “Las parroquias, cantones o provincias conformados mayoritariamente por comunidades, pueblos o nacionalidades indígenas, afroecuatorianos, montubios o ancestrales podrán adoptar este régimen de administración especial, luego de una consulta aprobada por al menos las dos terceras partes de los votos válidos.”

<sup>141</sup> Ibid., Art. 60, which states: “Communes that have collective property to land are recognized as an ancestral form of territorial organization.” Original: “Se reconoce a las comunas que tienen propiedad colectiva de la tierra, como una forma ancestral de organización territorial.”

<sup>142</sup> Constitution of 1998, Art. 81, which prohibits “the advertisement by any medium or mode that promotes violence, racism, sexism, religious or political intolerance that affects the dignity of human beings.” Original: “Se prohíbe la publicidad que por cualquier medio o modo promueva la violencia, el racismo, el sexismo, la intolerancia religiosa o política y cuanto afecte a la dignidad del ser humano.”

<sup>143</sup> Constitution of 2008, Art. 57.2. Original: “No ser objeto de racismo y de ninguna forma de discriminación fundada en su origen, identidad étnica o cultural.”

<sup>144</sup> Ibid., Art. 57.3, which guarantees “recognition, reparations and redress to groups affected by racism, xenophobia, and other related forms of intolerance and discrimination.” Original: “El reconocimiento, reparación y

diversity of their cultures, traditions, histories, and aspirations [be] reflected in public education and the media,” and promises access to and production of media.<sup>145</sup>

The Constitution extends principles of non-discrimination to individual Afro-Ecuadorians, as well. Article 11, for example, establishes that “all persons are equal and enjoy the same rights, obligations, and opportunities,” prohibiting discrimination on the basis of a broad criteria.<sup>146</sup> The Article further guarantees that “the state will adopt affirmative action measures that promote real equality in favor of those who find themselves in a situation of inequality.”<sup>147</sup>

While the 2008 Constitution represents a renewal and extension of the Ecuadorian state’s promises to protect the collective and individual rights of Afro-Ecuadorians, there remain significant challenges to the realization of these rights. The next section of the report considers some of the ongoing threats faced by Afro-descendant individuals and communities, in part as a consequence of the state’s failure to ensure the protection of the rights guaranteed by law.

## **VI. THREATS TO THE GUARANTEE OF THE HUMAN RIGHTS OF RURAL AFRO-ECUADORIANS**

The Rapoport delegation’s interviews with Afro-descendant communities in Esmeraldas and Valle del Chota, as well as with government institutions in Quito, indicated multiple ways in which the Ecuadorian state has failed to guarantee the collective property rights, land titles,

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resarcimiento a las colectividades afectadas por racismo, xenofobia y otras formas conexas de intolerancia y discriminación.”

<sup>145</sup> Ibid., Art. 57.21, which guarantees “that the dignity and diversity of their cultures, traditions, histories, and aspirations are reflected in public education and the media; the creation of their own forms of social communication in their languages and access to other forms of media without discrimination.” Original: “Que la dignidad y diversidad de sus culturas, tradiciones, historias y aspiraciones se reflejen en la educación pública y en los medios de comunicación; la creación de sus propios medios de comunicación social en sus idiomas y el acceso a los demás sin discriminación alguna.”

<sup>146</sup> Ibid., Art. 11.2, which states: “All people are equal and enjoy the same rights, duties, and opportunities. No one will be discriminated against for reasons of ethnicity, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, criminal record, socio-economic condition, migration status, sexual orientation, state of health, HIV status, disability, physical difference, nor on the basis of any other distinction, personal or collective, temporary or permanent, that as an objective or result damages or annuls the recognition, enjoyment or exercise of rights.” Original: “Todas las personas son iguales y gozarán de los mismos derechos, deberes y oportunidades. Nadie podrá ser discriminado por razones de etnia, lugar de nacimiento, edad, sexo, identidad de género, identidad cultural, estado civil, idioma, religión, ideología, filiación política, pasado judicial, condición socio-económica, condición migratoria, orientación sexual, estado de salud, portar VIH, discapacidad, diferencia física; ni por cualquier otra distinción, personal o colectiva, temporal o permanente, que tenga por objeto o resultado menoscabar o anular el reconocimiento, goce o ejercicio de los derechos.”

<sup>147</sup> Ibid., Art. 11.2. Original: “El Estado adoptará medidas de acción afirmativa que promuevan la igualdad real en favor de los titulares de derechos que se encuentren en situación de desigualdad.” Likewise, with respect to political inclusion and participation, Article 65 guarantees that “the state will adopt affirmative action measures to guarantee the participation of discriminated sectors.” Original: “El Estado adoptará medidas de acción afirmativa para garantizar la participación de los sectores discriminados.”



standards for prior consultation, and other basic human rights guaranteed to Afro-Ecuadorians. In nearly every meeting the delegation held in Esmeraldas and Valle del Chota, community members expressed concern over lack of education and health care. These concerns were often exacerbated by the dominance of industries that are effectively unregulated and have a significant impact on the environment and the health of those who live in the area. Many of these industries also rely on low-wage labor, thereby impeding Afro-Ecuadorian opportunities for economic development.

The delegation's interviews also highlighted how structural racism continues to threaten not only Afro-descendants' access to land, but also their ability to obtain credit, community-driven development, and inclusion in state policies and institutions. This section describes the delegation's findings with regard to these threats and contends that, until the Ecuadorian state begins taking adequate steps to guarantee the full realization of the rights and protections guaranteed in international law and the 2008 Constitution, Afro-Ecuadorian communities will remain trapped between the rights promised to them and the economic exclusion, social invisibility, and vulnerability they too often experience.

#### A. THREATS TO THE PROTECTION OF ANCESTRAL TERRITORIES IN ESMERALDAS

During the twentieth century, logging, oil palm cultivation, and commercial fisheries established operations in Esmeraldas. Over time, these industries destroyed community-based development opportunities for rural Afro-Esmeraldeños by moving them into an environmentally unsustainable, export-oriented economy that forced them off their territories and transformed them largely into laborers. Moreover, the industries caused environmental degradation with significant health impacts. The continued expansion of commercial operations on and around Afro-descendants ancestral lands also pressured community members, sometimes through violent means, to cede or abandon their communities' ancestral lands.

The displacement of Afro-Ecuadorians from their land was partly facilitated through Ecuador's agrarian reforms in 1964 and 1973 which, as previously mentioned, selected parts of Esmeraldas as safety valve for landless *mestizo* farmers (*colonos*) from other provinces. Since the reforms, these migrants have steadily arrived in Esmeraldas; their numbers grew by 66 percent between 1982 and 1990.<sup>148</sup> The *colonos* sought land and obtained it from the government due to the reforms or through purchase.<sup>149</sup> Sometimes, the state awarded *colonos* parts of Afro-Esmeraldeño communities' collective ancestral territories. In the 1990s, IERAC (the former land reform agency) made an oral promise that it would stop granting land to *colonos* until a system was established to legalize traditional Afro-descendant ancestral settlements.<sup>150</sup> Nevertheless, *colonos* today continue to gain ownership of traditional Afro-descendant lands through direct purchase and trafficking.

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<sup>148</sup> Rodrigo Sierra and Jody Stallings, "The dynamics and social organization of tropical deforestation in northwest Ecuador, 1983-1995," *Human Ecology* 26:1 (1998), 140. In 1978, *colonos* comprised 10.2% of the population, in 1982, 25.3% and in 1990, 37%.

<sup>149</sup> *Ibid.*, 140, 156.

<sup>150</sup> Fernandez-Rasines, *Afrodescendencia en el Ecuador*, 82.

Migrants often force the direct sale of ancestral lands by settling on the outskirts of such land and beginning to cut and sell timber.<sup>151</sup> If and when those Afro-descendants occupying the communally allocated land demand and receive compensation, a de facto sale of communal land has taken place and the community effectively loses its collective rights to that land.<sup>152</sup> The need to support a family and provide an education for children combined with limited opportunities for work and living wages account for the sale of communally allotted lands.

More directly, coercive pressures also factor into such sales. Community members explained to the delegation how third parties such as land traffickers often invade lands and use threats and violence to force Afro-descendants to sell or abandon their property.<sup>153</sup> Even those who sell under such conditions receive very little compensation, perpetuating the cycle of poverty.<sup>154</sup> The illegal and extra-legal nature of individual sale of communal land means that little empirical data exists to document the trend.

### *i. Logging and the Oil Palm Industry*

The logging and oil palm industries were first established in Esmeraldas during the 1950s in the centrally located area of Quinindé. The process of clearing land for lumber and installing oil palm plantations has since expanded into northern Esmeraldas and has sharply increased in the early twenty-first century.<sup>155</sup> The logging and oil palm industries are linked together in a way that contributes to the loss of Afro-descendant ancestral territory. In the first of a two-part process, timber companies contract with middlemen to clear land. Oil palm cultivators soon follow, and, using financial incentives and violence, pressure small farmers to sell or vacate the newly cleared lands.<sup>156</sup> The loss of forests began in the 1960s, and by 1990 approximately ninety percent of Ecuadorian forests west of the Andes Mountains had been logged.<sup>157</sup> Compared with other areas, the forest lands of rural Afro-Esmeraldeño communities were initially harvested more slowly but the pace of logging accelerated in the 1980s<sup>158</sup> and as violence and narcotics-trafficking along the Colombian border pushed people south.<sup>159</sup> The demands of an increasing population also led Afro-Ecuadorians to clear their lands, sell the

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<sup>151</sup> Sierra and Stallings, “The dynamics and social organization of tropical deforestation in northwest Ecuador, 1983-1995,” 141.

<sup>152</sup> Ibid.

<sup>153</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>154</sup> Ibid.

<sup>155</sup> Juan García Salazar, ed. *Territorios Ancestrales, Identidad y Palma: Una Lectura Desde Las Comunidades Afroecuatorianas* (Quito: Altrópico, 2007), 123.

<sup>156</sup> Ibid.

<sup>157</sup> Sierra and Stallings, “The dynamics and social organization of tropical deforestation in northwest Ecuador,” 140-141.

<sup>158</sup> Ibid., 141.

<sup>159</sup> Meeting with Juan García Salazar, Quito. Interview by Rapoport delegation, March 14, 2009; Stuart Schussler, “Refugees in Ecuador: Plan Colombia and the Asylum Lottery,” *Upside Down World*, October 7, 2008, <http://upside-down-world.org/main/content/view/1511/49/> (accessed September 1, 2009).

timber, and put the land into agricultural production.<sup>160</sup>

Racial discrimination, both direct and structural, has shaped much of the complex relationship between communities and these industries. While most Afro-descendants have opposed the industries due to the destruction they have wrought on the forest and environment, others point to the ways that they have been wrongly excluded from the industries, often through aggressive tactics and blatant forms of racial discrimination. In fact, some oil palm cultivators employ racist stereotypes about Afro-Ecuadorians to warrant the oil palm industry's advance into the region without Afro-Ecuadorian participation or consultation. The delegation experienced such stereotyping during its visit to Quinindé, when one oil palm cultivator explained to the delegation that *mestizo* farmers from Manabí were more likely than Afro-descendants to grow oil palm because "blacks are more tropical, less hard-working and generally less interested in long-term planning" than *mestizos*.<sup>161</sup> To the extent they have been permitted, however, some Afro-descendant individuals and communities have looked to the logging and oil palm industries as potential sources of income, and have entered into agreements with industry participants for use of their land. The question of Afro-Ecuadorian participation in this industry remains a highly controversial issue among and between Afro-descendant communities.

In any event, large-scale oil palm cultivation has critically damaged the local environment. The oil palm industry's use of agrochemicals has had a negative impact on the health of oil palm workers and the community members who are directly exposed to the toxins in their daily water supply.<sup>162</sup> According to community members the delegation met with in northern Esmeraldas, both the effluents (liquid waste) and the air pollution generated by the extraction of oil palm has led to further environmental degradation, observed by the death of fish populations in nearby rivers, and rashes on the bodies of people who bathe in these waters.<sup>163</sup>

At a community forum, the delegation learned specifically of one community that has been severely affected by environmental contamination caused by oil palm cultivation.<sup>164</sup> The community of La Chiquita depends on the river system to eat, drink, bathe, and provide other basic needs; yet, the wastewater from oil palm processing has caused health problems, reduced access to water for consumption and other uses, and inhibited traditional fishing practices. Concerned that the oil palm industry was poisoning their bodies<sup>165</sup> and livelihoods, residents of

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<sup>160</sup> Meeting with Juan García Salazar, Quito. Interview by Rapoport delegation, March 14, 2009; Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>161</sup> Meeting at palm oil extraction plant, Quinindé, Esmeraldas. Interview by Rapoport delegation, March 17, 2009.

<sup>162</sup> Juan García Salazar, ed., *Territorios Ancestrales, Identidad y Palma: Una Lectura Desde Las Comunidades Afroecuatorianas* (Quito: Altrópico, 2007), 133.

<sup>163</sup> *Ibid.*, 142-147; Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>164</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>165</sup> *Ibid.*, 159.

La Chiquita, have filed suit against four oil palm businesses.<sup>166</sup> Studies of the water revealed a high degree of oils and inorganic compounds, confirming that “the oil palm producers were the principal source of such contaminants.”<sup>167</sup> In particular, community residents contend that the oil palm industry has violated environmental regulations including the Law of Environmental Management for the Prevention and Control of Environmental Contamination (*Reglamento a la Ley de Gestión Ambiental para la Prevención y Control para la Contaminación Ambiental*) by altering and damaging water and soil quality. Moreover, they contend that the state has failed to monitor or enforce companies’ compliance with the law.<sup>168</sup>

## ii. *Shrimp Farming*

The delegation heard and saw first-hand how the commercial shrimp farming industry has similarly used considerable amounts of land in Esmeraldas with significant effects on biodiversity and on the traditional lands of Afro-descendants. Shrimping began in Ecuador in 1969 and by 1982 according to P. Ocampo-Thomason, “the country had the world’s largest area under shrimp production.”<sup>169</sup> Clearing of mangroves for the construction of shrimp ponds reduced mangroves by 57 percent between 1969 and 1999.<sup>170</sup> In 2002, the shrimp-farming industry had established operations in the *Reserva Ecológica Manglares Cayapas-Mataje* (Ecological Mangrove Reserve of Cayapas-Mataje-REMACAM) in northern Esmeraldas.<sup>171</sup>

The increase of commercial shrimp farming has, in many areas, been accomplished through illegal means.<sup>172</sup> Moreover, the loss of mangroves and pollution caused by the industry has eliminated central parts of Afro-Esmeraldeños’ territory and altered the livelihoods of Afro-

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<sup>166</sup> “Demanda de Reclamo Administrativo,” and “Contestación - Informe Mae, Proceso Palmicultores,” July 28, 2005” (documents received from Fundación Altrapicó via e-mail to Rapoport delegation, March 23, 2009). The community of La Chiquita filed the lawsuit in partnership with the Awá (indigenous) community of Guadalupe.

<sup>167</sup> “Informe Mae, Proceso Palmicultores,” July 28 2005. “The findings make clear the presence of contamination by oil and grease. These contaminants indicate that the (oil palm) extraction plants as the principle source of these contaminants in the water. The findings of dissolved oxygen are exceedingly high and are inconsistent with the level of organic contamination. With the exception of one finding, all the results exceed the 9mg/L.” Original: “Las muestras evidencian la presencia de contaminación por aceites y grasas. Estos contaminantes señalarían a las plantas extractoras de aceite como la fuente principal emisión de estos contaminantes en el agua;” “Los resultados de oxígeno disuelto son demasiado elevados y son inconsistentes con el nivel de contaminación orgánica. Con excepción de una muestra, todos los resultados exceden los 9 mg/L.” (Documents received from Fundación Altrapicó via e-mail to Rapoport delegation, March 23, 2009); see, also, Corporación de Gestión y Derecho Ambiental (ECOLEX) <http://www.ecolex-ec.org/> (accessed September 1, 2009).

<sup>168</sup> “Demanda de Reclamo Administrativo.” The lawsuit cites, for instance, the violation of Articles 105, Art. 77, Art. 62, and Art. 122 of the *Reglamento a la Ley de Gestión Ambiental para la Prevención y Control para la Contaminación Ambiental* (DE-3516. RO-E 2: 31-mar-2003).

<sup>169</sup> P. Ocampo-Thomason, “Mangroves, People, and Cockles: Impacts of the Shrimp-Farming Industry on Mangrove Communities in Esmeraldas Province, Ecuador,” in *Environment and livelihoods in tropical coastal zones: managing agriculture-fishery-aquaculture conflicts. Comprehensive assessment of water management in agriculture series*, 2, ed. Thai Hoanh Chu (Wallingford, UK: CABI Pub., 2006), 141.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid., 141-142.

<sup>172</sup> Ibid. Indeed, P. Ocampo-Thompson found that ninety percent of the shrimp farms in the area are illegal.

descendants who have lived in the area for centuries.<sup>173</sup> For example, effluents from shrimp ponds go directly into estuaries, killing the fish, crabs and shells Afro-descendants have relied upon for their family income.<sup>174</sup> Like logging and oil palm, commercial shrimp farming offers limited employment.<sup>175</sup> New investors in the shrimp industry tend to import work crews from the Ecuadorian highlands instead of hiring from local communities.<sup>176</sup>

**Figure 4: Waterway and Mangrove forest in northern Esmeraldas. Photograph by Rapoport delegation.**



### *iii. Security*

New violence stemming from the spillover effects of the war in Colombia, and the lack of a state response has created instability and new pressures for rural Afro-Ecuadorians in Esmeraldas living along the border. Since the implementation in 2001 of Plan Colombia—a broad campaign aimed at ending the civil war by eliminating guerrilla forces and reducing coca cultivation and the cocaine trade that the US principally funds in the form of military aid—these

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<sup>173</sup> Ibid., 144. Of the communities studied in REMACAM, Ocampo-Thomason found that 85 percent of the households depended on the mangroves for their income, in the form of fishing and cockle gathering.

<sup>174</sup> Ibid., 150.

<sup>175</sup> Ibid., 146.

<sup>176</sup> M. Sánchez and Franklin, “Communities of African Ancestry in Latin America,” 29.

effects have intensified.<sup>177</sup> Many Colombians displaced by the war and seeking safety have fled to Ecuador over the last nine years, adding to economic and social stress on an already marginalized population.<sup>178</sup> More recently, the war itself has crossed international borders into Ecuador, and violent conflict between the Colombian army, paramilitaries, and drug-traffickers have uprooted not only Colombian refugees but also Ecuadorians. The incursion of the Colombian military into northern Ecuador in March 2008, and the growing presence of narcotics-traffickers, coca cultivation, and Colombian rebels have further increased tensions in the region.<sup>179</sup> All of these factors have led to heightened levels of violence in and around Afro-Ecuadorian communities.<sup>180</sup>

The Ecuadorian army's non-permanent presence in the border provinces has contributed to the instability.<sup>181</sup> Indeed, community members in Esmeraldas expressed great concern about the violence stemming from the Colombian conflict.<sup>182</sup> The Ecuadorian government has acknowledged the deteriorating effect the situation has played on its northern border,<sup>183</sup> and the issue has been the subject of international concern. In fact, during the delegation's visit to Ecuador, the Organization of American States (OAS) was conducting an assessment of the volatile situation in the provinces of Esmeraldas, Carchi, and Sucumbíos.<sup>184</sup> The security concerns and high levels of violence only contribute to the difficulties Afro-Esmeraldeños face in protecting and obtaining official recognition of their communal lands.

## **B. THREATS TO ACCESS TO LAND, RESOURCES AND SUSTAINABLE DEVELOPMENT IN VALLE DEL CHOTA**

### *i. Land Distribution*

Afro-descendant communities in the Valle del Chota continue to suffer from a gross inequity in land distribution that dates back to slavery and the *huasipungo* system. As previously

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<sup>177</sup> For discussions of Plan Colombia and displacement in the region, see, for instance, John Lindsay-Poland, "Revamping Plan Colombia," (Washington, DC: Foreign Policy In Focus, July 21, 2009), <http://fpif.org/fpifxt/6283> (accessed September 10, 2009); María Camila López Rojas, "Efectos de la regionalización de la política de seguridad democrática para el desplazamiento en las fronteras de Colombia," *Revista Colombia Internacional*, (January 2007) 136(16), and William Avilés, "US Intervention in Colombia: The Role of Transnational Relations," *Bulletin of Latin American Research* 27:3 (June 2008): 410-429.

<sup>178</sup> Abigail Poe and Adam Isacson, "Ecuador's Humanitarian Emergency: The Spillover of Colombia's Conflict," *International Policy Report* (April 2009): 1.

<sup>179</sup> UN News Centre, "Colombian refugees begin registering in Ecuador under UN-backed project." March 27, 2009, <http://www.un.org/apps/news/story.asp?NewsID=30312&Cr=colombia&Cr1> (accessed August 9, 2009).

<sup>180</sup> Presidencia de la República, "Miguel Carvajal: Ecuador incrementó los patrullajes en la frontera en lo que va del año," *Diplomacy Monitor Link*, March 9, 2009.

<sup>181</sup> Poe and Isacson, "Ecuador's Humanitarian Emergency," 7.

<sup>182</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 16, 2009.

<sup>183</sup> Poe and Isacson, "Ecuador's Humanitarian Emergency," 7. The government has stated that "Ecuador has suffered a progressive deterioration of security and social and economic conditions on the northern border."

<sup>184</sup> "OEA recorre la frontera para verificar los efectos del conflicto colombiano," *El Universo*, March 17, 2009 <http://www.eluniverso.com/2009/03/17/1/1355/1D701B1ED4CA47A0899F8E8B10F68314.html> (accessed September 1, 2009).

discussed, agrarian reform in the 1960s and '70s failed to address this inequality, at least in the longterm, given that the land that was awarded under the 1964 reform (mostly in five-hectare plots) has already been divided among generations. Today, on average, a single five- hectare plot is shared by five to eight families, leaving each family with less than one hectare of land – an amount insufficient to assure a basic agricultural livelihood, especially given the land’s poor soil and limited access to water.<sup>185</sup> Describing the inequity of land distribution, a community member from Valle del Chota remarked that Afro-Choteños “do not even have enough space to bury their dead.”<sup>186</sup>

Lack of access to land and its concentration in the hands of a few large landowners has significantly limited the development possibilities for Afro-Choteños. A number of communities in Valle del Chota, for example, have received support for micro-development projects from the government and other donor agencies, such as the Inter-American Development Bank (*Banco Interamericano de Desarrollo-IDB*). But insecurity both of title and land access has impeded their ability to take full advantage of that assistance.

When the delegation visited a micro-enterprise development project in the community of El Juncal, it saw firsthand how a number of these issues manifested. There, in 2002, an Afro-Ecuadorian community cooperative began a project of cultivating the prickly pear cactus fruit (“*tuna*”) on the arid mountainsides of Valle del Chota, in part with funding from the IDB and support from Ecuadorian NGOs in the region.<sup>187</sup> Although they are using the land with the permission of the owner, the project’s farmers hope to buy the lands. The cooperative reported to the delegation, however, that the landowner refuses to formalize any agreement for land use or purchase by putting it in writing.<sup>188</sup> Without such a legally binding agreement, there is simply no basis for long-term administration of the lands, protection of Afro-Ecuadorian investment in them, or any grounds for an equitable settlement were a dispute to arise.

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<sup>185</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation. March 20, 2009.

<sup>186</sup> Ibid.

<sup>187</sup> See, for instance, Inter-American Development Bank IDB, “EC-T1067: Access to Markets for Afro-Ecuadorian Youth: The Quest for Economic Rights,” Projects, <http://www.iadb.org/projects/project.cfm?id=EC-T1067&lang=en> or for additional related IDB programs see “Final Evaluation Report,” Documents, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1263322> (accessed August 25, 2009). For a video about the *tuna* project, the Chota Valley and Afro-Ecuadorians see [http://www.iadb.org/countries/home.cfm?id\\_country=EC#](http://www.iadb.org/countries/home.cfm?id_country=EC#). The Centro de Investigaciones Familia Negra (the Black Family Research Center –CIFANE) and the Federación de Comunidades y Organizaciones Negras de Imbabura y Carchi (Federation of Black Communities and Organizations of Imbabura and Carchi-FECONIC) are the local organizations providing coordination and technical assistance.

<sup>188</sup> Meeting with Asociación Mirador del Juncal, El Juncal, Valle del Chota. Interview by Rapoport delegation, March 21, 2009.

**Figure 5: Tuna project in Valle del Chota. In the distance (near the river) are well-irrigated *haciendas*. Photograph by Rapoport delegation.**



ii. *Access to Quality Water*

Water represents another example of the historically unequal distribution of resources in the Valle del Chota. In a dry climate already plagued by water scarcity, hoarding of water by *haciendas* and poor irrigation systems leave many Afro-Choteño communities lacking the means with which to cultivate crops.<sup>189</sup> Inefficient irrigation systems, upstream sugarcane *haciendas*, and flower companies also consume enormous amounts of water.<sup>190</sup> According to one community member, *haciendas* consume 80 percent of irrigated water in the Valle del Chota region.<sup>191</sup> Pesticides and chemicals from these growers, Afro-Choteños contend, also contaminate water supplies, further exacerbating the scarcity of potable water.<sup>192</sup>

The delegation was also told that inadequate sewage systems contribute to water pollution in Valle del Chota. As a whole, Afro-Ecuadorians do not have adequate access to potable water<sup>193</sup> and rural areas in Ecuador receive the lowest levels of coverage in terms of

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<sup>189</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009; CODAE, El Sistema de Indicadores Sociales del Pueblo Afroecuatoriano (System of Social Indicators for the Afro-Ecuadorian people-SISPAE), Sistema Integrado de Indicadores Sociales del Ecuador (Integrated System of Social Indicators -SIISE), “Pueblo Afroecuatoriano Valle de Chota, Indicadores Sociales del Pueblo Afroecuatoriano,” 2, [http://www.inec.gov.ec/c/document\\_library/get\\_file?folderId=2140563&name=DLFE-21922.pdf](http://www.inec.gov.ec/c/document_library/get_file?folderId=2140563&name=DLFE-21922.pdf) (accessed August 20, 2009).

<sup>190</sup> CODAE, SISPAE, SIISE, “Pueblo Afroecuatoriano Valle del Chota,” 2.

<sup>191</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>192</sup> Ibid.

<sup>193</sup> Sánchez and Franklin, “Communities of African Ancestry in Latin America,” 124.



water sanitation and service.<sup>194</sup> Community members claim that in addition to agro-business chemicals, wastewater from urban communities flows directly into the Chota River and downstream to Afro-descendant residents. The use of this untreated water within communities, a member claimed, has led to an increase in health problems.<sup>195</sup> One community leader told the delegation that water contamination was “attacking the health and lives of the people and there are no ordinances to stop this. In the past there were fish in the river and now there are not because the waters are contaminated.”<sup>196</sup> Rural Afro-descendants’ experience is similar to problems related to water treatment and contamination faced by poor communities throughout the country,<sup>197</sup> but scarcity of water in the Valle del Chota makes water quality a particularly important issue.

### iii. *Labor Conditions*<sup>198</sup>

Lack of land and sustainable forms of production as well as a dearth of employment opportunities have forced many rural Afro-Ecuadorians to seek wage work under abusive and unhealthy conditions. While some migrate to other parts of the country, others enter into low paying jobs on nearby *haciendas*. Many of the jobs do not pay sufficiently to meet the average “basket of goods” for a family of four (“*canasta basica*”), a figure set by the Ecuadorian government that, as of June 2009, amounted to no more than \$500 dollars a month.<sup>199</sup> A study conducted in 2003, when the monthly *canasta basica* was \$300, found that many Afro-Choteños made just \$3.50 per day, or less than \$70 per month.<sup>200</sup>

When Afro-Choteños do find work, it is often under dangerous and functionally unregulated conditions. Many Afro-Choteños, – including children – find jobs in the nearby

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<sup>194</sup> World Water Council, "Rural and Small Towns Water Supply and Sanitation Projects I, II (PRAGUAS I, II)," <http://www.worldwatercouncil.org/index.php?id=2148> (accessed August 26, 2009).

<sup>195</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>196</sup> Ibid.

<sup>197</sup> World Water Council, “Rural and Small Towns Water Supply and Sanitation Projects I, II (PRAGUAS I, II).” For a discussion of water management issues in other areas, such as Guayaquil, see Emily Joiner, *Aguita Amarilla/Murky Waters: A Critical and Purposeful Look at Water and Sanitation Services in Guayaquil, Ecuador* (Guayaquil: Observatorio Ciudadano de Servicios Públicos, October 2007) <http://www.micometa.org.ec/descargas/Murky%20Waters%20By%20Emily%20Joiner.pdf> (accessed August 31, 2009).

<sup>198</sup> Partly because of the delegation’s focus in Esmeraldas on threats to communal land rights, it did not visit workplaces or interview individuals about labor conditions. Thus, this issue is only addressed with regard to Valle del Chota, though some of the same issues might well apply in Esmeraldas. For a discussion of working conditions in the shrimp industry, for example, see Kennedy Warne, “A Stone in the Shoe,” *Last Stands: The Disappearing Rainforests of the Sea*, <http://laststands.kennedywarne.com/tag/esmeraldas> (accessed August 30, 2009).

<sup>199</sup> Instituto Nacional de Estadística y Censos (INEC), “Serie Histórica de la Canasta Familiar Básica Nacional,” (Quito: July 2009) [http://www.inec.gov.ec/c/document\\_library/get\\_file?folderId=104043&name=DLFE-16812.pdf](http://www.inec.gov.ec/c/document_library/get_file?folderId=104043&name=DLFE-16812.pdf) (accessed August 9, 2009).

<sup>200</sup> See Renán Tadeo and others, *Diagnóstico de la Problemática Afroecuatoriana y Propuestas de Acciones Prioritarias. Cooperación Técnica BID ATN/SF-7759-EC, Diagnóstico General*, (Quito: September 2003), 50 <http://www.codae.gov.ec/documentos/cifras.doc> (accessed August 25, 2009).

flower plantations.<sup>201</sup> During the 1990s, Ecuador's flower exports grew by more than ten times, owing to the low labor costs, weak labor regulations and financial incentives that had encouraged businesses to establish operations.<sup>202</sup> Consequently, employment in this industry often exacts a high cost to workers' health. Women from the town of La Victoria, for example, described the health issues created by the use of harsh chemicals in flower factories, including respiratory illnesses and serious skin problems. One woman related that her daughter worked in the flower factory and quickly developed sores on her hands and arms from the chemicals. At the time, the girl was using her own cloth gloves because the company did not provide any protective gloves.<sup>203</sup> Although the factory might well be in violation of Ecuadorian labor and health regulations, the women expressed significant reluctance to file any kind of complaint out of fear that the factory might simply move to another location, leaving those who currently work there with no means of subsistence.<sup>204</sup>

### C. THREATS TO ACCESSING CREDIT FOR ECONOMIC DEVELOPMENT: VALLE DEL CHOTA AND ESMERALDAS

Both formal and structural discrimination have further impeded the development of Afro-descendants by restricting or even prohibiting their access to credit services,<sup>205</sup> thereby limiting their ability to invest in infrastructure, technology, and the marketing of their goods.<sup>206</sup> In both Esmeraldas and the Valle del Chota, the Rapoport delegation heard about Afro-descendant individuals, agricultural collectives, and communal organizations that wished to pursue business initiatives but could not obtain access to credit.<sup>207</sup> As one community member described, banks view Afro-descendants as unreliable borrowers and consequently do not even consider them as "sujetos de credito," or recipients of credit.<sup>208</sup> Many community members complained about redlining, a practice that excludes from credit lending the geographic areas in which Afro-descendant communities live.<sup>209</sup>

In Esmeraldas, several factors are responsible for the difficulties Afro-descendants experience when trying to obtain credit. First, like in the Valle del Chota, Afro-Esmeraldeños cannot secure credit with informal title or land use agreements because these arrangements often

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<sup>201</sup> For discussion about the flower industry in Ecuador and neighboring countries see Norma Ferm, "Is the bloom off the rose? The reality of the flower-export industry," *Kennedy School Review*: 8 (Annual 2008): 19(6).

<sup>202</sup> Tanya Korkovin and Olga Sanmiguel-Valderrama, "Labour standards, global markets and non-state initiatives: Colombia's and Ecuador's flower industries in comparative perspective," *Third World Quarterly*: 28:1 (February 2007): 125.

<sup>203</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>204</sup> Ibid.

<sup>205</sup> CODAE, SISPAE, SIISE, "Valle del Chota": 2.

<sup>206</sup> Carlos Rosero, "Derechos Humanos de los Afroecuatorianos CT BID ATN/SF-7759," *Diagnóstico de la problemática Afroecuatoriana y Propuestas de Acciones Prioritarias, Cooperación Técnica BID ATN/SF -7759-EC* (Quito: 2003), 71 <http://www.codae.gov.ec/documentos/derechos.pdf> (accessed July 15, 2009).

<sup>207</sup> Community forum in Maldonado, Esmeraldas. Conducted by Rapoport delegation, March 15, 2009; Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>208</sup> Meeting with FECONIC in Valle del Chota. Interview by Rapoport delegation, March 20, 2009.

<sup>209</sup> Ibid.

do not satisfy collateral requirements for loans. Second, in the cases where Afro-descendant communities have obtained government recognition and formal land titles to their communities as collective lands, such lands do not qualify because, as discussed above in the Law section, they are *inembargable*, meaning they cannot be used as collateral. Although designed to protect communities from losing communal lands due to a default on a loan, this restriction nevertheless has the effect of limiting Afro-descendants' access to credit and economic opportunities. No non-collateral legal mechanism has been offered to provide credit based on the value of the land.<sup>210</sup>

Rural Afro-Ecuadorians in both Esmeraldas and Valle del Chota continue to face complex challenges to the realization of their basic human rights. The next section considers several governmental agencies with which the Rapoport delegation had the opportunity to meet with while in Ecuador that formulate and implement policies that affect rural Afro-Ecuadorians directly and indirectly.<sup>211</sup> It explains that while many of the state institutions are at times well intentioned, they often fail to take into account the specific, diverse and urgent threats facing rural Afro-descendants.

## VII. NATIONAL INSTITUTIONAL RESPONSES: PROMISES, CHALLENGES, AND THE NEED FOR AFRO-ECUADORIAN PARTICIPATION

The new Ecuadorian government plans for development and institutional restructuring promise more inclusive governance practices. Yet visits made by the Rapoport delegation to the offices of the organizations in charge of implementing these plans suggested that, if left to continue along their current trajectory, new policies for economic development, environmental protection, and land titling will play out at great cost to Afro-Ecuadorian communities and their claims to land and participation.

It appeared that one agency, the *Corporación para el Desarrollo Afroecuatoriano* (Corporation for Afro-Ecuadorian Development-CODAE), directed by active members of the Afro-Ecuadorian social movement, provides the only official space for attending to Afro-

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<sup>210</sup> Such legal mechanisms do exist, at least in principle. See Colombia's Ley 70 de 1993, *Diario Oficial* No 41.013 (Aug. 31, 1993). In Colombia, for example, Law 70, which granted Afro-descendants the right to collective property ownership, requires that the federal government provide special finance and credit programs for Afro-Ecuadorian communities (Art. 52), and that those mechanisms accommodate the particular socioeconomic and environmental conditions faced by Afro-Colombian communities (Art. 55). In particular, the law states that, "for purposes of estimation and securing the loan, the value of the property authorized for use can be taken into account" (Art. 52). Original: "para efectos del estimativo de este aporte y para garantizar los créditos, se podrá tener en cuenta el valor de los bienes que se autoriza aprovechar." (Art. 52). Admittedly, that provision has been one of the most contested of Law 70, and the Colombian state has yet to promulgate the regulations necessary to implement it. For further discussion of the dispute over and delay of such regulations, see Karen Engle, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy* (Durham: Duke University Press, forthcoming).

<sup>211</sup> The Rapoport delegation met with several governmental agencies that play a role in policy decisions concerning Ecuador's Afro-descendants. However, these institutions do not constitute an exclusive or exhaustive list of federal agencies whose work affects Afro-Ecuadorians. —Ed

Ecuadorians. No other agencies with whom the delegation met or corresponded indicated that they employed staff to work specifically on Afro-descendant issues. Similarly, Afro-Ecuadorians are also under-represented throughout government agencies, despite the state's verbal commitment to affirmative action and the representation of all social groups.

This section outlines both the institutional promises and pitfalls with regard to the recognition and social and political inclusion of Afro-descendants. It examines a number of public institutions and policies that have a significant impact on the rights of rural Afro-Ecuadorians in Esmeraldas and Valle del Chota.

#### **A. THE CORPORACIÓN PARA EL DESARROLLO AFROECUATORIANO (CODAE)**

In 1998, CODAE was established by executive decree, with the mission of “designing plans to strengthen the Afro-Ecuadorian community, valorize Afro-descendant contributions to the nation, and combat racial discrimination.”<sup>212</sup> The 2007-2010 National Development Plan, as discussed in the structural racism section, lists CODAE as a national council that advises and consults with the state at the highest level for the formulation of public policy.<sup>213</sup> Nevertheless, CODAE struggles to find recognition and response from the state as a policymaking body.

CODAE operates with a limited annual budget of around US \$1 million, making it difficult for the agency to fulfill its mission to a large and diverse constituency.<sup>214</sup> The agency must struggle, for example, to bridge the divide between the priorities of rural Afro-descendants and their counterparts in Ecuador's urban centers. Moreover, the establishment of an institution dedicated to Afro-descendant issues, the delegation found, has provided justification for other state entities to ignore the Afro-Ecuadorian population within their own plans and programs. As the ensuing subsections detail, a number of other government agencies have yet to seriously consider their role in addressing the issues and problems confronting Afro-Ecuadorians.

#### **B. SENPLADES AND THE NEW NATIONAL DEVELOPMENT PLAN**

The *Secretaría Nacional de Planificación y Desarrollo* (National Secretary of Planning and Development-SENPLADES) is the state agency charged with administering a national plan

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<sup>212</sup> CODAE, “Quienes Somos.”

[http://www.codae.gov.ec/index.php?option=com\\_content&task=view&id=1&Itemid=128](http://www.codae.gov.ec/index.php?option=com_content&task=view&id=1&Itemid=128) (accessed September 14, 2009). Executive Decree 1747 established CODAE.

<sup>213</sup> SENPLADES, Plan Nacional de Desarrollo 2007-2010, 287.

<http://www.senplades.gov.ec/images/stories/descargas/2snp/1pnd/DLFE-205.pdf> (accessed August 30, 2009).

<sup>214</sup> Comisión Nacional de Estadísticas para Pueblos Indígenas y Afroecuatorianos (CONEPIA). *Gasto Social y Etnicidad en el Ecuador: Análisis de la inversión pública en el Ecuador en educación, salud, infraestructura, vivienda, desarrollo productivo y programas sociales*, 39, [www.inec.gov.ec/web/guest/conepia/con\\_est](http://www.inec.gov.ec/web/guest/conepia/con_est) (accessed September 9, 2009). In contrast, according to CONEPIA, in “*Gasto Social y Etnicidad en el Ecuador*,” the *Consejo de Desarrollo de las Nacionalidades y Pueblos del Ecuador* (Council for Development of Nationalities and Peoples of Ecuador –CODENPE), an organization for indigenous people, has a budget of more than 11 million dollars a year. This means that indigenous people receive 7.1 times more funding through CODENPE than Afro-descendants through CODAE. —Ed.

for development (or PND), as discussed previously. SENPLADES operates with the goals of increasing participation in the process of national planning.<sup>215</sup> In formulating its *Plan Nacional de Desarrollo* for 2007-2010, Ecuador acknowledged a number of structural problems that have frustrated a more inclusive and participatory development strategy for Afro-Ecuadorian communities, and committed—as the state indicated for a Durban Review preparatory conference in September 2008—“to mak[ing] Afro-Ecuadorian communities a priority in the political agenda.”<sup>216</sup>

The National Development Plan identifies several objectives that in fact mirror the demands and proposals that Afro-Ecuadorian communities have made for over a decade, such as responding to the historical legacy of racism and discrimination against Afro-descendants and other minority groups. For instance, the Plan promotes the knowledge, value, and affirmation of diverse socio-cultural identities of both Afro-Ecuadorian and indigenous people, guarantees the collective rights and territory of indigenous and Afro-Ecuadorian *pueblos* and the creation of mechanisms that guarantee free, prior and informed consent for the *pueblos* referred to in processes of negotiation and agreements with national and international businesses.<sup>217</sup>

Despite this relatively inclusive plan attending to Afro-descendants, the PND does not offer concrete proposals or actions to ensure that rural Afro-Ecuadorians have access to the lands and resources necessary. Such actions can be found in a CODAE-drafted proposal for the development of Afro-Ecuadorians, which considers how government institutions could address the inequity Afro-descendants experience with regards to health, racial discrimination, education, and land.<sup>218</sup> Moreover, CODAE puts forth specific actions regarding land access that would resonate particularly with rural Afro-descendants, including large-scale titling of Afro-Ecuadorian communal ancestral territories, legalization and purchase of Afro-descendant farm lands, and territorial and natural resources allocation.<sup>219</sup>

When the delegation met with SENPLADES, it was introduced to a highly detailed proposal for reorganization of state entities and jurisdictional boundaries. The new structure

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<sup>215</sup> Ecuador, *Estatuto Orgánico de la Secretaría Nacional de Planificación y Desarrollo*. Acuerdo No. 151-2007, May 2008, Art. 6.1. For SENPLADES’ mission and principle objectives, see <http://www.senplades.gov.ec/images/stories/descargas/4transparencia/3estatutoorganico/DLFE-40.pdf>, 5-6.

<sup>216</sup> UN Secretariat. Office of the High Commissioner for Human Rights, *Questionnaire to the specialized agencies... 2*, <http://www.un.org/durbanreview2009/pdf/questionnaire1st.pdf> (accessed August 31, 2009); UN General Assembly, Durban Review Conference, *Additional contributions from States received by the Office of the United Nations High Commissioner for Human Rights A/CONF.211/PC/WG.1/CRP.1* September 2008, 12, [http://www.un.org/durbanreview2009/pdf/Contributions\\_from\\_states\\_CRP.1.pdf](http://www.un.org/durbanreview2009/pdf/Contributions_from_states_CRP.1.pdf) (accessed August 31, 2009). Question 6 asked states to “[p]lease identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance in your country.” The state of Ecuador responded: “Ecuador has also committed itself, within the National Plan for Social Development and Productivity, to make Afro-Ecuadorian communities a priority in the political agenda.”

<sup>217</sup> SENPLADES, *Plan Nacional de Desarrollo 2007-2010*, 262.

<sup>218</sup> CODAE, *Plan Nacional de Desarrollo: 2007-2010 Pueblos Afroecuatorianos* (Quito: April 27, 2007) [http://www.inec.gov.ec/c/document\\_library/get\\_file?folderId=2019634&name=DLFE-21528.pdf](http://www.inec.gov.ec/c/document_library/get_file?folderId=2019634&name=DLFE-21528.pdf) (accessed August 31, 2009).

<sup>219</sup> *Ibid.*, 16.

largely assumes the legitimacy of de facto property use and ownership, however, which means it takes for granted loss and displacement that has already occurred. When the delegation asked about instances in which people have been removed from land through extra-legal means, a SENPLADES representative explained that, because the people are gone, the government would simply denominate the area as a commercial zone.<sup>220</sup> Moreover, while the aim of the reorganization is inclusion and participation, representatives acknowledged that Afro-descendants had not been consulted in the process of designing the new structure.

### C. INDA AND MASS TITLING OF LAND

As noted in the previous subsection, few Afro-descendant communities have obtained official title for their lands. When the Rapoport delegation met with INDA, the representatives stated that 60 percent of all Ecuadorians using lands do not possess legal title,<sup>221</sup> and that President Rafael Correa had made large-scale land titling a campaign promise.<sup>222</sup> Thus, in March 2009, INDA was planning to engage in a mass titling campaign, which has since begun in the central Sierras.<sup>223</sup> INDA representatives also indicated their understanding, however, that Afro-Ecuadorians did not possess ancestral lands (which they saw as referring only to the lands of indigenous peoples). When asked about the status of collective land applications by Afro-descendants, the representatives said INDA had received no such applications.<sup>224</sup> The delegation thus concluded that INDA had not developed or implemented a policy to target the legalization of Afro-Ecuadorian individual or collective lands despite its broad national titling initiative, and that it had no intention of doing so. Further, a high-ranking official noted that, due to security concerns and high levels of violence relating to the war in Colombia, the institute would deploy the military for the adjudication of titles in the northern Esmeraldas border region. For these reasons, the agency did not have plans to enter northern Esmeraldas to investigate any disputes or concerns over the loss of Afro-descendant lands.<sup>225</sup>

The government's actions toward mass land titling in Ecuador highlight the urgency of making clear the legal priority the 2008 Constitution guarantees to Afro-Ecuadorians, particularly with regard to their ancestral lands. Making titling of Afro-descendant lands a priority, however, is not sufficient. The Rapoport delegation repeatedly heard from Afro-Ecuadorian communities in Esmeraldas that mere possession of legal land title does not effectively protect the right to property. As described previously, illegal operations and the recognition of individual land sales of communal lands have weakened the significance of collective title. The titles must be both recognized and enforced.

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<sup>220</sup> Meeting with SENPLADES, Quito. Interview by Rapoport delegation, March 19, 2009.

<sup>221</sup> Meeting with INDA, Quito. Interview by Rapoport delegation, March 18, 2009.

<sup>222</sup> Ibid.

<sup>223</sup> "El INDA continúa con el trabajo de titulación de tierras," *Los Andes* April 22, 2009, <http://www.diariolosandes.com.ec/content/view/13793/38/> (accessed August 31, 2009).

<sup>224</sup> Meeting with INDA, Quito. Interview by Rapoport delegation, March 18, 2009.

<sup>225</sup> Ibid. The official explained that INDA did not want to confront narco-traffickers and guerillas in the region.

#### D. MINISTRY OF THE ENVIRONMENT AND ENVIRONMENTAL PROTECTION POLICIES

The National Development Plan highlights defense of the environment and conservation of land as a national priority.<sup>226</sup> For the most part, its vision would seem to fit with the emphasis that the delegation heard many Afro-Ecuadorian communities and leaders place on the importance of environmental protections and the preservation of the biodiversity of their ancestral territories. The *Ministerio del Ambiente* (Ministry of the Environment) has elaborated a conservation project, however, that, while reflecting the state's commitment to protect the environment is unfortunately emblematic of the government's failure to respond to the realities faced by Afro-Ecuadorian communities.

The conservation project, *Programa Socio Bosque* (Forest Partners Program), pays rural Ecuadorians to conserve land on their property. Formulated in response to the high levels of poverty in rural areas of Ecuador, the project nonetheless depicts poor farmers as responsible for the deforestation that degrades the land's productivity and deepens the cycle of poverty.<sup>227</sup> Through the Ministry of the Environment, the state agrees to make an annual payment of \$0.50 to \$30.00 per hectare to titleholders of individual or collective property who register for and comply with the program.<sup>228</sup>

The Ministry of the Environment describes *Socio Bosque* as a "pioneering initiative" in forestry governance<sup>229</sup> and identifies three principal objectives: (1) "conservation of native forests, fields, and flora; (2) reduction of greenhouse gas emissions; (3) improvement of the living conditions of those residing in the area."<sup>230</sup> The Ministry of the Environment already has plans to sign agreements with applicants in Esmeraldas due to the province's high rates of deforestation.<sup>231</sup> While *Socio Bosque* could have an impact on the preservation of lands currently occupied and used by Afro-Ecuadorians, especially in Esmeraldas, the delegation heard

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<sup>226</sup> SENPLADES, *Plan Nacional de Desarrollo 2007-2010*, 166.

<sup>227</sup> Ministerio del Ambiente, Acuerdo No. 177. (Quito), 1-15,

<http://www.ambiente.gov.ec/userfiles/1/file/socio%20bosque/Acuerdo177.pdf> (accessed September 1, 2009).

<sup>228</sup> Ibid.

<sup>229</sup> Ministerio del Ambiente, "Socio Bosque," Gobierno Nacional de la República de Ecuador,

[http://www.ambiente.gov.ec/paginas\\_espanol/sitio/elprograma.html](http://www.ambiente.gov.ec/paginas_espanol/sitio/elprograma.html) (accessed August 9, 2009). Original: "una iniciativa pionera."

<sup>230</sup> Ministerio del Ambiente, Acuerdo No. 177. (Quito), 2,

<http://www.ambiente.gov.ec/userfiles/1/file/socio%20bosque/Acuerdo177.pdf> (accessed September 1, 2009). "To achieve conservation of the areas of native forests, fields, and fauna; to reduce the emission of greenhouse gases caused by deforestation, and to contribute to the betterment of the conditions of life of the inhabitants of rural villages situated in the aforementioned areas." Original: "lograr la conservación de las áreas de bosques nativos, páramos y otras formaciones vegetales nativas del Ecuador; reducir las emisiones de gases de efecto invernadero causadas por efecto de la deforestación; y contribuir a la mejora de las condiciones de vida de los habitantes de poblaciones rurales asentados en dichas áreas."

<sup>231</sup> Ministerio del Ambiente, "Socio Bosque," Gobierno Nacional de la Republica de Ecuador, [http://www.ambiente.gov.ec/paginas\\_espanol/sitio/comofunciona.html](http://www.ambiente.gov.ec/paginas_espanol/sitio/comofunciona.html) (accessed August 9, 2009). Besides Esmeraldas province, the program also prioritized the Amazon region.

concerns about the penalties communities might face for failing to comply with the terms of the program.<sup>232</sup> There appears to be a risk that community members could lose not only their usage rights to the land for which communities hold title but also the land itself.<sup>233</sup> Such a penalty would conflict with the constitutional guarantees of communal property rights and the land's inalienable character.<sup>234</sup>

Moreover, the community registered for the program is responsible for any development or other activity on the land that might violate the conservation agreement, even if third parties enter communal land and violate the terms of the project. When meeting with the Rapoport delegation, a ministry official stated that Afro-Ecuadorian communities had the obligation to "protect their lands," raising troubling questions about how existing conflicts between communities and violent land traffickers might be resolved.<sup>235</sup>

As with the national development plan and land titling, the state should actively consult with Afro-Ecuadorian communities in the development and implementation of the *Socio Bosque* project and ensure that it lives up to the promises guaranteed by international and Ecuadorian law.

## VIII. CONCLUSIONS AND RECOMMENDATIONS

The reaffirmation of the territorial rights of Afro-descendant rights in the enactment of the 2008 Constitution and in the restructuring of the state catalyzed by the Constitution present an opportunity for the Ecuadorian government to begin taking active, positive measures for the protection of Afro-Ecuadorian land rights. Such measures are as necessary now as ever, and the Rapoport delegation urges the government to respond, as set forth in the recommendations at the beginning of this report, to the urgent threats facing Afro-Ecuadorian communities in Esmeraldas and Valle del Chota and to do so with the full inclusion, participation, and consultation of these communities.

Based on the delegation's findings, the Rapoport Center makes the following recommendations for the Ecuadorian government as well as for international and regional human rights and financial institutions. The recommendations are mindful of the central role that collective territories and land serve in guaranteeing the full realization of human rights for Afro-Ecuadorians.

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<sup>232</sup> Ministerio del Ambiente, Acuerdo No. 177. (Quito), 12, <http://www.ambiente.gov.ec/userfiles/1/file/socio%20bosque/Acuerdo177.pdf> (accessed September 1, 2009).

<sup>233</sup> Ibid., see 9.4, 11.4.

<sup>234</sup> Constitution of 2008. Art. 57.

<sup>235</sup> Meeting with the Ministry of the Environment, Quito. Interview by Rapoport delegation, March 19, 2009.



## **A. ECUADORIAN GOVERNMENT**

1. *Facilitate, regularize and guarantee land title for rural Afro-Ecuadorian communities in Esmeraldas.*
  - a. Immediately establish a program and assign institutional responsibility for the identification, titling and protection of Afro-Ecuadorian communities' ancestral lands.
    - i. The program should establish procedures for collective territorial organization under the CTA and other autonomy models recognized in the 2008 Constitution.
    - ii. Suspend INDA's mass titling effort in Esmeraldas and Valle del Chota until the state has effectively guaranteed the collective rights of Afro-Ecuadorian communities through the titling processes mentioned above.
    - iii. The collective titling system should ensure that communities receive titles that fully encompass the land they have traditionally used, and guarantee that collectively held lands are inalienable and non-transferable from the community.
    - iv. The program should be developed with the participation of Afro-descendant communities and in accordance with state obligations for guaranteeing meaningful prior consultation.
    - v. The titling system should fully consider the specific measures proposed by CODAE for Afro-Ecuadorians for the National Development Plan: 2007-2010.
    - vi. Surveying and mapping of traditional Afro-Ecuadorian territory should be carried out by independent entities with the participation of community members.
    - vii. In addition to titling new land, the program should guarantee the enforcement of those Afro-Ecuadorian collective titles already recognized by the state.
  - b. Refuse to recognize any future illegal sales of inalienable ancestral land, and ensure the return of land to those communities affected by those sales. Create, in consultation with Afro-Ecuadorian communities, a process by which other forms of compensation might be considered in extraordinary circumstances where return of the land is no longer a meaningful option for the communities.
  - c. Identify northern Esmeraldas as a priority for regularization of land title and conflict resolution.
  - d. Provide adequate security and institutional support to Afro-Ecuadorian communities in the Colombia border region.

2. *Ensure that Afro-Ecuadorians in the Valle del Chota acquire adequate productive lands for individual or communal economic activities by:*
  - a. Developing, with the active participation of Afro-descendant communities, an additional program to purchase rural lands in the Valle del Chota region for redistribution to Afro-Ecuadorian families.
  - b. Ensuring the enforcement of oral agreements entered into between Afro-Ecuadorians and large landholders in the region to guarantee that Afro-Ecuadorians can engage in long-term development projects on the land.
  - c. Ensuring equitable distribution of water for irrigation and personal use in accordance with Ecuadorian water law (the Ley de Aguas, Art. 318) which prioritizes human consumption and irrigation over industry.
3. *Ensure fair lending and credit practices to Afro-Ecuadorian communities.*
  - a. Enforce anti-discrimination laws and promulgate new regulations when necessary to prohibit direct and indirect discrimination by banks in their lending practices.
  - b. Through the adoption of legislation and/or regulations, provide alternatives to traditional forms of credit lending that allow Afro-Ecuadorians the opportunity to invest in community-based development and small-business ventures.
4. *Guarantee environmental rights in the 2008 Constitution.*
  - a. Require the consideration of environmental impact of any program or project requiring governmental approval on Afro-descendants through a process of free, prior and informed consultation or, where applicable, consent.
  - b. Enforce current legislation and adopt new legislation and regulations where necessary for the protection of Afro-Ecuadorian communities' traditional livelihoods in Esmeraldas.
    - i. To protect the mangrove areas against the commercial shrimping industry.
    - ii. To prohibit those engaged in the oil palm industry from dumping and from water, land, and air contamination.
    - iii. To ensure remediation for any environmental harm.
  - c. Guarantee the fairness of the *Socio Bosque* program.
    - i. Ensure that Afro-Ecuadorian communities are not subject to loss of their land under the program.
    - ii. Make certain that Afro-Ecuadorian communities are in no way penalized in cases where lands protected under the *Socio Bosque* program are adversely impacted by individuals or third party actors.

- iii. Recognize a principle of prioritizing traditional resource-based livelihoods over the rights of the environment when these two points conflict by considering sustainable traditional livelihoods as part of a harmonious interdependence of resources and human populations.

5. *Ensure coordination between government institutions.*

- a. Allocate sufficient funds to CODAE and other institutions to carry out the positive steps necessary to guarantee the land rights of Afro-Ecuadorians.
- b. Create an inter-institutional mechanism to ensure that state policies do not have contradictory goals that may adversely impact Afro-descendant communities.

6. *Take immediate and positive measures to address structural racism.*

- a. Enforce laws against discrimination and denounce instances of racism.
- b. Implement affirmative action policies that promote effective and equal access to all of the country's institutional spaces.
- c. Develop new social programs to address unequal access to education and to basic health and social services.
- d. Promote ethno-education policies and the inclusion of Afro-Ecuadorian history and culture into classroom curriculums throughout the country.
- e. Establish methods for census data collection that accurately represent the Afro-descendant population in Ecuador.
- f. Consider the concerns and implement the recommendations from the Concluding Observations of the Committee on the Elimination of Racial Discrimination CERD/C/ECU/CO/19 with regard to Afro-Ecuadorians.
- g. Implement the measures and initiatives recommended in the outcome document from the Durban Review Conference relating to the Durban Declaration and Programme of Action for Afro-descendants.

7. *Guarantee adequate resources and institutional coordination for the recommendations above.*

**B. UNITED STATES GOVERNMENT**

- 1. *The United States should reduce military and police aid to Colombia that is increasing the militarization of the border with Ecuador and contributing to the increase of refugees into the northern provinces of Esmeraldas and Carchi.*

2. *The United States should increase funding to the Inter-American Foundation, particularly to continue and expand its outreach and community-driven work with rural Afro-Ecuadorians.*
3. *USAID Ecuador should give precedence to funding requests by Afro-Ecuadorian communities in Esmeraldas and Valle del Chota, and engage in specific outreach to those communities. Such outreach should include an easily accessible record of projects that have been completed in Ecuador and a clear guide regarding funding priorities.*

#### **C. ORGANIZATION OF AMERICAN STATES**

1. *The Inter-American Commission on Human Rights should conduct an onsite visit to Ecuador to document and report on the situation of rural Afro-Ecuadorians.*
  - a. Visit with rural Afro-descendant communities throughout the country, including those who have been displaced by both private and public development projects.
  - b. Issue a report following the visit on the extent to which Ecuador is in compliance with its obligations under the American Convention on Human Rights and *the El Salvador Protocol*.
2. *The Inter-American Commission on Human Rights should strengthen the role of the Special Rapporteur on Afro-Descendant Issues.*
  - a. The Special Rapporteur should closely monitor the situation of rural Afro-descendant communities throughout the region.
  - b. The Special Rapporteur should prepare a study on land rights of Afro-descendants in the Americas.
  - c. The Special Rapporteur should take an active role in preparing the Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance, and ensure strong provisions guaranteeing the collective and other property rights of Afro-descendants.

#### **D. INTERNATIONAL AID AND INTERNATIONAL FINANCIAL INSTITUTIONS**

International organizations, such as the World Bank, the Inter-American Development Bank, and the United Nations Development Program, as well as governments providing financial assistance to Ecuador should:

1. *Provide funds directly to Afro-descendant communities to support projects and programs they freely decide to pursue.*

2. *Establish new micro-credit and micro-finance programs aimed at supporting development projects of rural Afro-descendant communities.*
3. *Provide funds and technical assistance to implement the recommendations made to the Ecuadorian government, especially to support the collective titling of Afro-Ecuadorian ancestral lands.*
4. *Ensure that all these development and micro-credit programs are planned and implemented with the full participation of Afro-Ecuadorian communities.*

**E. NON-GOVERNMENTAL ORGANIZATIONS (NGOs)**

Human rights, development and environmental NGOs should:

1. *Help strengthen the capacity of Afro-descendants to gain legal title and recognition for the lands they traditionally have used or occupied, and to individual and collective land to which they are otherwise entitled.*
2. *Provide advocacy and technical support to Afro-descendant communities in development initiatives chosen by those communities.*
3. *In all work in Ecuador, attend to issues of discrimination, racism, and inequality and their effects on the enjoyment of Afro-descendants' rights.*
4. *Support expanded dialogue between Afro-descendant communities and other social movements, such as environmental organizations and Ecuador's indigenous people.*

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## **APPENDIX A: MEMBERS OF THE RAPOPORT DELEGATION**

**Karen Engle** is Cecil D. Redford Professor in Law and Director of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law.

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**Meredith Glueck** was a Rapoport Center Summer Fellow and worked as a researcher and editor for this report, though she did not travel to Ecuador. She is a doctoral candidate in Latin American history at the University of Texas at Austin.

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**Christopher Willett** received his J.D. from the University of Texas School of Law in May 2009.

**Matthew Wooten** received his Master's degree in Latin American Studies from the Lozano Long Institute of Latin American Studies at the University of Texas.

## **APPENDIX B: LIST OF PEOPLE, COMMUNITIES, AND INSTITUTIONS MET WITH IN ECUADOR**

### **Esmeraldas (March 15- 17)**

#### *Esmeraldas City*

- Juan Garcia Salazar – Historian and Poet, Leader in the Proceso de Comunidades Negras, Ecuador (PCN, Black Communities Process).
- *CONAMUNE (Coordinadora Nacional de Mujeres Negras, National Organization of Afro-Descendant Women)*. María Luisa Hurtado – President
- *Ministerio de Cultura, Esmeraldas (Ministry of Culture, Esmeraldas)*. Lindberg Valencia – Minister of Culture
- Oswaldo Ruiz – Cultural activist
- Afro-Ecuadorian artisan collective of Esmeraldas

#### *Northern Esmeraldas*

- Jorvelis Corozo – President of the *Comuna Rio Santiago Cayapas*
- Sonia de España – Community Organizer, Guayabul
- CANE (Confederación Afroecuatoriana del Norte de Esmeraldas). Pablo de la Torre – President
- Domingo Valencia – Lawyer
- Darwin Valencia
- Representatives from the following communities: Borbón, Camarones, Colón Eloy, Comuna Arenales, Guayabul, Isole Marzo, La Chiquita, Comuna La Ceiba, Maldonado, Olmedo, Parroquia Tingire, Parroquia Selva Alegre, Playa del Oro, San José Cayapas, San José de Tagua, Telembi, Timbiré, Villa la Tola.

#### *Quinindé*

- Asociación de Mujeres Afroecuatorianas de Quinindé (Association of Afroecuatorian Women of Quinindé). Judit Barreiro – President
- Pastoral Afroecuatoriana. Aminta Quiñones
- Máximo Delgado – Political Leader of Quinindé

- Ministerio de Cultura, Esmeraldas (Ministry of Culture). Jalisco González
- Various representatives from Quinindé and surrounding communities
- Fausto Orozco Mazón – Director, Palcien S.A. Oil Palm Extraction Plant and Coepalma Oil Palm Marketing Agency

### **Quito (March 14, 18-19)**

- Fundación Altrópico. Jaime Levy – Executive Director
- Centro Cultural Afro-Ecuatoriano (CCA, or Afro-Ecuadorian Cultural Center). Ximena Chalá; Gabriela Viveros; Abel Godfroy, CCA President; Fausto Padilla, CCA Lawyer
- Instituto Nacional de Desarrollo Agrario (INDA, National Institute of Agrarian Development). Galo Aldás Macías – Executive Director; Elpis Vivas Cabezas – Director of Land Regulations
- Corporación del Desarrollo Afro-Ecuatoriano (CODAE, Corporation for Afro-Ecuadorian Development). José Chalá Cruz – Director
- Comisión Ecuémica de Derechos Humanos (CEDHU, Ecumenical Commission on Human Rights). Alicia Granda, César Duque
- Universidad Andina Simón Bolívar
- Catherine Walsh– Academic Coordinator, Doctoral Program in Latin American Cultural Studies
- Procurador General de la Nación (National Attorney General's Office).
- Salim Zaidan – Lawyer; Rodrigo Duranto Cordero – Lawyer
- Ministerio de Inclusión Económica y Social (Ministry of Economic and Social Inclusion).
- Oscar Chalá Cruz
- Secretaría Nacional de Planificación y Desarrollo (SENPLADES, or National Secretary of Development and Planning). Pabel Muñoz López – Undersecretary of State Democratic Reform
- Ministerio de Medio Ambiente del Ecuador (Ministry of the Environment).
- Manuel Bravo Cedeño, Undersecretary of Natural Capital; Tonnya Lozada; Geovanny Andrade
- Marcela Enriques - Lawyer, Constitutional Court of Ecuador

- Julianne Hazlewood – PhD Candidate, University of Kentucky, IAF Fellow
- Edizon León – Photographer and Cultural Activist. Former Director of the Fondo Documental Afro-Andino at the Universidad Andina Simón Bolívar.

### **Valle Del Chota (March 20-21)**

- FECONIC (Federación de Comunidades y Organizaciones Negras de Imbabura y Carchi, or Federation of Black Communities and Organizations of Imbabura and Carchi).
- Salomón Acosta - President of FECONIC; Renán Tadeo – Ex-President of FECONIC
- Gualberto Espinoza, Editor of El Griot
- Community representatives during visits to the towns of Chota, Salinas, Victoria, Carpuela, Juncal, Pusir, Tumbatú, and Mascarillas.

#### *Representatives from the following community development projects:*

- Community bakery and chicken raising project, sponsored by CONAMUNE (Salinas)
- Prickly pear cactus fruit (tuna) farming project - Asociación Mirador del Juncal (Juncal)
- Local bean producers cooperative (Tumbatú)
- Organic soil and composting project (Chota)

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