

Mandates of the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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17 April 2024

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 45/24, 53/3, 55/2, 52/4, 51/16 and 54/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of escalating violence, including by the security forces, and the misuse of criminal law against environmental human rights defenders in the context of environmental consultations for mining projects in Ecuador. In particular, we refer to the communities of Las Pampas and Palo Quemado, Sigchos canton, Cotopaxi Province, in relation to the La Plata mining project - operated by the Ecuadorian company La Plata S.A., which is owned by the company Atico Mining Corporation based in Canada. Additionally, the information refers to communities in the canton of Las Naves, province of Bolivar, in relation to the Curipamba-El Domo project, concessioned to the company Curiming, owned by Salazar Resources Ltd. and Adventus Mining Corporation, both of which are Canadian companies. Atico Mining Corporation and Adventus Mining Corporation receive funding from Singapore-based Trafigura Pte Ltd., while Atico Mining Corporation has also received a loan from Export Development Canada.

According to the information received:

With the alleged aim of unblocking the execution of several mining projects paralysed by social conflict, on 31 May 2023, the then President of the Republic of Ecuador, Guillermo Lasso issued an Executive Decree No. 754. This Decree reformed the Regulations to the Organic Environmental Code, incorporating the "*Citizen participation process for environmental consultation in the environmental regularisation process*", which would allow for the execution of the environmental consultation process on resource extraction projects with an impact on the environment.

On 13 June 2023, the Confederation of Indigenous Nationalities and Peoples of Ecuador (CONAIE) filed a complaint with the Constitutional Court for the unconstitutionality of Executive Decree No. 754 (number 51-23-IN), together

with a request for precautionary measures on the grounds that the application of the Decree constituted a serious and imminent threat of violation of the human rights of Indigenous Peoples, including free, prior and informed consent.

On 9 November 2023, the Constitutional Court of Ecuador, in its ruling N°51-23-IN/23, declared Executive Decree No. 754 unconstitutional for violating the principle of legal reserve by regulating by decree the right to free, prior and informed consultation or indigenous consultation on environmental matters. However, the ruling allowed the application of Decree No. 754 as long as the environmental authority complies with the guidelines and standards defined by the Constitutional Court for the provisional application of the decree, including the non-application to communes, communities, Indigenous Peoples and nationalities. It also urged the National Assembly to pass a law on the right to free, prior and informed consultation of indigenous communes, communities, peoples and nationalities within a maximum period of one year.

La Plata Project

The **Ecuadorian company La Plata S.A.** has a mining concession for the La Plata project, located in the communities of Palo Quemado and Las Palmas, Canton Sigchos, which extends over 2,222 hectares to exploit sulphides lodged in volcanic rocks. La Plata S.A. is owned by the Canadian company Toachi Mining Inc., which in turn is owned by the Canadian company Atico Mining Corporation.

The mining project is located within the parishes of Palo Quemado, with around 1500 inhabitants, and Las Pampas, with around 3000 inhabitants. The two communities are made up of peasants, Indigenous Peoples, montubios, among others. The members of these two communities maintain strong ties and roots with the land and natural resources, as they depend on the water of the river and the land for their survival and means of subsistence, producing milk, cheese, naranjilla, organic panela, among others. The communities have never been consulted in a free, prior and informed manner in relation to this project, neither at the time of the granting of the mining concession in 2000 nor in the different updates of the title. However, the communities have spoken out against this project because of the adverse effects it will have on their way of life, the detrimental and toxic impacts on their human rights to healthy, clean and sustainable environment, including water and land, and therefore on their livelihoods. Consequently, the efforts to put the La Plata project into operation have led to a situation of conflict between the company and the members of the communities, exacerbated by division and tension within the communities themselves, the latter of which has been promoted by the company. Allegedly, the company have created a group of community members called a “Committee Pro Development of Palo Alto”, to act in favour of the company.

Based on the application of Executive Decree No. 754, on 19 June 2023, the Ministry of Environment, Water and Ecological Transition (MAATE by its initials in Spanish) initiated the environmental consultation processes in Palo Quemado and Las Palmas, prior to issuing an environmental licence to continue

with the exploitation phase of the project. This led to the reactivation of the socio-environmental conflict.

MAATE announced the start of the environmental consultation procedure only through social media and not through a public, open and inclusive prior notification. The information presented on the project referred only to its supposed economic benefits, providing only partial information on its environmental impacts. Furthermore, the consultation process excluded a large part of the community and/or its representative institutions and consulted mainly those in favour of the project.

During the consultation, which was attended by military and police officers, incidents were recorded, in which at least five people were reportedly injured. Peasants also reported being subjected to threats, harassment and other acts of violence by armed groups with alleged links to the mining company. Given the situation of violence, the consultation could not be finalised, and the environmental licence was not granted.

For this reason, MAATE called for a new environmental consultation, scheduled to resume on 16 March 2024. During the week of 5 to 10 March, the members of the community reportedly received threats to their physical integrity, had their motorbikes seized and were threatened on the access roads to the Palo Quemado community with the alleged aim of generating fear in the community prior to the consultation. These acts were allegedly committed by paramilitary groups linked to the mining company. On 14 March, some 500 soldiers were deployed in the Palo Quemado area.

On 15 March 2024, the Ministry of Energy and Mines issued a *Manual for the operationalisation of free, prior and informed consultation, contained in number 7 of Article 57 of the Constitution of the Republic of Ecuador for the issuance of administrative measures in mining concessions*. The document apparently accelerated the imposition of mining projects and would contravene the legal conditions provided for in the current Constitution and the Constitutional Court ruling that provides for the regulation of this right by means of an Organic Law.

In this context, on 16 March 2024, MAATE resumed the environmental consultation again. On March 18, 2024, the military and police entered the communities of Palo Quemado and Las Pampas and additional confrontations were recorded. In addition, more than 70 people from the communities of Palo Quemado and Las Pampas were accused of the crime of terrorism by the provincial prosecutor's office.

Due to this situation of conflict, on 25 March 2024, the Head Judge of the Multicompetent Unit based in the Sigchos canton ordered the provisional suspension of the environmental consultation on the La Plata project following a protective action with precautionary measure filed by the mayor of Sigchos. In the context of increased tensions, at least 20 people were reportedly injured by the security forces, and the authorities reported that members of the security forces were also injured. On 28 March, the Ministry of Environment issued a

communiqué stating that the citizen participation process for the environmental consultation will be provisionally suspended due to the court order. In addition, the hearing for protective measures scheduled for Tuesday 2 April 2024 was suspended, as well as the hearing scheduled for 9 April 2024.

Project Curipamba - El Domo

The Canadian company Curimining S.A. has seven gold and copper mining concessions for the Curipamba- el Domo project, covering a total of 21,537 hectares, located in the Las Naves canton in the Bolivar Province. The company is owned by Salazar Resources Ltd. and Adventus Mining Corporations, both Canadian. Based on Executive Decree No. 754, MAATE carried out an environmental consultation in June 2023 and the environmental license was granted in January 2024, despite the opposition of the communities to the project and the social conflict that it generated. Similarly, to the consultation in Palo Quemado, MAATE announced the consultation through social media and was aimed exclusively at people linked to the company. It is also alleged that there was a lack of accurate and complete information on environmental impact, lack of transparency, harassment and threats, with 13 peasants injured and two people arrested in the context of the environmental consultation. In addition, six defenders of nature were accused by the mining company Curimining S.A. for the crime of illicit association in the context of the environmental consultation and were sentenced by the Criminal Court of the province of Bolivar on Thursday 21 March 2024 to three years in prison and to pay a fine of ten basic unified salaries.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the alleged acts of human rights abuses to which Trafigura may be linked to.

Financial institutions have their own responsibilities under the UN Guiding Principles on Business and Human Rights to respect human rights and conduct human rights due diligence. Financial businesses can be directly linked to adverse human rights impacts through its business relationships (such as through the provision of financing); they can also cause and contribute to human rights harm through their own operations and actions. When having activities linked to conflict-affected areas, business should conduct an heightened human rights due diligence to avoid fueling violence and human rights violations ([A/75/212](#)), and on this basis make the decision to remain, end a business relationship or exit a challenging context more generally¹. Investors should also request, where appropriate, that investees provide evidence that they have undertaken heightened human rights due diligence in these contexts. They can also take a number of other actions, including releasing public information on the approach taken, taking escalation measures such as collaborative engagement and filing shareholder proposals. The Organisation for Economic Co-operation and Development (OECD) Guidance on Due Diligence for Responsible Corporate Lending and Securities Underwriting further states that where a bank is directly linked to an adverse human rights impact through a client, it still has a responsibility to prevent or mitigate the impact, and that “[w]here the adverse impacts are directly linked to a bank’s lending or

¹ See OHCHR policy guidance on business and human rights in challenging contexts: Considerations for remaining and exiting. <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>

securities underwriting through a client, it should also use its leverage to seek to prevent and mitigate those impacts”. This approach has been applied by the OECD National Contact Points (NCP): for example, the Norwegian NCP concluded that “If [an investor], after investing, learns of a portfolio company’s human rights impacts, it still has a number of tools available, including shareholder proposals, engagement with management, and the threat of divestment.” Further, a financial business can move from being directly linked to an adverse human rights impact to contributing to that impact if it does not take action to prevent or mitigate the business relationship to which it is directly linked, including by undertaking human rights due diligence.

In relation to the above allegations, please find attached the **Annex of references to international human rights law** which summarises some relevant international instruments and principles.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to try to clarify the allegations brought to our attention. In this regard, we would be very grateful to have your cooperation and your observations on the following issues:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures your Excellency’s Government has taken, or is considering taking, to ensure that business enterprises domiciled in your territory and/or jurisdiction respect human rights in all their activities, including investment activities.
3. Please provide information on concrete progress made by your Excellency’s Government in requiring or encouraging business enterprises domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, in accordance with the UN Guiding Principles on business and human rights.
4. Please provide information on the steps your Excellency’s Government is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country, through judicial or extrajudicial State-based mechanisms.
5. Please provide information on the progress made by your Excellency’s Government to protect human rights defenders in the context of business activities.

We would appreciate receiving a response within 60 days. After this deadline, this communication and any response received from your Excellency’s Government, or other responses, will be made public through the communications reporting [website](#). They will also be made available subsequently in the regular report to be submitted to the Human Rights Council.

We may publicly express our concerns in the near future, as we believe that the information we have received is sufficiently reliable to indicate that there is an issue that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with you to clarify the relevant issues.

Please be informed that letters on this matter will also be sent to the Governments of Ecuador and Canada, and to the companies La Plata S.A., Adventus Mining Corporation, Atico Mining Corporation, Salazar Resources Ltd. and Trafigura Pte Ltd., related to the above-mentioned allegations.

Please accept, Excellency, the assurances of our highest consideration.

Barbara Reynolds
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David R. Boyd
Special Rapporteur on the human right to a clean, healthy and sustainable environment

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, without wishing to prejudge the facts alleged, we would like to draw your attention to the UN Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles were unanimously endorsed by the Human Rights Council in June 2011. These Guiding Principles are based on the recognition of:

- "a. The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business as a specialised organ of society that performs specialised functions and must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be accompanied by adequate and effective remedies in case of non-compliance".

The Guiding Principles clarify that, in accordance with international human rights obligations, "States must protect against human rights abuses committed within their territory and/or jurisdiction by third parties, including business enterprises" (guiding principle 1). This requires States to "clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities" (guiding principle 2). In fulfilling their obligation to protect, States should: a) Enforce laws that have the purpose or effect of enforcing respect for human rights by business, periodically assess the adequacy of such laws and remedy any shortcomings; b) Ensure that other laws and regulations governing the establishment and activities of business, such as commercial law, are not restrictive of, but conducive to, respect for human rights by business; c) Effectively advise companies on how to respect human rights in their activities; d) Encourage and if necessary require companies to explain how they take into account the human rights impact of their activities (guiding principle 3). States should also "take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy" (principle 25).

The guiding principle 4 requests States to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. In its report A/HRC/38/48 on "economic diplomacy" as a tool for States to promote corporate respect for human rights, the UN Working Group on Business and Human Rights mentions that States and their export credit agencies should ensure that their practices are aligned with the UN Guiding Principles on Business and Human Rights.

The second pillar 2 of the Guiding Principles states that business should have a human rights due diligence process in place to identify, prevent, mitigate and account for how they address their human rights impacts.

In addition, principle 18 emphasizes the critical role of civil society and human rights advocates in identifying the potential adverse human rights impacts of business. The commentary to principle 26 emphasizes that States, in order to ensure access to remedy, must ensure that the legitimate activities of human rights defenders are not impeded. In its 2021 guidance for ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights stressed the urgency of addressing the negative impacts of business activities on human rights defenders. It highlighted the normative and practical implications of the UNGPs for States and companies to protect and respect the vital work of human rights defenders.

The Working Group highlighted in its guidance illustrative steps that States should take to ensure that strategic litigation against public participation (SLAPP) is not used to silence the voices of human rights defenders, for example by:

1. Introduce legislative reforms to prevent human rights defenders from being sued for criminal defamation and commercial companies from claiming large sums of money for alleged damage to their reputation through criminal defamation.
2. Sanction companies that bring strategic lawsuits against public participation (SLAPP), as they are an abuse of process and not a legitimate tool for a company to use to achieve its own objectives.
3. End the collusion between states and companies, where companies use the police to demand action against human rights defenders, who then end up in detention for an alleged criminal offence, which is actually designed to silence their protests about company activities.
4. Introduce stronger laws and institutions to protect whistleblowers, and to prevent SLAPPs through strong anti-SLAPP laws.
5. Ensure that judges and prosecutors are trained to recognise SLAPPs, to identify frivolous complaints against human rights defenders and to establish procedures to manage and respond to this situation.
6. Give courts the power to dismiss a case if they consider that the intention of the complaint/charge is to misrepresent the facts about a human rights defender's work, or to harass or take advantage of the defendant. In this case, the plaintiff/complainant could be barred from bringing the same case again.

The Working Group also stated that companies should not expose human rights defenders to undue risk, for example by engaging in frivolous litigation, including SLAPPs, or reporting them to the authorities as a means of intimidation. They should recognise that SLAPPs are not only wrong in principle, as they are incompatible with

responsible business, but also that engaging in them makes poor strategic sense, as they destroy any credibility of the company's commitment to respect human rights generally.

Furthermore, the guiding principle 4 requests States to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. In its report A/HRC/38/48 on “economic diplomacy” as a tool for States to promote corporate respect for human rights, the UN Working Group on Business and Human Rights mentions that States and their export credit agencies should ensure that their practices are aligned with the UN Guiding Principles on Business and Human Rights.

We would like to refer to the United Nations Declaration on the Rights of **Indigenous Peoples**, adopted by the General Assembly on 13 September 2007. In particular we would like to refer to article 7.1 on the right to life, physical and mental integrity, liberty and security of indigenous individuals; article 3 on the right to self-determination and their political status and freely pursue their economic, social and cultural development; article 32 on the obligation to obtain their free and informed consent prior to the approval of any project affecting their territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources; and article 28 on the right to redress by means that may include restitution or, where this is not possible, just and fair compensation for lands that have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

We would also like to draw the attention of your Excellency's Government to article 30 of the UN Declaration on the Rights of Indigenous Peoples which provides that no military activities shall take place on the lands or territories of indigenous peoples, unless justified by a relevant public interest or unless otherwise freely agreed with, or requested by, the indigenous peoples concerned; States shall consult effectively with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, before using their lands or territories for military activities. Finally, article 12.1 stipulates that indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; states shall provide redress through effective mechanisms, which may include restitution, established in conjunction with indigenous peoples, for cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs (article 11.2).

We would like to draw your attention to the thematic report submitted to the Human Rights Council by the Working Group on the use of mercenaries in July 2019 (A/HRC/42/42), which covers the relationship between private military and security companies and the extractive industry from a human rights perspective. In that report the working group highlighted the human rights risks particularly in situations of armed conflict where private security personnel, employed or contracted to support an extractive operation, might carry out military-style operations themselves or with the support of the State. The group reaffirms the human rights and humanitarian law obligations and responsibilities of private military or security companies and their

personnel providing services to an extractive company in a context of armed conflict (see paragraphs 28 and 38).

We would also like to draw your attention to the fundamental norms set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2 which declare that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and fulfil all human rights and fundamental freedoms.

Furthermore, we would like to refer to article 12, paragraphs 2 and 3, of the Declaration, which stipulates that the State shall ensure the protection, by the competent authorities, of everyone, individually and in association with others, against any violence, threats, retaliation, discrimination, denial in law or in fact, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in this Declaration.

We would also like to draw your Excellency's attention to the obligations established in Convention 169 of the International Labour Organisation (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Ecuador on 15 May 1998, in particular articles 6, 7, 14, 17 and 18, which state, among other aspects, the obligation to consult freely and in good faith, to guarantee the effective protection of the rights of indigenous peoples over the lands they traditionally occupy.

We would also like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. According to article 1, paragraph 2, the Declaration applies to any person engaged in small-scale or artisanal agriculture, crop planting, animal husbandry, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants. In addition, article 18.1 of the Declaration states that “peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their land and the resources they use and manage”. Furthermore, article 18(2) provides that “States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment”.

We would also like to draw your attention to article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that everyone shall be entitled to a **fair and public hearing by a competent, independent and impartial tribunal** established by law in the determination of his rights and obligations in a suit at law. Article 19 of the same Covenant enshrines the right of everyone to **freedom of expression**, which includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print or in the form of art.

Moreover, the UN General Assembly as well as the Human Rights Council recognised the right to a clean, healthy and sustainable environment with the adoption

of resolutions A/76/300 and A/HRC/48/13. In addition, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out the core obligations of States under human rights law regarding the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 states that "States should establish a safe and enabling environment in which individuals, groups of individuals and organs of society concerned with human rights or environmental issues can operate without threat, harassment. Finally, we would like to highlight that Ecuador has ratified the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean on 21 May 2020. The Agreement entered into force on 22 April 2021.

Finally, we wish to draw the relevance of the Declaration on the Right to Development (GA resolution 41/128). Article 1 of the Declaration provides that the "right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." This right "implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." (Article 1(2)). Article 2(3) of the Declaration further provides that "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom."

We also refer to the Guidelines and recommendations on the practical implementation of the right to development developed by the Special Rapporteur on the right to development (A/HRC/42/38). The Guidelines urge States to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. They further recommend (para. 37) that States should respect the right of indigenous peoples to self-determination to fulfil the right to development. The Guidelines also recommend (para. 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

- (a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;
- (b) Information should be shared in a format that is accessible to target populations.

We would like to draw your attention to the thematic report submitted to the United Nations General Assembly by the Special Rapporteur on the right to development (A/78/160) which examined the role of businesses in realising the right to

development. The Special Rapporteur recommended, among others, that business can play a critical role by ensuring that development projects in which they are involved promote – rather than undermine – cultural development not only of the present generation but also future generations. Businesses must ensure that such projects are not only responsible and sustainable but also conducted only after obtaining a social licence from the affected communities through their active, free and meaningful participation (para 60).