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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision adopted by the Committee under article 14 of the Convention, concerning communication No. 61/2017**, ***

Communication submitted by:	Yaku Pérez Guartambel
Alleged victim:	The petitioner
State party:	Ecuador
Date of communication:	10 February 2017 (initial submission)
Date of adoption of decision:	4 December 2019
Subject matter:	Racial discrimination due to non-recognition of ancestral marriage
Procedural issues:	Admissibility; exhaustion of domestic remedies; non-substantiation of claims
Substantive issues:	Discrimination on the grounds of national or ethnic origin
Articles of the Convention:	1 (1), (2) and (4); 2 (1) (a) and (2); 5 (a) and (d) (iv); and 9 (1)

1. The communication is submitted by Yaku Pérez Guartambel, an Ecuadorian national of Kichwa Kañari ethnicity, born on 26 February 1969. He claims that the State party has violated his rights under articles 1 (1), (2) and (4), 2 (1) (a) and (2), 5 (a) and (d) (iv), and 9 (1) of the Convention. Ecuador acceded to the Convention in 1966 and made the declaration provided for in article 14 thereof on 19 March 1977.

The facts as submitted by the petitioner

2.1 The petitioner is the president of the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador and the general coordinator of the Coordinadora Andina de Organizaciones Indígenas. On 21 August 2013, he married Manuela Lavinas Picq, a Brazilian-French journalist and academic, in an ancestral ceremony at the Kimsacocha lakes in Ecuador. They registered their marriage with the ancestral community of Escaleras,

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** Adopted by the Committee at its 100th session (25 November–13 December 2019).

*** The following members of the Committee participated in the examination of the communication: Noureddine Amir, Alexei S. Avtonomov, Marc Bossuyt, José Francisco Calí Tzay, Chung Chinsung, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izsák-Ndiaye, Ko Keiko, Gun Kut, Li Yanduan, Gay McDougall, Pastor Elías Murillo Martínez, Verene Albertha Shepherd, María Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.

Azuay Province, that same day and with the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador on 30 August 2013.[1]

2.2 The petitioner explains that he has, on several occasions, led action to defend the rights of indigenous peoples, including peaceful marches. In August 2015, the petitioner and his wife took part in the so-called march for the dignity and freedom of the peoples and were arrested as soon as the march arrived in central Quito on 13 August 2015. Both of them received blows to the head and body and were subsequently taken to hospital while in police custody.

2.3 The petitioner submits that, on 14 August 2015, Ms. Lavinas Picq's visa was revoked without notice or any legal justification. That same day, she was sent to the Hotel Carrión detention centre for migrants in an irregular situation. The petitioner, meanwhile, remained in hospital, recovering from head injuries sustained during the march. Four days after Ms. Lavinas Picq's transfer to the detention centre, she was released as a result of an application for a protective remedy.[2] However, her visa was never reinstated. The petitioner explains that the Minister of the Interior asked the judge who ruled on the application for a protective remedy to refer the case to his Ministry so that a date for deportation could be set. On 21 August 2015, Ms. Lavinas Picq, faced with the risk of being placed in detention again, had no choice but to leave the country and move to Brazil.

2.4 In September 2015, Ms. Lavinas Picq applied for a Southern Common Market (MERCOSUR) visa from Brazil. The petitioner submits that, even though this type of visa is generally granted automatically within a few days, his wife's application was refused one month after she had submitted it and the only reason given was that the State party was exercising its powers of discretion. On 13 May 2016, the petitioner and his wife applied for a family reunification visa from the Ministry of Foreign Affairs of Ecuador on the grounds that they were married. Their application was refused because the petitioner was not recorded as married in the national civil registry. On 27 July 2016, the petitioner sought to register his ancestral marriage to Ms. Lavinas Picq with the Directorate General for Civil Registration in Quito. His request was rejected on the basis that the State party recognizes civil marriage but not indigenous marriage.

2.5 On 6 September 2016, the petitioner instituted constitutional protection proceedings before the Criminal Court of the Metropolitan District of Quito against the Director General for Civil Registration, the Minister of Foreign Affairs, the Director General for Immigration and the Counsel General of the State, requesting that his ancestral marriage be recorded in the civil registry and that his wife be granted a family reunification visa. On 9 September 2016, the case was declared inadmissible.[3] The Court considered that the ancestral marriage was not legally valid because marriage is a strictly defined, eminently formal and solemn legal institution which, in order to be valid, must be performed by and registered with the competent authority, in accordance with the Organic Act on Identity and Civil Data Management. The Court found that indigenous judicial authorities are not competent to perform or register marriages, since, under article 171 of the Constitution, they have the power only to hand down and enforce judgments and to intervene in conflicts between members of indigenous communities.[4]

[1] The petitioner provides a copy of the document indicating that the marriage was registered with the community of Escaleras, dated 21 August 2013, and the document indicating that it was registered with the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador, dated 30 August 2013.

[2] The petitioner provides no further information in this regard.

[3] The petitioner provides a copy of the decision.

[4] Article 171 of the Constitution provides that:

"The authorities of indigenous communities, peoples and nationalities shall perform judicial functions, based on their ancestral traditions and their own laws, within their own territory and shall guarantee participation and decision-making by women. The authorities shall apply their own laws and procedures to settle internal disputes, provided that these do not conflict with the Constitution or the human rights recognized in international instruments. The State shall ensure that indigenous judicial decisions are respected by public institutions and authorities. These decisions shall be subject to monitoring to ensure their constitutionality. Mechanisms for coordination and cooperation between the indigenous and ordinary justice systems shall be established by law."

2.6 The Quito Criminal Court also considered that there had been no violation of any constitutional right, since the petitioner could have gone to the Directorate General for Civil Registration, Identification and Certification at any time in order to have his marriage performed by the competent authority, and then applied for a family reunification visa for his wife.

2.7 On 12 September 2016, the petitioner filed an appeal against the Quito Criminal Court's decision with the Pichincha Provincial Court, which it dismissed on 24 November 2016. The Pichincha Provincial Court considered that there had been no violation of the petitioner's constitutional rights and reiterated that indigenous judicial authorities are not competent to perform or register marriages. The petitioner claims that, by lodging an appeal with the Pichincha Provincial Court, he exhausted the domestic remedies available to him.

The complaint

3.1 The petitioner contends that the State party violated his rights under articles 1 (1), (2) and (4), 2 (1) (a) and (2), 5 (a) and (d) (iv), and 9 (1) of the Convention.[5]

3.2 The petitioner claims to be the victim of an explicit act of racial discrimination that violates the right to recognition and protection of indigenous ancestral marriage. The petitioner submits that the non-recognition of his ancestral marriage to Ms. Lavinas Picq resulted in a forced marital separation, and thus a violation of his right to have a family, bearing in mind that indigenous peoples have the right to found a family in accordance with their culture and principles.

3.3 The petitioner also claims to have suffered discrimination in his capacity as an indigenous leader. He maintains that Ms. Lavinas Picq was denied a visa in retaliation for her efforts to defend the rights of indigenous peoples. The petitioner explains that this violation of his rights took place against a backdrop of persecution and criminalization of indigenous peoples, especially "anti-extractivist leaders". He claims to have been persecuted for being a human rights activist and to have been arrested several times on charges of terrorism, sabotage and disruption of public services, although he was never found criminally responsible. He also claims to have suffered personal attacks by President Rafael Correa, who has questioned his indigenous origins and called him "crazy, savage, reactionary, mentally retarded and backward". The petitioner submits that these attacks reflect a policy of institutional discrimination against indigenous persons, and alludes to the fact that the President has called other indigenous leaders "simple-minded" and ignorant.

3.4 The petitioner maintains that there has been a violation not only of his individual rights but also of the collective rights of indigenous peoples. He claims that the refusal to recognize indigenous marriage violates the indigenous right to self-determination within the context of plurinationalism, which includes the right of indigenous peoples to exercise judicial autonomy and to preserve their own age-old procedures and institutions.[6] He also maintains that there has been a violation of a set of collective rights of indigenous peoples, relating to the preservation of their culture, traditions, ways and customs, historical continuity, education and philosophy. He explains that indigenous marriage is an ancient pre-State legal institution made up of rites, allegories, ceremonies and formalities that are specific to indigenous peoples and based on their cultural and spiritual world views. He concludes that the non-recognition of indigenous marriage results in forced assimilation into the hegemonic national mestizo culture and the legal and political system of the State.

3.5 In addition, the petitioner claims that there was a violation of due process during the appeal proceedings because the hearing never took place and the measures requested earlier in the proceedings were never taken.[7] The petitioner also claims that the application for a protective remedy to allow his wife to remain in the country was not processed in

[5] The petitioner does not explain in specific terms how each of the articles of the Convention to which he refers has been violated.

[6] The petitioner refers to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and to the United Nations Declaration on the Rights of Indigenous Peoples.

[7] The petitioner provides no further information in this regard.

accordance with the principle of judicial autonomy, as the Minister of the Interior ordered the courts to refer the deportation case to his Ministry, leading to interference by the executive branch in judicial matters. The petitioner adds that his wife was discriminated against because she was a foreigner, even though the Constitution guarantees equal rights and freedoms for both nationals and foreigners.

State party's observations on admissibility

4.1 On 5 July 2017, the State party submitted its observations on the admissibility of the communication, requesting that the admissibility be considered separately from the merits.

4.2 The State party claims that the communication is inadmissible *ratione personae* because the petitioner submitted it on behalf of two organizations, without identifying the persons whose Convention rights had allegedly been violated. In addition, the State party believes that the petitioner is expecting the Committee to decide, in the abstract, whether the alleged discrimination against the legal institutions of "marriage" and the "indigenous family" took place. In this regard, the State party argues that the Committee requires petitioners to identify the persons who consider themselves to be victims.[8]

4.3 The State party is of the view that the scope of the complaint should be limited to the petitioner's personal allegation that "the case concerns an explicit act of racial discrimination that violates the right to recognition and protection of ancestral marriage". On this basis, the State party requests that the Committee exclude the following from its legal analysis: (a) the allegation of double discrimination affecting collective rights; (b) the petitioner's allegations concerning events that took place in the context of social protests for the assertion of collective rights in August 2015; (c) the alleged persecution of the petitioner and his wife, which supposedly constituted a violation of the petitioner's right to integrity of the person and liberty; (d) the alleged interference by the executive branch in judicial matters relating to the implementation of a plan for the deportation of Ms. Lavinas Picq; (e) the allegation that the events took place against a backdrop of persecution and criminalization of indigenous peoples and anti-extractivist leaders, and the allegation that the petitioner's status as an activist gave rise to acts of political retaliation; (f) the alleged connection between the facts of the case and various sets of criminal proceedings brought against the petitioner for various offences that have no causal link of any kind with the communication; and (g) the alleged racist attacks by the then President.

4.4 The State party also claims that the communication is inadmissible *ratione materiae*, since the petitioner has not submitted any solid evidence or information relating to acts of discrimination on various grounds that could be used to establish a prima facie violation of the rights enshrined in the Convention.[9] The State party requests that the Committee declare the communication inadmissible under article 14 (1) of the Convention, in accordance with rule 91 (c) of its rules of procedure.

4.5 The State party submits that, in making its decision, the Criminal Court of the Metropolitan District of Quito took account of which authority was competent to register civil marriages and of the institution and legal formalities of civil marriage, as defined in article 100 of the Civil Code, as well as of the legality of the documents submitted by the petitioner. The Court ruled as follows:

> In the present case, there has been no violation of the rights enshrined in article 423 of the Constitution of the Republic of Ecuador, or of the right to a family established in article 67 thereof, since, pursuant to the aforementioned legal regulations, the performance and registration of civil marriage in Ecuador falls within the competence of the Directorate General for Civil Registration, Identification and Certification. In the present case, it should also be noted that the complainant, Carlo Pérez Guartambel, was previously married to a citizen named María Verónica Ceballos Uguña, as recorded in the marriage register on 28 August 1998 in entry No. 1628, page 28, volume 5 …, that is to say, Mr. Carlos Pérez Guartambel recognized

[8] The State party refers to *A.S. v. Russian Federation* (CERD/C/79/D/45/2009), para. 7.2.

[9] The State party refers to *M.M. v. Russian Federation* (CERD/C/87/D/55/2014), para. 6.3.

> the Directorate General for Civil Registration as the competent authority on a previous occasion.[10]

4.6 The State party also submits that the Pichincha Provincial Court, in its judgment of 24 November 2016, not only confirmed the decision of the court of first instance as to which authority was competent to register civil marriages, but also found that whatever registration was performed by the community of Escaleras or by the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador "does not equate to a civil marriage duly formalized and registered by the civil authorities".[11] The Court ruled that "there is no evidence that a constitutional right has been violated or that the public authority has, by act or omission, violated the rights of the rights holders".[12] The State party explains that articles 6 and 7 of the statute of the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador, which define the purpose and activities of the organization, make no reference to the registration of ancestral marriages.

4.7 Furthermore, the State party claims that the communication is inadmissible because the petitioner has not exhausted the available domestic remedies. The State party explains that the petitioner could have filed an application for a special protective remedy, as provided for in the Constitution and the Organic Act on Judicial Safeguards and Constitutional Oversight. This remedy is governed by article 94 of the Constitution, which states that:

> An application for a special protective remedy may be filed with the Constitutional Court against final judgments or orders that constitute a violation, by act or omission, of the rights enshrined in the Constitution. Such applications may be filed only in cases where all ordinary and special remedies have been exhausted within the time limits fixed by law, unless failure to apply for such remedies is not attributable to negligence on the part of the person whose constitutional right has been violated.

4.8 The State party points out that the Constitutional Court has explained the legal characteristics and scope of this remedy, considering that:

> Special protection proceedings are intended to ensure the effective protection of constitutional and human rights. As it is for precisely this purpose that the Ecuadorian legal system provides for this sole means of contesting res judicata, the protection of constitutional and human rights cannot be conditional upon formalities in cases that could give rise to impunity, since this was not the will of the authors of the Constitution, according to the analysis carried out.[13]

4.9 In the same judgment, the Constitutional Court held that:

> The raison d'être of the special protective remedy is to guarantee the effective supremacy of the Constitution and, consequently, the validity of constitutional and human rights. Since the State has a fundamental, overriding duty to protect these rights, the formal requirements established in the Organic Act on Judicial Safeguards and Constitutional Oversight governing the submission and admissibility of an application for a special protective remedy may be relaxed on the basis of a substantiated and reasoned analysis by the Admissibility Division, precisely in order to prevent impunity at the national level and to ensure that the matter does not need to be referred to international bodies because the State has not allowed the relevant measures to be taken at the domestic level in order to remedy the violations in question.[14]

4.10 The State party claims that these case law references show that, at the national level, there are avenues and remedies for ensuring the effective protection of rights that take precedence over statutes of limitations and the principle of res judicata. The State can thus

[10] *Amparo* trial No. 17294-2016-02881, Carlos Pérez Guartambel, judgment of the Quito Criminal Court, 9 September 2016.

[11] Ibid., judgment of the Pichincha Provincial Court, 24 November 2016.

[12] Ibid.

[13] Judgment No. 214-12-SEP-CC, case No. 1641-10-EP, 17 May 2012, p. 26.

[14] Ibid.

redress human rights violations at the national level, with the appropriate court granting the special protective remedy in order to prevent impunity and to punish any human rights violations that may have occurred.

4.11 The State party submits that this is an effective remedy that has enabled the Constitutional Court to make significant progress in the protection of the right to equality and non-discrimination. The State party refers to a judgment in which the Court found that "international human rights law prohibits not only policies, attitudes and practices that are deliberately discriminatory but also those that have a discriminatory impact on a certain group of persons, where it cannot be proven that this was the direct intention of the discrimination".[15]

4.12 With regard to racial discrimination in particular, the State party refers to another judgment, in which the Court held that:

> Ecuador has an international obligation to respect rights and freedoms without discrimination on the grounds of race, colour … an aspect mentioned in some instruments ratified by the State, including … the International Convention on the Elimination of All Forms of Racial Discrimination, which establishes the obligation for the State of Ecuador to respect and guarantee the rights of all persons without making prejudicial distinctions and to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.[16]

The State party submits that, although the victim in the case in question was an Afro-Ecuadorian, the Court's analysis applies in full to any complaint that may be submitted by a member of an indigenous people or nationality of Ecuador; this shows that the domestic remedy is fully effective.

4.13 In addition, the State party claims that the communication constitutes an abuse of the right of submission, on the grounds that the petitioner provided misleading information because he claimed to be asserting his right to have an indigenous family with the status of a marital union under indigenous law, when his real aim was to obtain a family reunification visa for Ms. Lavinas Picq. The State party points out that the petitioner made several public statements to a widely distributed newspaper on 27 July 2016, which were reported as follows: "Although Pérez, a potential presidential candidate for the Pachakutik political movement, claims that it is of little or no importance to him whether his union is recognized by what he calls the 'colonial systems', its recognition by the civil registry would bring him one step closer to obtaining a visa for his partner."[17]

4.14 The State party submits that the petitioner's actions were carried out in a context in which he was considered a potential presidential candidate and therefore made frequent public appearances in the media with purely political intentions. Lastly, the State party reports that the petitioner has continued to use his civil identification to perform all acts in his public and private life, thus acknowledging the competence of the Directorate General for Civil Registration, Identification and Certification.

Petitioner's comments on the State party's observations

5.1 On 27 September 2017, the petitioner submitted his comments on the State party's observations. The petitioner submits that, by failing to recognize an ancestral legal marriage based on a personal relationship, the State party undermined the legal, economic, social, emotional and relational stability of both the petitioner and his wife. They have been forcibly separated for more than two years as a result of this lack of State recognition. The petitioner submits that the State party has violated his right to an indigenous family in two ways: firstly, by refusing to recognize and record his legal ancestral marriage in the civil registry and, secondly, by refusing to grant his wife a family reunification visa. The violent

[15] Judgment No. 080-13-SEP-CC, case No. 0445-11-EP, 9 October 2013, p. 17.

[16] Judgment No. 136-14-SEP-CC, case No. 0148-11-EP, 17 September 2014, p. 15.

[17] "Carlos Pérez Guartambel solicitó al Registro Civil la inscripción de su matrimonio ancestral" (Carlos Pérez Guartambel requests the registration of his ancestral marriage in the civil registry), *El Comercio*, 27 July 2016.

expulsion of his wife, despite her being legitimately married to the petitioner, constitutes a flagrant violation by the State party of article 67 of the Constitution, which stipulates that: "The family, in its various forms, shall be recognized. The State shall protect the family as the basic unit of society and shall create conditions that are wholly conducive to the achievement of its aims. Families shall be formed on the basis of legal or de facto ties and founded on the principle of equal rights and opportunities for their members."

5.2 The petitioner reiterates that the State party has flagrantly violated his rights as a member and president of the two aforementioned organizations. To support his argument, the petitioner refers to article 2 (2) (b) of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which stipulates that States should protect the rights of these peoples by adopting measures that promote "the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions", and to article XVII (1) of the American Declaration on the Rights of Indigenous Peoples, which stipulates that "indigenous peoples have the right to preserve, maintain, and promote their own family systems. States shall recognize, respect, and protect the various indigenous forms of family".

5.3 With regard to the claim that he failed to exhaust the available domestic remedies, the petitioner maintains that the State party is trying to confuse the Committee by asserting that he had exhausted all remedies under ordinary proceedings before the court of first instance and the high court. The petitioner explains that it takes the Constitutional Court an average of five years to issue a judgment and that there is a high risk that he would once again be denied his rights, as has occurred in some unusual judgments handed down by this "organization that has been hijacked by the national Government". The petitioner also explains that the Constitutional Court has been discredited by international reports citing its lack of independence. The petitioner reiterates that the State party is trying to destroy his marriage through forced separation, which is a long-standing strategy of colonial governments. The petitioner submits that it is precisely to ensure that victims are not left defenceless, and to protect the human rights and collective rights of indigenous peoples and nationalities who cannot wait for months or years, that similar cases have been brought before the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and other international justice authorities, "according to extensive international case law".

5.4 The petitioner reiterates that the State party's refusal to record his ancestral marriage in the civil registry "is a political act of [colonialism] reflecting State power, hierarchy and racial discrimination, which demonstrates the supposedly modern colonial State's attitude of arrogant superiority over the backward indigenous peoples".

5.5 With regard to the State party's request that he enter into a civil marriage under ordinary law in order to have civil and political rights, the petitioner reiterates that ancestral marriage is protected by article 171 of the Constitution, which grants judicial powers to indigenous peoples and nationalities. The petitioner submits that his ancestral marriage was performed by a legally and legitimately constituted community authority that was recognized by the community assembly.

5.6 The petitioner draws attention to the concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on the third periodic report of Ecuador, which read as follows:

> 28. The Committee takes note of the information provided by the State party with respect to the immigration situation of the French-Brazilian journalist Manuela Picq and expresses satisfaction that there are no restrictions on her admission to Ecuador or on the visa which allows her to stay in the country. However, the Committee is concerned about reports that due process was not observed in the cancellation of her visa and her alleged deprivation of liberty.
>
> 29. The Committee recommends that the State party conduct an impartial investigation into what occurred in the case of Ms. Picq and take the necessary steps to ensure that, when applications for entry and residence visas are submitted, guarantees are provided in respect of the conditions established in the Organic Act on Human Mobility regarding migration categories and regularization, including the

rights set forth in the Convention, the Residency Agreement for Nationals of MERCOSUR and Associated States Parties, and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).[18]

The petitioner stresses this last reference to the ILO Convention, reiterating the "legitimacy and urgency of recognizing the civil and political rights of the indigenous family".

5.7 Lastly, the petitioner submits that he has been using his original Kichwa name, Yaku, in place of his "colonial name", Carlos, since 9 August 2017, attaching a copy of his new identity card as proof.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible.

6.2 The Committee takes note of the State party's argument that the communication is inadmissible *ratione personae* because, firstly, the petitioner submitted the communication on behalf of two organizations, without identifying the persons whose Convention rights had allegedly been violated and, secondly, the petitioner is expecting the Committee to decide, in the abstract, whether the discrimination against the institutions of marriage and the indigenous family took place. The Committee notes that the petitioner submitted the complaint both in his own name, as an individual directly and personally affected by the refusal to register his marriage and to grant his wife a visa, and in the name of the indigenous peoples whose collective rights were allegedly violated by the non-recognition of indigenous marriage. The Committee recalls its jurisprudence[19] to the effect that a person cannot claim to be a victim of a violation of any of the rights enshrined in the Convention unless he or she was directly and personally affected by the act or omission in question. Any other conclusion would open the door to complaints of a general nature without identifiable victims (*actio popularis*[20]) that would, therefore, fall outside the scope of the individual communications procedure established under article 14 of the Convention. The Committee considers that the author's reference to the collective rights of indigenous peoples is generic and does not specify which individuals or group of individuals were directly and personally affected by the acts mentioned in the present communication. The Committee therefore decides to limit its analysis to the individual rights of the author and declares the rest of the communication inadmissible *ratione personae* under article 14 (1) of the Convention.

6.3 The Committee takes note of the State party's argument that the petitioner failed to exhaust the available domestic remedies because he did not file an application for a special protective remedy with the Constitutional Court. The Committee notes, however, that the petitioner did institute constitutional protection proceedings, requesting that his indigenous marriage be registered and that his wife be granted a family reunification visa, and that he subsequently appealed against the refusal of his request, thus exhausting the ordinary remedies available to him. The Committee also takes note of the petitioner's claims that an application for a special protective remedy would take approximately five years to process and would unduly prolong his separation from his wife. In the light of the foregoing, the Committee concludes that the author has exhausted all domestic remedies that can reasonably be considered available and effective, in accordance with article 14 (2) of the Convention.

6.4 However, the Committee notes that, according to the information available, the petitioner's claim that he has been politically persecuted, arrested and publicly discredited

[18] CMW/C/ECU/CO/3.

[19] *Documentation and Advisory Centre on Racial Discrimination v. Denmark* (CERD/C/63/D/28/2003), para. 6.6; and *A.S. v. Russian Federation*, para. 7.2.

[20] Ibid.

has not been brought before the national judicial authorities. Domestic remedies have therefore not been exhausted in relation to this part of the communication.

6.5 The Committee takes note of the petitioner's claim that there was a violation of due process during the appeal proceedings because the hearing never took place, the measures requested earlier in the proceedings were not taken and the application for a protective remedy was not processed in accordance with the principle of judicial autonomy. However, the Committee notes that the petitioner has not explained how the failure to hold a hearing violated his right to a fair trial, nor has he specified the nature of the measures that were not taken. Moreover, he has not provided any information or evidence demonstrating that there was a lack of judicial autonomy in the appeal process. The Committee therefore concludes that the petitioner has not sufficiently substantiated his claim that there was a violation of due process.

6.6 The Committee notes that the petitioner claims to be a victim of racial discrimination because the authorities of the State party did not recognize his ancestral marriage to Ms. Lavinas Picq or agree to record it in the civil registry, and because they refused to grant his wife a family reunification visa. The Committee also takes note of the petitioner's claim that the non-recognition of his indigenous ancestral marriage resulted in a forced marital separation, and thus a violation of his right to have a family in accordance with his indigenous culture and principles. The Committee also takes note of the State party's argument that the author's marriage had to meet the requirements laid down in national law in order to be recorded in the civil registry and consequently recognized for the purposes of granting a family reunification visa. However, the Committee also takes note of the petitioner's claim that his ancestral marriage was performed by a legally and legitimately constituted community authority that was recognized by the community assembly. In this regard, the Committee notes that, according to article 1 of the State party's Constitution, "Ecuador is a constitutional State of rights and justice that is social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular".

6.7 The Committee also takes note of the State party's argument that the petitioner has not submitted any solid evidence or information relating to acts of discrimination that could be used to establish a violation of the rights enshrined in the Convention resulting from the failure to recognize and register his ancestral marriage. However, the Committee points out that article 11 (1) of the United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. The Committee also draws attention to its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to recognize and respect indigenous distinct culture, history, language and way of life and to ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages. In view of the foregoing, the Committee considers that, for the purposes of admissibility, the author's claims under articles 1 (4), 2 (1) (a) and (2), and 5 (d) (iv) of the Convention have been sufficiently substantiated and should be examined on the merits.

7. The Committee therefore decides that:

(a) The communication is admissible insofar as it raises issues with respect to articles 1 (4), 2 (1) (a) and (2), and 5 (d) (iv) of the Convention;

(b) In accordance with article 14 (6) of the Convention and rule 94 of the Committee's rules of procedure, the State party shall be requested to submit to the Committee, within three months of the date of transmittal of the present decision, written observations on the merits of the claims;

(c) Any observations received from the State party shall be communicated to the petitioner under rule 94 (4) of the Committee's rules of procedure, so that he may comment thereon;

(d) The present decision shall be communicated to the State party and to the petitioner.