

Ecuador Case Study

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0. Introduction

In contrast to neighbors like Colombia and Peru, Ecuador does not carry a high profile in human rights circles. In fact, Ecuador has been called an island of peace and receives relatively little attention from international human rights monitors. Nonetheless, the country suffers from both civil and political and economic, social and cultural rights violations and a disparate set of non-governmental institutions and movements has developed to confront these issues. The state has ratified all of the relevant treaties and is active on the international human rights front. However, domestically, human rights have only recently surfaced as a priority for the government.

Ecuador's human rights movement is comprised of small, relatively unsophisticated NGOs with fairly recent roots and weak ties to the international human rights movement. In the past, these organizations have almost exclusively focused on civil and political rights (CPR) and are only recently beginning to broach economic, social and cultural rights (ESCR). More important actors in terms of ESCR include social movements tied to particular issues (labor, indigenous, women's rights), who are just beginning to identify themselves with the human rights movement.

Some basic facts about the country are relevant to an understanding of the human rights context. Ecuador is a small country, with a population of 12 million, and three distinct regions – the coast, the sierra and the Amazon. Between 35 and 45% of the population is indigenous and another 10% is afro-ecuadorian. The country has a relatively short and chaotic democratic tradition, beginning most recently in 1979 when power was restored from the military. The President shares power with a 121-member Congress, made up of 17 political parties. The military is still a dominant force, along with the Catholic Church. The country has the highest per capita debt in South America and relies heavily on petroleum and a handful of other export crops. Globally, Ecuador ranks somewhere in the middle in terms of human development, but land and wealth are greatly skewed, with close to 70% of the population living in poverty.

While many reports describing CPR violations from NGOs, governments, and international bodies are available, far fewer exist with reference to ESCR, and only a handful of brief published analyses of the human rights movement in Ecuador were found. Accordingly, the first two sections of this study rely principally on published materials, and the third section relies almost entirely on interviews with the key human rights actors in Ecuador.

1. The relation of the state to ESCR

1.1 International commitments (international and regional treaties)

Ecuador is an enthusiastic participant in the international human rights system. Unfortunately, its eagerness to sign treaties has not been matched by a comparable commitment to follow through on treaty obligations. Ecuador has ratified all of the major human rights treaties in both the UN and OAS systems (including the San Salvador Protocol on ESCR), along with the principal ILO treaties (including ILO 169 on indigenous peoples). Ecuador has made only minor reservations to its ratifications, and none on the International Covenant on Economic, Social and Cultural Rights (ICCPR) or the Covenant on the Elimination of Discrimination against Woman (CEDAW).

Ecuador plays an active role on various human rights bodies in both the UN and OAS systems. Among the most notable posts: first UN High Commissioner for Human Rights; longstanding member of the UN Committee on ESCR; member of the UN Committee on the Elimination of Discrimination against Women; president of the Interamerican Court of Human Rights. An Ecuadorian was also instrumental in drafting the International [Convention on the Elimination of All Forms of Racial Discrimination](#) and Ecuador has frequently responded to requests for information from UN working groups and Special Rapporteurs.

Ecuador's record of compliance with these bodies is mixed. As the former government representative to the UN Human Rights Committee laments "The conduct of Ecuador in front of international organizations has had unfortunate failings. First, the dates for the presentation of reports has not been respected and we have been confronted with justified criticism for the excessive tardiness. Secondly, the reports have been deficient and have not complied with the norms established for their presentation. Finally, the delegations that have appeared before the UN Human Rights Committee have not always been of sufficiently high office nor have they had command over the required information." (Prado Interview). Though often late, Ecuador has submitted reports to all of the main UN human rights bodies, with the notable exception of the Committee on Economic, Social and Cultural Rights, for which it is now long overdue. In 1994, Ecuador allowed an on-site investigation by the OAS Human Rights Commission and has complied with recent findings of the Commission and Court in a handful of high profile cases involving torture, disappearances and arbitrary detention.

1.2 National law and national institutions

a. Constitutional protections

Ecuador's current Constitution, adopted by the National Congress in May of 1996, was the product of considerable debate and popular consultation. It strengthened and elaborated on both CPR and ESCR and incorporates human treaties immediately into the legal system upon their ratification ("self-executing"). The Constitution is one of the most progressive constitutions in Latin America and provides for the full enjoyment of all the CPR and ESCR as well as a number of additional guarantees for vulnerable

populations. The Constitution declares that “the highest duty of the State [is to] respect, and ensure respect, for human rights” (art. 19) and that the Ecuadorian State “guarantees to all individuals, male and female, who are subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights enunciated in the declarations, covenants, agreements and other international instruments in force” (art. 20).

The Constitution includes two important provisions for enforcing human rights guarantees: the right of “amparo”, and *habeas corpus*. The right of amparo provides that “any person may apply to the organs of the judiciary designated by law and request the adoption of urgent measures to halt, prevent the commission of, or immediately remedy the consequences of, an unlawful act by a public authority violating any of the constitutional rights and which may cause imminent, serious and irreparable harm.” If the judge determines the action to be well founded, “he shall order the suspension of any current or imminent action that may result in a violation of the constitutional right” (art. 31) This is a broad-based protection similar to an injunction in common law systems. Being such a new tool, most civil society groups have yet to take advantage of this right and are just learning about its potential use.

Habeas corpus predates the current constitution and provides a powerful remedy for challenging illegal detentions. Unlike many countries, in Ecuador it is the mayor that reviews habeas corpus petitions, rather than a judge. Accordingly, the usefulness of the remedy depends largely on the individual disposition of the mayor, and challenges under habeas corpus differ greatly between cities. In Quito, for example, it is an often used and effective remedy, whereas in Guayaquil it is much less commonly employed. Alongside *Habeas Corpus*, the new Constitution added the right of *Habeas data* that guarantees any person access to documents, databases and reports about that person held by public authorities. It also allows a judge to modify or eliminate these reports on the request of the person.

The new Constitution contains a separate chapter devoted to ESCR which includes an extensive elaboration of rights and duties relating to labor, health, education, social security, family, vulnerable populations, and culture. A separate chapter on collective rights includes articles on minority rights, environmental rights, and consumer rights. These two chapters contain a number of ambitious guarantees and underscore the overall importance placed on ESCR. Among the most notable provisions are obligations to designate a stipulated percentage of the annual budget to health and education, guarantees of bilingual education, communal land-holdings, consultation and participation in development projects, prioritization of services for vulnerable populations, and special labor protections for women.

b. Human Rights Institutions

The new Constitution established and strengthened institutions relevant to human rights protection. Most significantly, the Constitution established Ecuador’s first “Defensor del Pueblo” (ombudsman). Under the Constitution, the Defensor del Pueblo is required to initiate or sponsor *habeas corpus* and amparo actions, and to carry out other functions aimed at defending the rights of persons and communities. The Defensor del Pueblo's Office Organization Act of 1997 elaborates upon the Defensor’s responsibilities, which include: initiating unconstitutionality motions in the Constitutional Court; intervening as

a mediator in disputes with public authorities; taking efforts to protect the environment and cultural heritage; promoting human rights training; visiting prisons to verify respect for human rights; presenting draft legislation on behalf of civil society; providing information for the purposes of the signature and ratification of international covenants, conventions or declarations relating to human rights and ensuring their effective execution; and reporting annually to Congress on the human rights situation in Ecuador. Ombudsmen have been established in the majority of the country's provinces and have already had an impact on human rights issues. Of particular relevance to ESCR, the ombudsmen are charged with supervising the provision of basic services, such as water, electricity and access to medical care.

The Constitution also strengthened the Constitutional Court as an autonomous body whose primary function is to ensure observance of the Constitution and its rights provisions. The Court's nine members are selected by the three branches of the State (legislative, executive and judicial), each designating three members. The Constitutional Court has jurisdiction over the unconstitutionality of laws, decrees, ordinances, and administrative acts by any public authority. A declaration of unconstitutionality entails repeal of the act. In addition the Court can decide on unconstitutionality objections raised by the President of the Republic against bills approved by Congress, settle conflicts on competence or responsibilities assigned by the Constitution, and intervene in the protection of the fundamental rights of the individual. One of the primary functions of the Constitutional Court is to hear appeals to decisions denying Constitutional rights and brought under the remedy of amparo. The decisions of the Court are final.

Resort to the Court's precursor, the Constitutional Tribunal, by human rights groups was common in the 1980s, but is rarely used at present. While the Court has shown some independence in its decisions, it lacks the political power to ensure compliance and many successful decisions have been undermined by a simple refusal to respect them by the relevant public institutions. Two significant recent decisions by the Court declared unconstitutional the criminalization of private homosexual relations between consenting adults and the extra detention of persons charged on a Narcotics law.

Congress has a separate Commission on Human Rights, which is composed of legislators representing all political affiliations and whose basic aims are the following: analyzing and verifying alleged human rights violations; instituting administrative and criminal proceedings against any officials who conceal, order or commit violations of human rights; encouraging human rights education; investigating prison conditions; proposing constitutional and legal reforms to strengthen human rights; overseeing petitions brought against Ecuador in front of international human rights bodies; promoting human rights in regional Latin American bodies; and calling for declarations by Congress in the most serious cases of human rights violations. The Congressional Commission on Human Rights has yet to realize its potential and is largely stymied by party divisions.

Two *ad hoc* Commissions established in the mid-nineties to examine human rights violations going back to the late 1970s have been effectively disbanded. Other institutions covering women's and indigenous and minority rights have been recently established and are increasingly important in terms of ensuring priority and protections to these populations.

Ecuadorian laws, like its Constitutions, are generally progressive towards human rights. This is particularly notable in the field of labor laws, which provide extensive trade union rights and mandatory benefits as well as requiring companies to provide 12 weeks of maternity leave, prohibiting the firing of women due to pregnancy, and requiring day care centers in companies with more than 35 female employees. In recent years, the Ecuadorian government, working closely with civil society has also elaborated a number of National Plans covering human rights, women, children, and development more generally, that establish an ambitious set of standards for government action in these areas. The executive and congressional branches have officially adopted these plans. However, government compliance with the “National Plans” for women and children, both adopted in the early 1990s, has been disappointing and widely criticized.

The government has discussed these plans in its reports to UN bodies:

The National Plan of Action established diagnoses, objectives, strategies and projects in the areas of education, health, water supply, sanitation, nutrition and children living in especially difficult circumstances. The Plan is being implemented in part by the institutions of the Social Front and by NGOs. The Office of the Secretary-General for Planning carries out limited follow-up to the Plan, and there is no evidence that it has been able to guarantee priority for the allocation of resources for its implementation. The Committee on the National Plan of Action has not met since the adoption of the Plan, and therefore its responsibilities are not being met. Some of the constraints on implementation of the Plan relate to the fact that it was closely linked to the Government in power at the time of its development and to a policy of public spending, and was oriented towards civil society. (Ecuador report to CRC)

Ecuador has incorporated in its National Development Plan a set of gender—perspective strategies, policies and goals in each of the critical areas covered in the Platform for Action approved at the Fourth World Conference on Women in Beijing in September 1995. These are aimed at: alleviating poverty; eliminating violence against women; increasing participation of women in the benefits of development, particularly with regard to education and training, health, employment and the environment; and increasing women's participation in politics and in decision—making at all levels.

A 1995 Law Against Violence Affecting Women and Children, drafted by a coalition of women's organizations, criminalizes spousal abuse for the first time, including physical, sexual, and psychological abuse. It also creates family courts and reforms the Penal Code to give courts the power to separate an abusive spouse from the home. In 1994, the government established the "Comisaria de la Mujer," or Women's Bureau, which accepts complaints about abuse of women and passes them on to the Prosecutors office.

2. Situation of ESCR in Ecuador

2.1 General human rights situation

Human rights violations in Ecuador have rarely come close to the notorious repression and violence in neighboring countries like Colombia, Peru and Chile. In the mid to late eighties, Ecuador suffered its worst bout of repression under the government of Leon Febres Cordero, which used torture, extrajudicial killings and disappearances to confront a small, leftist guerrilla movement. Ecuadorians enjoy freedom of speech (eg. human rights groups operate vocally and openly), freedom of religion and a weak but functioning democratic system. Over the last decade, torture and killings have occurred regularly, but are rarely political. The most systematic violations of CPR are related to the pervasive discrimination against women, indigenous peoples and other minorities, a corrupt and inefficient judicial system, and the general impunity of public officials. ESCR violations are among the worst in Latin America, and are manifest in such structural problems as inequality, poverty, illiteracy, malnutrition, lack of access to health services and the lack of spending and attention to these issues by recent administrations. While the country has seen an overall improvement in the field of CPR over the past decade, ESCR violations, alongside an economic crisis, are worsening.

a. CPR violations

Discrimination: While *de jure* discrimination has been largely abolished, the government is implicated in discrimination violations by the racism of public institutions and the failure to address *de facto* discrimination. The Constitution prohibits discrimination based on race, religion, sex, or social status and the new Constitution explicitly increased the rights of women, children, and minorities, banned discrimination based on sexual preference, and required the new Congress to pass legislation implementing these rights promptly. However, societal biases against women and minorities are strongly ingrained and affect these populations in all spheres (work, home, school, public services, public office, etc.). Public institutions are guilty of discrimination in their treatment of employees and in the provision of services and the government has failed to take effective steps to confront these and larger societal prejudices.

According to the U.S. State Department's 1999 human rights report on Ecuador,

Discrimination against women is pervasive in society, particularly with respect to educational and economic opportunities for those in the lower economic strata. The increasingly active women's movement blames culture and tradition for inhibiting achievement of full equality for women. There are fewer women than men in the professions and skilled trades, and pay discrimination against women is common... Despite their growing political influence and the efforts of grassroots community groups, which were increasingly successful in pressuring the central Government to assist them, Indians continue to suffer discrimination at many levels of society. With few exceptions, the indigenous people are at the lowest end of the socioeconomic scale... The population of the rural, northern coastal area includes large numbers of Afro-Ecuadorian citizens. They suffer widespread poverty and pervasive discrimination,

particularly with regard to educational and economic opportunity. There were no special government efforts to address these problems.

Extrajudicial killings, disappearances and torture: Throughout the nineties, reports of extrajudicial killings, disappearances and torture appeared regularly, usually totaling between 20-40 killings and 3-5 disappearances per year. Most cases involve the police abusing or killing suspected criminals. Two governmental commissions established in 1996 to review human rights violations going back to the late eighties, received hundreds of complaints. According to Amnesty International's 1998 report, "disappearances are regularly reported and scores of other human rights cases documented in previous years remained unresolved. These included allegations about the "disappearance" of five men and the extrajudicial execution of a further six in 1997 and of hundreds of cases of torture, "disappearance", and extrajudicial executions brought to the attention of two human rights commissions." (AI 98). The OAS Human Rights Commission stated in a 1996 report that "Ecuador has not suffered the effects of massive or widespread disappearances, but has been marked by a disturbing series of sporadic cases. Reports suggest approximately 25 to 390 forced disappearances between 1985 and 1996, most of which occurred between 1985 and 1988. One of the most important cases in recent years involved a trade union leader killed and tortured presumably by the military in 1998.

Administration of justice: The then-Minister of the Tribunal of Constitutional Guarantees recently declared that "according to the Constitution there is an independent judiciary. In reality, it is weak, inefficient, vulnerable to political and economic pressure, lacking in human and economic resources, and characterized by a high level of corruption and ill-repute." (CDES, 1994) The disastrous state of Ecuador's judiciary means that accused criminals spend long periods in detention before receiving a trial; investigations have found that as many as 70% of inmates have never been sentenced. According to the U.S. State Department's 1999 human rights report on Ecuador, "The most fundamental human rights abuse stems from shortcomings in the politicized, inefficient, and corrupt legal and judicial system. Persons are subject to arbitrary arrest; once incarcerated, they may wait years before being convicted or acquitted unless they pay bribes. Although a public defender system exists, in practice there are relatively few attorneys available to defend the large number of indigent suspects. Trial is supposed to begin within 15 to 60 days of the initial arrest, but in practice, initiation of the trial phase can take years."

The new Constitution addressed this systematic violation of CPR by requiring judges to order the immediate release of all prisoners who had not been convicted and who had been detained for more than a year, without prejudicing the continuation of criminal proceedings against them. By the end of the first year of the Constitution, of 2,100 prisoners reportedly entitled to the provision, some 600 had been released.

Impunity: Impunity for human rights violations by the military and police is widespread. Most cases involving the security forces are referred to courts of those institutions, rather than the civilian judiciary, and few result in punishments. Amnesty International has been particularly outspoken about the impunity of public officials for human rights violations, as detailed in its 1998 report:

Over the past years Amnesty International has made repeated reference in its reports to the practice of institutionalized impunity which prevails in Ecuador. Hundreds of complaints about human rights violations filed before the authorities remain unresolved. These include the deaths of at least 25 men, women and children shot by police during a mass protest by workers and their families at the Aztra sugar mill over 20 years ago, in October 1977; the torture, “disappearance” or extrajudicial execution over a four-year period by members of the police and armed forces of scores of people suspected of belonging to the armed opposition group *Alfaro Vive, Carajo!* (AVC); and the torture and ill-treatment of scores of criminal suspects held in police custody or in penitentiary establishments. None of the attempts by the Ecuadorean authorities to create and implement mechanisms by which these and other past cases are investigated and those responsible are brought to justice have come to fruition. In September 1996, the National Congress, set up a special commission to investigate allegations of police corruption and human rights violations made public by a former policeman who claimed to have participated in counter-insurgency operations by the SIC during the years when the AVC was active... Also in September 1996, the Ministry of Government and Police established the Truth and Justice Commission, to investigate unresolved cases of human rights violations which had taken place over the previous 16 years (since 1979, when military rule ended). By the end of 1996 the Commission was reported to have received information on almost 300 such cases. However, within five months of commencing their work, both the Truth and Justice Commission and the congressional commission ceased to function. The failure of both commissions to publish any findings further consolidated the impunity surrounding hundreds of unresolved cases of torture, “disappearance” and killings.

The U.S. State Department concurs with AI’s assessment in its most recent report: “Although the law prohibits torture and similar forms of intimidation and punishment, police continued to abuse suspects and prisoners, usually with impunity.”

b. ESCR violations

Despite the strong Constitutional protections for ESCR, Ecuadorians suffer massive violations of basic rights relating to the government’s failure to address basic needs. According to the UN Committee on Economic, Social and Cultural Rights, “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the covenant.” (GC 3, 1990) Ecuador suffers all the economic problems of any developing country, but recent governments have exacerbated these problems with structural adjustment measures, and have neglected the most pressing socio-economic problems, even within the realm of possible. The government is also negligent for failing to enforce labor, health and environmental protections, for failing to rectify de facto discrimination of certain populations, and for its role in industrial abuses, particularly those relating to petroleum (these failings are covered in greater detail below)

Poverty in Ecuador has grown dramatically over the past ten years, along with overall inequality. According to the National Development Council (a public institution), poverty levels have risen from 47% of the population in 1975 and 57% in 1987 to 69% in 1998. A more conservative public research institution, states that “in 1995, more than 6 million Ecuadorians had income levels that did not even permit them to satisfy their

basic needs. The poverty in Ecuador is massive. Fifty-six percent of the population is poor and suffers from deprivation or risks satisfaction of their basic needs, and one-fifth (20%) is indigent and unable to cover their nutritional requirements.” (Secretariat Tecnica del Frente Social) Poverty is especially high among rural and indigenous populations, reaching as much as 90% of the population in some parts of the country. The government’s report to the OAS in 1997 highlighted poverty as the principal obstacle to the enjoyment of ESCR in Ecuador.

Ecuador is among the three countries in Latin America with the greatest disparities in wealth (along with Honduras and Peru). In 1988, 10% of the urban population controlled 47% of income, while the poorest 20% controlled 2.55%. Five years later, the richest 10% controlled 54% and the poorest 20%’s share had fallen to 1.68%. Over the course of twenty-five years, from the late 1960s to the early 90s, the poorest 20% of Ecuador’s share of overall income fell from 6.3% to 2.0% (Treakle). Inequality is also reflected in highly skewed land-holdings: 20% of the population owns 91% of land.

Poverty has accompanied a wide variety of other problems. Malnutrition affects 45% of children under the age of 5. Only 56% of children aged 10 to 17 are able to study full time. According to the Interamerican Human Rights Commission’s 1997 report, “current data reflects that over half of all Ecuadoreans lack sufficient income to cover basic necessities.” Salaries have dropped over the past decade and unemployment has reached as much as 20%, while underemployment hovers at between 50 and 60%. Approximately 12 percent of the work force is organized, but collective bargaining agreements cover only one-quarter of these workers. The majority of workers work in the large informal and rural sector without recourse to legally mandated benefits or the minimum wage and the vast majority of these workers are not organized.

c. Response to international bodies

Ecuador’s response to international human rights bodies has been mixed, but generally open. It has provided reports to the ICCPR Committee, the Committee on Racial Discrimination, and the Child Rights Committee, but is many years overdue with its report to the Committee on Economic, Social and Cultural Rights. After a long delay, it recently resolved a number of cases brought before the OAS system and allowed an OAS mission to visit the country in 1994.

In 1998, the Government recognized official responsibility for the unlawful killing of Consuela Benavides (1986), for the disappearances of the Restrepo brothers (1988), and for the fatal shooting of Esteban Villacreses. Following the IACHR’s finding of official wrongdoing in the Benavides case, the Government paid settlements to the Benavides and Restrepo families and to the Putumayo 11, a group of rural workers, for illegal arrest, detention, and torture. A year earlier, the Government released Ivan Suarez Rosero, following a ruling by the Inter-American Court of Human Rights that the Government had violated due process provisions in connection with his arrest, investigation, and pretrial detention.

In 1994, the government permitted an OAS mission to investigate a series of human rights allegations, including those related to prison conditions, the judicial system, abuses by the military and police, and harm done to Amazon communities by the petroleum industry. While the government provided wide access and assistance to the

Commission, it did little to follow-up on the Commission's later report and recommendations.

2.2 ESCR violations

Traditionally, ESCR have received scant attention from the government and NGOs in Ecuador. The government has long neglected to report on its compliance with the ICESCR and NGOs have done no systematic analysis of ESCR. Rather, smaller and narrower studies and reports have touched on particular aspects of ESCR, providing a general, and generally grim, picture of the situation. Government submissions to the UN laud certain important advances, including targeted social programs and improvements in a variety of human development indicators, including life expectancy and maternal mortality. Nonetheless, these advances pale in the face of government's failings.

The Government's role in violations is apparent in the following three areas: 1. Structural adjustment measures and the failure to provide basic services, 2. Failure to redress de facto discrimination, and 3. Complicity in violations by third parties. It is important to note that many of Ecuador's problems have been caused by external factors which cannot be blamed on the government, such as natural phenomenon (the 1997 impact of el Nino devastated the coastal region, with an estimated loss of almost billion) and international financial and commercial markets, which are critical to the debt problem and government revenues (Ecuador is particularly dependant on a handful of exports that suffer from drastic price swings). The violations listed below are mindful of the extent to which the government can be held responsible for ESCR problems.

Structural adjustment measures and failure to provide basic services: Ecuador has not been consistent with its structural adjustment policies as mandated by the IMF, but those policies that it has implemented have had a devastating impact on the large majority of the population. This impact is most apparent in the cuts to social budgets and subsidies in favor of external debt and the banking sector, cuts to social sector employment, and highly regressive taxes. These issues have been raised in various reports, as excerpted below:

Ecuador's 1997 report to the UNCRC explains the economic policies in benign but still revealing terms:

Over the past few years, Ecuador has undergone a profound economic transformation. It has changed its political model and has been incorporated in the international process characterized by growing economic globalization and internationalization. The Ecuadorian oil boom of the 1970s, which provided the necessary resources for implementation of a 'developmentally-oriented' model, was followed in the 1980s by a process of economic adjustment and liberalization which encouraged macroeconomic stability...The process involved the gradual replacement of interventionist management by the implementation of various market-based policy instruments such as reduction of public spending, financial deregulation, liberalization of foreign trade and public sector reform. Social policies gradually lost their function of redistribution and compensation for the adjustment process, on the basis of substantial State subsidies, and no longer involved direct investment aimed at job creation and preservation. The crisis of the 1980s led to a major restriction and reorientation of social spending, made it necessary

to direct policies towards the elimination of general and specific subsidies, and increased the tax burden.

In the early 1980s, social spending accounted for a major part of the State budget: spending on social welfare, education, health, drinking-water and environmental sanitation accounted for 12.1 per cent of GDP. However, State spending on the social sector in 1993 accounted for only 5.18 per cent of GDP; since 1981, systematic (with some variations) budget restrictions have been reflected in reduced social spending. During the economic crisis, there was a considerable reduction in spending on social policies, which resulted in a deterioration of the quality and coverage of State social services. This decline in spending coincided with a reduction in the real income of the population. There was, therefore, both an increase in the demand for public services (as a result of the drop in real income) and a decrease in their availability (as a consequence of diminished resources).

As one human rights commentator observes in 1999: “The management of the political economy, that has been centered on avoiding bank collapses and exclusively privileging the servicing of external and internal debt, has had a greater negative impact on the deterioration of living conditions for the Ecuadorian population, including recession, inflation, devaluation, rising unemployment and poverty, than the impact of the international financial crisis and el Nino, in spite of this being the greatest natural catastrophe in this century.” (Salgado Interview)

An OAS report states that “During the Commission’s on site visit to Ecuador, human rights organizations and representatives of a wide range of social sectors expressed profound anxiety with respect to socio economic conditions in the country. Among the specific concerns raised were the effects on the population of: measures taken to trim social spending and to substantially reduce the number of public sector employees, unemployment generally, increases in the prices of fuel, and other measures aimed at modernization and privatization.” The report goes on to raise questions about cuts to education budgets and declining access to health services and clean water, but also notes recent limited programs initiated with the World Bank and the IDB to address some of these issues.

The Committee on the Rights of the Child states that “The Committee expresses its concern regarding recent budget cuts which impacted negatively on the provision of social programmes, especially those related to children. While the Committee takes note of the State party’s efforts to reduce infant mortality rate and under five mortality rate, it is still concerned about the prevalence of malnutrition, high rates of maternal mortality as well as the limited access to health services in remote rural areas. In particular, concerted efforts are needed to combat malnutrition and ensure the adoption and implementation of a national nutritional policy on children.”

UNICEF’s report on Ecuador in celebration of the 50th Anniversary of the Universal Declaration of Human Rights is even more critical. The report underscores the overwhelming poverty, affecting “7 out of 10” Ecuadorians, rising inequality, and consistent cuts to social budgets, going from 6% of GDP in 1980 to 3.8% of GDP in 1993. It notes that “investment in education has fallen progressively. In the last 15 years, the budget for education has been reduced by one half in relation to the overall budget. It also stresses that spending on health has fallen with widespread impacts, and

that “49% of deaths of infants less than one year of age, and 70% of deaths of children between one and four, are preventable.”

In 1990, the average health expenditure was per person in Ecuador, compared to 6 in Costa Rica, 3 in Chile, in El Salvador and in Peru. Between 1990 and 1993 this per capita expenditure fell 37% and in 1995, the government invested approximately US.00 per month per person in the area of health. During the same period (1990-1993) Ecuador increased its expenditures in service of the external debt from 12% to 29% and today, while health receives 3% of the budget, debt service expenditures has increased to 54%. Military expenditures have also risen consistently, with an increase of 62% during the period, 1990-1993.

A 1998 report by the Centro de Derechos Economicos y Sociales (CDES) links social cuts to violations of ESCR. “In recent decades, Ecuador’s health expenditures have been among the lowest in Latin America. Since the late 80s, successive administrations have drastically and arbitrarily cut the health budget in the name of other interests. As a governmental research institute states: ‘Social development as a policy has not been prioritized by the State; this is manifest in the recurring practice of governments of improving the country’s fiscal position through the reduction of social spending and public subsidies.’”

The report highlights cutbacks in essential services, such as clean water and maternal health cares:

In Ecuador, illnesses linked with contaminated water are the principle causes of death for children between one and four years old. Between 1962 and 1990, the percentage of urban housing with access to water fell from 88% to 78%, while in rural areas the current percentage is less than 25%. In 1982, 46% of the houses had access to sanitation but in 1990 the proportion fell to 38%. In the rural sector, in 1982, only 15% had access to sanitation and in 1990 the proportion fell to 10%. In 1982, 80% of the urban houses had access to sewage systems; by 1990 this percentage had fallen to 59%... During half of births (48%), the mother is alone or assisted only by untrained people. The percentage of births occurring in health establishments has dropped from 40% in 1990 to 28% in 1994. The annual coverage of immunizations has fallen from 94.5% to 63.4% during these years, and today Ecuador has the highest rate of human rabies.

Many of the health problems in Ecuador are not caused by a lack of resources, but rather by government priorities. Successive administrations have sacrificed the most basic health elements in order to invest in large curative programs which reach only a small fraction of the population. In 1995, 46% of the resources available to the health sector were assigned to specialized attention, 37% to secondary attention, and only 17% to primary health care. In total, 7.28% was assigned to prevention and 93% to curative treatment. A government research institute concludes that “more than 80% of the deaths that occur in the country can be avoided with the application of primary and secondary prevention measures with those resources already available to the health sector. (Secretaria Tecnica del Frente Social)

Failure to redress de facto discrimination and to protect vulnerable populations As described above, large parts of Ecuadorian society suffer from de facto discrimination in the form of socio-economic inequalities, including women, minorities, children, and

rural communities. These populations are particularly vulnerable to economic shocks and adjustment measures and the government has a particular duty to assure that they are adequately protected under such circumstances. A number of reports have described the governments failings to redress these differentials and provide protections.

Ecuador's recent report to UN Committee on Women and the observations of that Committee underscores the difficulties faced by women.

Members of the Committee ... expressed their concern about the alarming living conditions of the majority of women. They noted that the economic situation and the structural adjustment measures had affected her country more than others. Women and small children were the major victims. Members of the Committee noted the need for the Government ... to improve what was deemed to be a kind of medieval situation for women, which was the result of a patriarchal structure in which women were denied basic rights. Before enjoying legal rights, women needed to be given basic human rights, such as safe drinking water and better nutrition. Members emphasized that, despite the economic problems, many programmes related to women's equality could be carried out with few resources. The Committee expressed the feeling that the prevailing attitude in Ecuador was that the Government was not giving serious consideration to the advancement of women....The representative regretted to report that no laws or measures "of positive discrimination in favour of women" had been taken by the State aside from the one mentioned on the protection of pregnant female workers. An analysis of the report submitted showed that legislation was still marked by serious discriminatory features; customs tended to stereotype gender roles in a way that was detrimental to the advancement of Ecuadorian women; and State initiatives, far from expanding, had undergone a serious decline. Those factors combined to create an extremely serious situation with regard to the human rights violations addressed in the Convention. Concerning the situation of rural women, the representative reported on the existing gap between urban and rural areas. Many development programmes focused on the cities, while the rural areas were abandoned and neglected.

The 1997 OAS report confirms many of these observations: "In practice, while the status of women in Ecuadorean society has evolved, there remain instances of discriminatory treatment which hinder the ability of women to fully and equally enjoy their human rights. Women and children are disproportionately affected by the conditions of poverty which afflict a majority of the population. ... More males received higher education ... [and] girlchildren are reportedly steered towards curricula and careers which limit their future opportunities."

The U.S. State Department report is even franker: "Discrimination against women is pervasive in society, particularly with respect to educational and economic opportunities for those in the lower economic strata. There are fewer women than men in the professions and skilled trades, and pay discrimination against women is common."

Indigenous peoples suffer many of the same problems, including higher incidence of poverty, pervasive discrimination, threats to culture and land, and lack of public services. By law they enjoy all the same rights as non-indigenous, and ratification of ILO 169 and the new Constitution, provide strong guarantees relating to their rights to bilingual education, cultural respect, communal land title, and participation and consultation on any development projects likely to affect them. Bilingual education is

increasing, but still absent in many areas. Many communities have gained legal title to their lands, but land is scarce for the large majorities, is subject to invasions from non-indigenous communities, and is threatened by laws failing to respect communal land holdings. Petroleum development continues to harm a great number of the Amazonian indigenous communities and laws to protect them have proved largely hollow (see below). The new Constitution did not go as far as Indigenous peoples sought, but did define the state as “pluricultural and multiethnic”, which is relevant to the indigenous demand that they retain certain rights over customary practices and social structures.

The 1997 OAS report on Ecuador recognized certain improvements, particularly in the area of bilingual education and legal protections, but underscored the continued existence of social, economic and political exclusion: “significant segments of the indigenous population suffer the effects of pervasive poverty, and little social spending is directed toward this sector. Indigenous individuals are subjected to discrimination, from both the public and private sectors. They experience obstacles in seeking to pursue their traditional relationship with the lands and resources that have supported them for thousands of years, and in seeking to practice and preserve their culture.” The report also details the particular threat to indigenous communities in the Amazon, principally coming from oil development.

Other Ecuadorian minorities suffer the same levels of discrimination and general government indifference. In fact, they are in some ways more vulnerable, as their organizations lack the same level of political clout that the indigenous populations have achieved over recent years. As the US State Department report notes, “the population of the rural, northern coastal area includes large numbers of Afro-Ecuadorian citizens. They suffer widespread poverty and pervasive discrimination, particularly with regard to educational and economic opportunity. There were no special government efforts to address these problems.”

Children represent perhaps the most vulnerable and oft-neglected population by the government. The government’s failure to provide adequate pre-natal care, maternity services, basic health and nutrition programs has had a devastating impact on children, with an estimated 25 children dying every day from easily preventable causes and almost half of the child population suffering malnutrition. The US State Department report notes that “The Government has not taken effective steps to promote the welfare of children. The Government rarely enforces the constitutional requirement of education through the age of 14. Government resources to assist children have traditionally been limited. Government spending on education continued to decline, both in real terms and as a proportion of gross domestic product.”

CDES’s 1998 report on the right to health underscores the government’s responsibility for existing discrimination:

The rural population, constituting approximately 40% of the total population, suffers from tremendous discrimination in terms of resources and attention from the government. Approximately 80% of Ministry of Health personnel are located in urban areas. In 1990, 93% of all physicians were concentrated in the three cities of Quito, Guayaquil and Cuenca. There is one doctor for every 537 people in urban areas, and one per 3142 people in rural areas. Between 1985 and 1997, the percentage of the rural population with access to medical services declined by one-half, from 20% to 10%, in

comparison to 84% of the urban population with access to medical services in 1997. In 1992, 70% of births in rural areas took place without professional medical care, while in the urban areas 20% of births took place without professional care. The government spends six times more on Social Security for urban affiliates than for rural affiliates.

According to a government research institute, “the residents of the countryside, the poor and indigenous peoples have less opportunities to benefit from health services. The indigenous population is a group particularly discriminated against in the health system ... Indigenous women must wait more than one hour to be attended to in health establishments.” Forty-five of every thousand children die before the age of one due to acute respiratory infections and diarrhea which could be avoided at low cost. According to UNICEF, in Ecuador “49% of the deaths of children under 1 year of age and 70% of the deaths of children from one to four years old, are preventable.” (UNICEF 1996)

Government neglect of women and children is evidenced by the fact that in 1996 70% of pregnant women and 60% of infants between the ages of 6 and 11 months had anemia, which is easily controlled with better nutrition (and low-cost nutritional programs). It is estimated that of the 1.5 million Ecuadorian children under the age of five, almost half are malnourished and only 11% were covered by nutritional programs in 1990. Nevertheless, in 1993, the central nutritional program for these children, the Community Network, was abruptly terminated and replaced by a more limited program resulting in a decreased coverage to 4.3% by 1994, and five years later, this gap has yet to be addressed effectively.

Complicity in violations by third parties: Development in Ecuador has been rapid, rapacious and largely uncontrolled. The government violates ESCR by its direct role in those industries that harm the population and by its facilitation and failure to regulate abusive industries. The governments direct role in violations is most apparent in the oil industry, in which the state-owned company, Petroecuador, controls the majority of operations and is highly destructive to surrounding communities. The failure to protect populations is pervasive and is highlighted below with examples from different types of industries. While labor, health and environmental laws are increasingly strong, the lack of enforcement allows for systematic violations affecting workers, the environment and public health.

The rapid and irresponsible exploitation of non-renewable resources throughout Ecuador has deprived the present population and future generations of a rich biodiversity, clean water, and alternative possibilities of developing the mangroves and tropical forests. Over-exploitation has caused the loss of 83% of the original vegetation of the coastal region and has led to the second highest rate of deforestation of tropical forest in South America. It is estimated that over-fishing has resulted in a loss of close to 70% of the fish on the Coast.

Oil development in the Ecuadorian Amazon has widespread impacts on local populations and has been the subject of numerous reports from both NGOs and human rights bodies. Private companies (especially Texaco) are responsible for much of the damage, but Petroecuador has played a leading role since 1992. The majority of Petroecuador’s production stations dump their wastes, full of heavy metals and carcinogens, into open pits and nearby streams. These streams and rivers constitute the main source of water for several communities and the contamination has caused wide-

ranging problems to their health and nutrition. Petroecuador's activities continue to harm the health of nearby communities, despite many warnings about the risks of their polluting and the capacity to avoid it.

The issue of oil development in the Ecuadorian Amazon was the subject of an OAS mission in 1994. The report details the many varied impacts:

First among these is the influx of outsiders into the traditional homelands of the indigenous peoples of the Amazon. The oil boom led to the construction of a network of roads and opened and exposed the interior in a way that previous development and outside contact had not... This colonization was encouraged by the State, and in fact deemed a national priority. One consequence of the influx of non-native peoples into traditional indigenous territory is the exposure of indigenous inhabitants to previously unknown diseases and epidemics. Viral diseases have taken a harsh toll. The Commission has received reports that the introduction of previously unencountered diseases has resulted in numerous deaths over time. Another consequence has been the displacement of indigenous inhabitants and communities.

The individuals and groups from whom the Commission has received information represent both settler and indigenous communities. These inhabitants of oil development sectors have been unanimous in claiming that the operations generally, and the improper handling and disposal of toxic wastes in particular, have jeopardized their lives and health. They claim that oil exploitation activities taking place in or near their communities have contaminated the water they use for drinking, cooking and bathing, the soil they cultivate to produce their food, and the air they breathe. Residents of affected sectors indicated that their rivers, streams and groundwater were contaminated with crude oil and toxic production wastes, collapsed or leaching waste pits, and oil spills. These are, in most cases, the only water sources available for drinking, cooking and bathing, as well as for the watering of livestock, domestic animals and wildlife.

The inhabitants allege that the Governments has failed to regulate and supervise the activities of both the state-owned oil company and of its licensee companies. They further allege that the companies take few if any measures to protect the affected population, and refuse to implement environmental controls or to utilize existing technologies employed in other countries... According to the Government's own figures, billions of gallons of untreated toxic wastes and oil have been discharged directly into the forests, fields and waterways of the Oriente. The resulting consequences for the inhabitants of the affected areas have been and remain grave.

A UN Special Rapporteur takes note of the problem in her recent report, "The oil industry is seen as the biggest destroyer of Ecuador's 13 million hectares of rainforest inhabited by eight groups of indigenous people (Texaco had 330 wells in Ecuador. It has left the country, but Petroecuador has taken its place). It seems that 1 million hectares of the country's forest have been destroyed and 90 per cent of this destruction is due to the operations of Texaco/Petroecuador. Inevitably, these operations have affected the health of the people living there." (Ksentini, 1996)

The only public regulation of the petroleum industry falls under the control of the Ministry of Energy and Mines and of the State oil company. In addition to a lack of

political support, these environmental offices have neither the minimum personnel nor the resources to monitor complex oil activities. As a result, the industry is one of Latin America's most notorious polluters and communities suffer regular contamination of their water and lands.

While oil is the most high profile industry, many others, including flower, shrimp and apparel industries, have been accused of ESCR violations relating to labor rights and environmental contamination. Additionally, the lack of effective governmental controls extends to such issues as domestic violence and consumer health, as noted by CDES's 1998 health report:

The abuse of women and children by their partners and members of the family constitute one of the gravest threats to the health of these groups. In 1988, 88% of the women in Guayaquil (Ecuador's largest city) had suffered some form of inter-familial violence. Today, it is estimated that six out of ten women are victims of domestic violence and three out of every ten children are victims of sexual abuse in Quito and Guayaquil. The State is complicit in these violations through its failure to educate the population and to assist and protect the victims of these abuses. According to women's advocates, only a handful of victims are willing to bring their cases to the attention of authorities. Of those cases that do reach the judicial system, only a tiny fraction result in any kind of sanction. Between 1989 and 1992 in Quito, of 1,548 complaints concerning sexual crimes against women and girls, only 1% of cases resulted in convictions. In Guayaquil during the same period, of 1,923 complaints, only 2.1% resulted in convictions.

It is estimated that 60% of illnesses in developing countries are caused by contaminated food and that these foodstuffs cause millions of deaths of children around the world. In Ecuador, the consumer has no way of knowing about the products being consumed. While a Consumer Protection Law exists, there is little enforcement, leaving compliance with the law to the discretion of the manufacturer. As a natural consequence, the market is flooded with products that do not comply with country's sanitary norms.

3. Non-Governmental Organizations

3.1 What organizations exist

The roots of the human rights movement in Ecuador go back approximately 20 years and are strongly tied to the Catholic Church. Most major cities boast at least two or three NGOs working explicitly on human rights, with a total of 25 to 30 formal organizations in total and many more informal groups with missions relating to human rights. All of the main social movements (labor, indigenous, women, environmental, children) along with student groups, universities, and community organizations have incorporated human rights into their work to varying degrees. Among the human rights NGOs, the focus has been predominantly on CPR, but ESCR have surfaced in recent years as an increasingly important part of their work. Economic, social and cultural concerns are at the forefront of the social movements and the larger sectors (labor, indigenous, women) have all created separate human rights commissions within their coordinating bodies.

The human rights movement should be understood in its historical context. In the late 70s and 80s, the movement was largely the province of small organizations linked to the Catholic church and concerned with CPR abuses, including a pair of massacres of social leaders. There was some coordination with the labor movement to the extent that their leaders were often the target of abuses and labor groups provided human rights organizations with a more powerful platform. There were very few links to international organizations and widespread public ignorance about human rights (a poll in 1981 revealed that less than 5% of the population in one area had even heard of human rights). Government repression in the mid and late 80s also contributed to a general silencing and discrediting of human rights organizations, which the government linked to delinquents and guerrillas.

The movement underwent a dramatic change in the late 80s, sparked by the unprecedented public protests by the family of two disappeared boys. Following years of stonewalling from the government, military and police, the Restrepo parents set up a weekly vigil outside of the Presidential Palace that gradually attracted the interest and participation of other victim families, NGOs and members of the general public and drew significant media attention. This marked the beginning of a broader human rights movement and coincided with the strengthening of social sectors, particularly the indigenous and women's' movements.

In the words of Alexis Ponce, spokesperson for the APDH: "We call it the 'ciudadanization' ('citizenizing') of human rights. No longer was it just 5 or 6 Quijotes, 4 or 6 religious workers, rather it was a theme that attracted a foundation in social bases and the public and the media. This provoked two things in the 90s, it broke the movement into two eras: before the Restrepos and after the Restrepos. They inaugurated this type of social concern for the theme that did not exist before then.... This happened because of the struggle of this heroic family and the surge in new social subjects, indigenous, women, children, environmentalists..." (Ponce Interview) Pedro Restrepo, the father of the disappeared sons, notes that "while there were human rights violations before and after the Restrepos, the case of an innocent family, gratuitously affected by violence, awoke the solidarity of groups beyond the traditional militants connected to the left." (Restrepo Interview)

The 90s has seen a surge in human rights groups and human rights commissions within social sector organizations. Almost half of all the human rights NGOs in Ecuador are based in Quito, the capital. Among the largest and most active are CEDHU (the Ecomenical Commission of Human Rights, the first human rights NGO in the country and now entering its 21st year, APDH (the Permanent Assembly for Human Rights), and INREDH (Regional Foundation for Human Rights Support). Both CEDHU and APDH have a wide network of affiliates throughout the country, making them more representative than traditional NGOs. Three other important Quito organizations are the Confederation of the Incarcerated (work with prisoners), the Amparo Commission for Human Rights of the Catholic University (promote student involvement in human rights), and CDDH (the Commission for the Defense of Human Rights – education on human rights in Quito and provinces).

Outside of Quito, the strongest human rights advocacy is found in some of the smaller provinces and the Amazon, where organizations supported by the Church have created networks of human rights volunteer "promoters" who do outreach to outlying

communities. Among the most important are the Commission for Human Rights of the Northeast, of Los Rios, and of Esmeraldas. In Ecuador's two other biggest cities, Guayaquil and Cuenca, the most active organizations are also the respective Human Rights Commissions of Guayas and Azuay. All of these Commissions share the same name, but are otherwise unrelated.

Most national groups range in size from 4 to 10 paid staff, along with volunteers. Apart from INREDH, most groups have at most one lawyer on staff. Most budgets range from ,000 to 75,000/year, with most falling on the smaller side. The Church is linked directly or indirectly (eg. through funding) to more than half of all existing groups and is particularly important in the rural areas.

Ecuador is also home to a number of international human rights organizations including SERPAJ (Peace and Justice Service), ALDHU (Latin American Association for Human Rights), Amnesty International, and CDES. These groups work closely with local partners, and in the case of SERPAJ, have local offices scattered throughout the country.

Human rights have become an increasingly important part of the work of social movements. These movements have long fought for the rights of their particular constituencies and to varying extent have used human rights instruments and allied themselves with human rights organizations. The most important movements over the past fifteen years have been the indigenous and campesinos, labor, and women. Other movements include environmentalists, sexual workers and transsexuals, child rights activists, students, and senior citizens. Today, the indigenous and women's movements are ascendant, while labor organizations have been badly discredited. Smaller labor groups, like health workers, teachers, and taxi drivers are able to exercise considerable pressure, even without the support of larger federations. On various occasions, these movements have individually and jointly brought the government to a standstill.

In this respect, the indigenous movement is in a class of its own. The national federation, CONAIE represents approximately 70% of the indigenous population, meaning close to 30% of the entire Ecuadorian population. CONAIE has gained tremendously in influence over the last decade and has spawned a political party, Pachacutik that now enjoys 8 members of Congress. In the words of its then president Luis Macas "Little by little, the indigenous movement has qualitatively developed its struggle for survival, for land, for defense and recuperation of territories. Today it is a political proposal, and it is a proposal for all of society." (quoted in Selverston).

Ecuadorian NGOs and social movements are also connected to a number of international networks. In the case of human rights NGOs, the networks serve primarily for communications, including ALAI, Nizkor, and Human Rights Derechos, and human rights education, including the Latin American Network of Education and the Council of Adult Education of Latin America (CEAAL). The social movements are all connected to larger regional networks, including ORIT (labor), COICA (indigenous), CLADEM (women), ALOP (development groups), Alianza Social (labor and human rights), Amazon Alliance (indigenous and environmentalists), and Grito de los Excluidos (grassroots and human rights). The South American Platform on Human Rights, Democracy and Development has also recently established an Ecuadorian chapter that includes four human rights groups and is focused principally on ESCR.

3.2 Use of human rights instruments: problems and possibilities

Ecuadorian NGOs and social movements have made limited use of international and national human rights instruments. During the repression of the late 80s, groups turned to the national courts and later took some of those cases to the Interamerican system. Very little work has been done at the United Nations. Groups have had some success with national cases and promoting new legislation, but on the whole, there is great skepticism about the capacity of the domestic judicial and political systems and greater reliance on social and political pressure and outside intervention.

As mentioned earlier in the report, the most commonly used legal instrument at the national level is habeas corpus. INREDH reports that approximately 250 habeas corpus actions are brought per week in Quito relating to illegal detentions and that more than half are successful. Most cases are brought by private lawyers unconnected to human rights groups. That rate is significantly lower in other cities, but testifies to the importance of the instrument. Some groups and families have also brought penal cases against public forces, but most of those have ended up in the specialized courts of those institutions.

The Constitutional Court (formerly Tribunal) has heard only a handful of cases involving rights concerns, and its decisions, even when favorable, have rarely resulted in concrete action. Human rights groups express little interest in bringing cases to the Constitutional Court because of its lack of independence and inability to enforce decisions. As Elsie Monge writes “CEDHU, after bringing many various cases to the Court, views its capacity as insufficient to stop human rights violations: it cannot demand the imposition of sanctions that would limit, at least partially, the abuse of power of the State... Its operations, on some occasions, have been influenced by political pressure.” (Monge95) In recent years, the Court has heard frequent labor complaints arising from cutbacks to the public sector and salary issues, but though many are successful, there is little follow through on the decisions. The court recently declared unconstitutional the raising of gas prices and the freezing of bank accounts, but in both cases the government has simply ignored the decisions.

In the early 90s, the Court ruled favorably on two important cases, one declaring a national park with indigenous territories, off-limit to oil companies, the other declaring an agrarian reform to be unconstitutional for its imposition on indigenous land-holdings. In the first case, under alleged pressure from the government and oil industry, the Court reversed itself, one month after the decision, without explanation. In the second case, the government explicitly renounced the ruling and failed to enforce it. A more recent petition brought by CDES and the Defensor del Pueblo relating to unconstitutional cutbacks to the national health budget has lingered in the Court without any decision.

While many amparo actions are brought, particularly in Quito, almost none of them relate to human rights victims and most deal with powerful private interests. The two primary obstacles identified by advocates are the lack of familiarity with this new legal instrument and the lack of confidence in the judicial system. Human rights groups could point to only a single successful use of the right to amparo in a human rights case. In that case, CDES brought a petition on behalf of the Achuar indian community and won an injunction from the court prohibiting an oil company from dividing the community

and weakening its leadership by negotiating contracts with individual members of the community. The case was brought under both Constitutional law and the international treaty, ILO 169, and has been viewed as an important precedent for bringing similar actions relating to violations of ESCR.

Human rights groups have commented on the difficulty in bringing cases under domestic laws based on a prevailing cynicism about towards the judicial system and a culture of clientalism. As Judith Salgado, president of INREDH describes it, people are much more disposed to search for a personal connection and to pay a bribe rather than depend on a time and resource-consuming legal process characterized by corruption and inefficiency. Of the 848 allegations of torture identified by INREDH during the period 1996 through 1999 in Quito, only one person was willing to go forward with a legal complaint. Ms. Salgado places the blame for that primarily on a lack of faith in the system and a culture of payoffs and only secondarily on fear of retribution.

Human rights groups spoke more optimistically of international legal processes. There is particular interest in the OAS system based on a number of recent cases and an OAS mission that have resulted in concrete resolutions. The cases resolved by the Court and Commission involved CPR violations including torture, disappearance and arbitrary detention, in which the government, after years of denying responsibility, admitted blame and made monetary restitution to the victims and their families. In 1998, CEDHU, by far the most active in the OAS system, had 42 cases pending before the Commission.

The Interamerican Human Rights Commissions 1994 on site investigation and report (1997) were notable for their inclusion of ESCR concerns. One of the petitions that prompted the investigation was filed in 1991 by a US environmental group (Sierra Club Legal Defense Fund) on behalf of an indigenous community facing threats from the oil industry. The investigation focused primarily on prison conditions and other CPR, but the commission spent a good deal of time with environmental and indigenous organizations and the final report included chapters on socio-economic conditions, indigenous issues, and the particular threat faced by Amazon communities from the oil industry.

Ecuadorian NGOs have yet to intervene before the UN Committee on Economic, Social and Cultural Rights and have made little use of the other bodies. NGOs did provide information to the Committee on Torture and the Working group on Disappearances relating to the repression in the mid-80s and a coordination of child rights groups presented an alternative report to the UN Committee on the Rights of the Child during its 1997 review of Ecuador. CDES also presented the Committee with information. Labor organizations have made limited use of the ILO. CEOLS, the Ecuadorian Central of Free Unions, brought a case recently with a human rights group, APDH, and is working with CDES and an indigenous on a case to be presented under the recently ratified ILO Convention #169. The national indigenous federation, CONAIE, took part in the last meeting of the UN Working Group on Declaration of Rights of Indigenous Rights and provided information to the UN Human Rights Committee, with the support of ALDHU. SERPAJ has brought two cases involving education disputes to UNESCO and is waiting on a response.

3.3 Long-term ESCR strategies

Work around ESCR is relatively new and many groups are only beginning to strategize about long term initiatives. Given how little information about these rights exists and the general lack of awareness, there is a strong emphasis on education and consciousness-raising at many levels of society. Because ESCR are more structural in nature and require long-term efforts, groups recognize the need to build alliances, both among different sectors of society and internationally, to ensure an impact. Legal petitions at the national and international levels, though less so than the other areas of work, are also on the agenda of some groups. The following five focuses thus encompass the primary long term planning for the most active groups: Education, consciousness raising, work with social movements, international alliances, and legal petitions. The overwhelming cynicism about governmental and judicial effectiveness is reflected in the lack of attention to reforming or working with public institutions.

Education: Almost all of the NGOs working with ESCR have some component of their work dedicated to education. Much of this work is being done in conjunction with the Ministry of Education, which has included human rights in the national curriculum of education. FEDHU, the national network of human rights groups, has developed a series of modules on human rights to be used in junior high schools around the country. APDH, SERPAJ, CEDHU and CDDH do a great deal of educational work with students and other sectors of society, including community groups, unions, and professionals. INREDH and CDES have developed university courses on ESCR and are planning a long-term venture with a regional university to establish a permanent ESCR course in three countries tribunal. A number of organizations are also working with the Defensor del Pueblo to promote greater attention to ESCR violations.

Consciousness-raising: Closely linked to education, consciousness-raising is also evident in the work of most groups. Demonstrations, marches, public events are all very common in Ecuador, where groups face little threat of retaliation. Groups also build awareness through the media, particularly radio programs. A number of groups, including human rights, women's, development, environmental and religious, are working to establish public tribunals focused on one of the principal threats to ESCR, the external debt. The APDH is particularly focused on drawing attention to ESCR through public actions.

Work with social movements: Human rights groups have a history of working with social movements and are particularly aware of the importance of these movements for ESCR. The women's movement is the most closely allied with human rights groups, particularly INREDH and CEDHU, and has perhaps the broadest vision in terms of ESCR. To give a sense of some of the other planned work with social movements: APDH works closely with labor unions; some of the regional human rights commissions and CDES have developed strong ties to indigenous and campesino organizations and INREDH is planning workshops on amparo with these communities; SERPAJ, CEDHU and the APDH are looking to other allies like students, professional, and community groups and have brought many of them together in such forums as the Grito de los Excluidos (Yell of the Excluded).

International alliances: International alliances have been less significant in Ecuador than in most of Latin America. However, a number of alliances relevant to ESCR have

incorporated Ecuadorian groups, and those groups most active with ESCR are eager to take advantage of these spaces. This year's establishment of the Ecuadorian chapter of the South American Platform is a particularly important development as it unites four leading groups (CDES, APDH, INREDH, SERPAJ) around a common ESCR agenda linked to six other countries. Other groups are looking to international networks like CLADEM, FIDH, the Grito de Excluidos and the educational networks as important spaces for promoting ESCR.

Legal actions: Despite the discouraging history of domestic legal remedies, groups expressed interest in testing the new Constitutional rights through amparo actions and with the support of the Defensor del Pueblo. INREDH is undertaking a significant project with a number of other social organizations to build familiarity with the amparo right and to bring cases based in large part on ESCR violations. CDES is intent on bringing Constitutional challenges on a variety of ESCR violations, with an eye towards eventually taking the cases to the Interamerican system, the ILO and the UN CEDHU and INREDH are also interested in raising ESCR issues at the OAS level. Members of the South American Platform in Ecuador are also planning to prepare the first alternative report on Ecuador for the UN Committee on ESCR, even in the absence of an official government report (now years overdue). In all of these cases, the NGOs are working closely with social movement allies, who are similarly interested in testing the new Constitutional rights and newly ratified treaties like ILO 169. Finally, NGOs are eager to raise labor and education cases through the individual petition procedures of the San Salvador Protocol, which just came into force.

3.4 Activities of particular interest

Before 1997, work by NGOs around ESCR was very limited. Almost all of the significant activities in this field, though rarely going by the name of ESCR, were carried out by social movements. CEDHU started publishing a regular bulletin in the early 1980s that focused much attention on ESCR violations, and SERPAJ later began publishing a more substantive magazine that has also devoted attention to these rights. A number of human rights groups have for many years included ESCR secondarily in their workshops. In 1994, CDES published one of the first formal ESCR investigations - a report on the right to health relating to oil development in the Amazon - and joined an existing campaign around the issue with the intent of bringing human rights to bear on what had until then been framed in environmental and indigenous rights terms (see appendix for case study).

In 1997, CDES began a number of activities in Ecuador aimed at raising awareness and building capacity around ESCR. It organized two major ESCR conferences with the National Congress and a university aimed at congressional representatives, NGOs and students. In 1998, CDES and the APDH extended these conferences to universities in the three principal cities. CDES has organized more than a dozen smaller workshops on ESCR with NGOs and social sectors in Quito and the Amazon. Last year, CDES co-organized with five Latin American networks (CLADEM, ORIT, ALOP, FIDH, PSDHDD) the largest conference to date in Latin America devoted to ESCR. The 3-day event brought together 50 of the most active Latin American NGOs to share strategies and build greater collaboration throughout the region and across social sectors. The conference produced a high profile Declaration on ESCR and a common plan of action for two years (see web site: www.encuentro-desc.org).

A number of groups have increased their focus on ESCR in terms of their education and outreach activities. Among the most active groups in this respect are the APDH, CEDHU, SERPAJ and FEDHU. The Human Rights Commission of the Northeast has also held a number of ESCR-related events aimed at the general public and human rights promoters in the Amazon. The Frente de Defensa de la Amazonia, a network of Amazon communities, in conjunction with CDES, Accion Ecologica (a Quito-based environmental group), an Austrian-funded laboratory, and local church missions, has trained a number of community leaders in rights and impacts relating to oil development, towards the end of building a monitoring network to investigate damages and report on violations.

In 1999, CDES released two significant ESCR publications as part of separate campaigns. The first report related to the right to health in Ecuador and provided the basis for a campaign involving five ex-Ministers of Health, NGO and university leaders, and student groups, who undertook a march on Quito with meetings with the head of the Constitutional Tribunal and the President of the National Congress and much media attention. CDES has subsequently brought two legal challenges to cuts to the health budget, one in front of the Constitutional Court and one in the civil court system. The second publication, a book on debt and human rights, is the precursor to an international conference on that subject and the launching of an Andean People's Tribunal on Debt. Those events, involving a wide range of NGOs, are part of a much larger campaign around debt, led by the indigenous, women's and labor movements in Ecuador.

One additional important initiative relating to ESCR is the National Human Rights Plan promoted by the government in conjunction with civil society. As many as 300 NGOs are reported to have taken part in the elaboration of the Plan and the Plan is an ambitious document reflecting most of the proposals from civil society around CPR, ESCR, collective rights and the right to development. The government approved the plan in early 1999, but subsequent work on the Plan's implementation, which involves a number of government and civil society working groups, has been stalled awaiting ratification of the working group plans by the Minister of Foreign Relations. Among the Plan's interesting clauses relating to ESCR is the establishment of a commission comprised of both governmental and non-governmental representatives to oversee compliance with ESCR obligations.

3.5 National NGO cooperation

The majority of human rights groups are members of the FEDHU (Ecuadorian Front for the Defense of Human Rights). The network was formed in 1982 and today includes 22 NGOs from around the country. A few of the more active NGOs, including APDH, INREDH and CDES are not members of FEDHU, but work closely with the member groups. FEDHU is strictly comprised of human rights NGOs and as such has maintained a distinct profile that has kept it beyond politics and sectarian issues. According to the Coordinator, Elsie Monge, this is important in a country in which human rights campaigns are easily politicized and taken advantage of by political parties.

The coordinating group, CEDHU, describes the mission of FEDHU, and other similar coordinations, in the following terms: "They constitute spaces for denouncing, mobilizing, discussion among popular organizations, analyzing the human rights

situation, and searching for alternatives. They have confronted aspects of the national reality like repression, the Law of National Security, administration of justice, armed groups, labor policy, land tenancy, rights of women, the environment, neoliberalism, democracy. The coordinations have been means to disseminate information and create public opinion, insofar as the media generally refuses to report on complaints of abuse of power against the people.” (DDP, 1998)

FEDHU has established five areas of work: 1. human rights education, 2. petitions and legal assistance, 3. communication and consciousness-raising among the public, 4. human rights investigations and proposals for strengthening protections, and 5. coordination with popular organizations to undertake joint actions on rights.

A number of smaller and less formal collaborations also exist between organizations. APDH, CEDHU and SERPAJ all have a network of organizations and supporters with whom they coordinate activities. A number of human rights groups are joined in communications networks aimed at raising awareness and disseminating human rights action alerts.

In the field of ESCR, the Ecuadorian chapter of the South American Platform is the most significant coordination. The Platform’s roots go back five years and involve five initial countries, Colombia, Peru, Brazil, Chile and Bolivia. The network was established to build consensus and common activities around a set of principles relating to democracy, human rights and development. Each country has a chapter with as many as a hundred member organizations. In Ecuador, the chapter was established last year with four initial groups, CDES (coordinators), APDH, SERPAJ and INREDH. The Chapter’s initial activities included support for two regional events in Quito, a conference on peace in Colombia and a Conference on debt and human rights. Next years agenda is still in discussion, but will include the preparation of an alternative ESCR report to the UN.

Outside of the strictly human rights NGO field, a number of important national coordinations exist with respect to particular sectors. Women’s groups, children’s groups, indigenous organizations, campesinos and environmentalists all enjoy strong and effective coordinating bodies, each representing dozens of groups from across the country. The labor movement has been more fragmented and is going through a particularly tough period presently.

3.6 International NGO cooperation

As described above, the Ecuadorian human rights community has not developed strong ties to international organizations and none take part in international human rights commissions. Regional human rights ties among NGOs are maintained through such networks as the South American Platform, ALDHU, SERPAJ, and the Human Rights Education Network (all mentioned above). Additionally, CLADEM (a women’s rights network) and ALOP (a network of development groups), both have national NGO affiliates. Ecuadorian NGOs and community groups have also taken part in regional coordinations such as the Grito de los Excluidos, ILSA (a network of groups focused on alternative law), and Jubilee2000, which has active affiliates in both Quito and Guayaquil. The Ecuadorian labor and indigenous movements are also strongly tied to regional networks: ORIT, in the case of labor, and COICA (the Amazonian

coordinating body), and the Amazon Alliance (involving both indigenous organizations and NGOs) in the case of indigenous groups.

3.7 Other work on ESCR

It has to be emphasized that the most successful work on ESCR has not come out of the human rights community, but rather by dint of social protests led by social movements. Ecuadorians are reticent to use formal processes and eager to take to the streets, because that is where they have traditionally had the most impact. In that respect, the following examples of popular protests are representative:

- 1988: human rights march against the Febres Cordero administration, one of the first large public gatherings to protest abuses, involving 5000 people led by families of disappeared persons and other victims.
- 1990: major indigenous uprising involving tens of thousands of Indians and shutting down the country (blocking all major roads) for a week in protest of deteriorating social and economic conditions, land conflicts, and the government's refusal to recognize indigenous peoples as distinct.
- 1991: popular tribunal for truth and justice, held in the National Congress, alongside a march against past abuses and the particularly abusive police investigations unit that is subsequently disbanded;
- 1994, indigenous uprisings involving hundreds of thousands of Indians shut down the country again for two weeks in protest of agriculture law dispossessing many communities of communal land title, and succeed in establishing direct negotiations with President;
- 1994: demonstrations by indigenous representatives and environmentalists and the peaceful take over of the Ministry of Energy and Mines office to protest oil abuses and to demand a civilian petroleum oversight body, resulting in agreement with the Minister.
- 1994/1995 marches and demonstrations of women's groups succeeding in the establishment of local government offices to hear complaints on domestic violence and the passing of a domestic violence law.
- 1997: massive civil society protests involving all the main social movements succeed in forcing the Presidents ouster;
- 1999: labor, indigenous and student marches, demonstrations, and shut-downs succeed in winning concessions to the Presidents austerity measures, including a cap on petroleum price increases.

These examples suffice to demonstrate that human rights advocates (understood broadly) have made more concrete gains, particularly in the field of ESCR, through informal than formal channels. The 1990s have been marked by particularly weak and corrupt political leadership, which has infected all three branches of government (executive, legislative, and judicial), making civil society even less inclined to employ formal challenges. With a stronger legal framework now in place, (owing to both the new constitution and such recent treaties as ILO169 and the San Salvador Protocol), stronger institutional support in the form of the Defensor del Pueblo, and new instruments like the right to amparo and the Human Rights Plan, human rights groups and social movements are likely to focus renewed attention on formal channels, but always in close conjunction with public protests and social organizing.

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- Pedro Restrepo, father of two disappeared sons

ANNEX: 1. Promoting the Rights to Health and a Healthy Environment in the Ecuadorian Amazon: A Case Study in Advocacy around Eco

-- Chris Jochnick, Center for Economic and Social Rights¹

1. Introduction

The global human rights movement has undergone a flurry of change over the past decade. The success of human rights in bringing reforms to many repressive countries and the new political space sparked by the end of Cold War has reinvigorated rights at both the international and national levels. Conferences on women's rights, indigenous rights, environmental rights, rights to food and housing, are indicative of the new directions pushing the human rights agenda. Economic, social and Cultural Rights (ESCR) have finally made it onto the radar screens of many human rights groups and may be the fastest growing area of human rights.

Nonetheless, the field of ESCR offers little concretely to celebrate, particularly in Latin America. While civil and political rights (CPR) can point to a number of successes, most developing countries have probably suffered a worsening of ESCR. Latin America is the most unequal of all the continents and economic growth has done little to improve the well being of the vast majorities in each country while adding to the debt burden, depleting natural resources, and contaminating the environment.

The UN Committee on Economic, Social and Cultural Rights has declared that "a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the covenant."² To take Ecuador (the focus of this case study) as fairly representative, compare the Committee's observations with those of the government's research institute: "In 1995, more than 6 million Ecuadorians had income levels that did not even permit them to satisfy their basic needs. The poverty in Ecuador is massive. Fifty-six percent of the population is poor and suffers from deprivation or risks satisfaction of their basic needs, and one-fifth (20%) is indigent and unable to cover their nutritional requirements."³ According to the World Bank, more than 70% of Ecuadorians now live in poverty and

¹ Author is the Legal Director of the Center for Economic and Social Rights and has been involved in CESR's work in the Amazon since its beginning in 1993. This paper was prepared for the WOLA/ILD Conference: "New Strategies for Human Rights in Latin America", July, 1999.

² Committee on Economic, Social and Cultural Rights, General Comment 3, (1990)

³ Secretaría Técnica del Frente Social, *Pobreza y Capital Humano en el Ecuador*, Quito, STFS, p.XV (1997).

almost half of all children are malnourished, and Ecuador is by no means an extreme case.

While the massive neglect and violation of ESCR makes it easy to grow cynical about the prospects for these rights, it also underscores the overwhelming urgency of finding effective strategies to promote them. This paper describes both the positive and negative factors facing potential ESCR advocates and uses a case study from the Ecuadorian Amazon to illustrate some strategies based on these factors.

ANNEX: 2. Positive and Negative factors influencing ESCR advocacy

One of the primary reasons that ESCR have not made a wide impact is that they are more difficult to promote than CPR. This has slowed advocacy efforts and discouraged some groups and movements from using these rights. Some of the obstacles are intrinsic to ESCR and will always pose difficulties, while others are related to current social, political and economic conditions and may change over time. While they are less obvious, there are also some factors making ESCR advocacy easier and more effective. Both sets of factors are important to developing practical advocacy strategies.

Obstacles

- A lack of awareness and underlying prejudices against ESCR: One of the most formidable obstacles facing ESCR advocates is the general lack of awareness about, and even bias against, these rights. This is particularly true in the Americas where human rights have often been narrowly defined and limited to CPR. Much of human rights work depends upon public support and public outrage, and the lack of awareness and information about ESCR makes it more difficult to provoke a public reaction to violations. Governments can violate ESCR with relative impunity because most people do not recognize the acts as violations
- Lack of legal experience and precedents: ESCR have not enjoyed the same legal recognition given to CPR. While many national constitutions include ESCR, they are rarely the subject of litigation and national judicial systems have very little experience dealing with these rights. This lack of experience extends to the Inter-American system: ESCR are barely recognized by the Inter-American Convention, have never been the subject of Court decisions, and are given short shrift by the Commission. This lack of experience and precedents presents a double obstacle – it deprives advocates of an accessible legal alternative and it de-legitimizes ESCR in the eyes of the public and government institutions
- Lack of institutional oversight mechanisms: The lack of legal experience and precedents is closely related to the lack of oversight mechanisms. While CPR violations are monitored and prosecuted by attorney generals and Defensores del Pueblo, these institutions are rarely committed to or capable of monitoring violations of ESCR and no comparable institutions exist to hold violators accountable
- A weakened state and international violators: Over the past half-century, states have lost much of the sovereign control implicit in human rights treaties. Today's governments are besieged by a host of outside actors over whom they have an ever-decreasing capacity to influence. Rapid privatization, free trade agreements, economic integration, external debt burdens, and the leverage of TNCs have tremendously limited government prerogatives, particularly among the smaller, developing countries and particularly in relation to ESCR. It is no longer sufficient to target only national governments. Today's ESCR activists must also address the external debt burden, free trade dictates, powerful private industries and a host of other factors that play a significant, if not overwhelming

role in violations. This break with traditional state-focused models of advocacy poses both jurisprudential and practical problems.

- Challenge the dominant forces: ESCR are further complicated by the challenge they pose to the dominant actors and forces in society. While civil liberties and formal political rights are generally consistent with the reigning free market currents and neo-liberal ideologies, ESCR are more often at odds with these demands. Multilateral Banks, northern governments, free trade agreements, Reebok and Levi's all strongly support CPR; but ESCR advocates pushing for government social programs and greater control over corporate abuses will find little support from these quarters. The dominant political and financial actors in today's society continue to insist on the narrow vision of human rights that all but excludes ESCR. Human rights groups with strong relationships to some of these dominant forces may be concerned about alienating them by taking up ESCR.
- Lack clear, discrete solutions: Under reigning political and economic structures, ESCR are more complicated than CPR. Almost all countries have institutions and systems already in place to ensure CPR and solutions to existing violations are relatively straightforward. Ensuring basic levels of education, health, food, housing and employment is a far more daunting task. These issues lack the consensus and clear-cut paths that CPR enjoy. ESCR advocates face difficult economic and social questions that have yet to be fully resolved and may even find themselves on opposite sides of certain issues (e.g. full employment vs. adequate wages and working conditions); ESCR will often require the sort of controversial or political positions feared by many traditional advocates.
- Lack sensationalist appeal: A single case of torture or disappearance will inevitably draw greater attention and public outrage than 100 or even 1000 child deaths by malnutrition or contaminated water. Society has been conditioned to accept certain things as natural and others as unacceptable "violations." While the government's hand in ESCR-related suffering can be clearly established, there are more tangible and sensational elements to CPR violations. As so much of human rights advocacy depends on being able to attract media and public attention, this lack of a sensational element makes ESCR advocacy that much more difficult.
- Lack of models: Owing to the long-standing neglect of ESCR within the human rights movement, there are very few advocacy models, guides or strategies to draw upon. Traditional models are of limited value in this field, and most ESCR advocates are forging new ground in terms of tactics, allies and targets. For groups with limited resources, there is little room for trial and error and many advocates struggle with the need to go beyond the comfortable, time-tested approaches that have served the CPR field.
- Interdisciplinary and resource-intensive: ESCR advocacy requires more than the legal or activist-oriented staffing of traditional human rights groups. ESCR advocacy requires the ability to investigate, analyze and take positions on complex economic and social issues. Groups must have access to experts in a variety of social sciences as well as the law. Many human rights groups with their existing experience and expertise in CPR are reluctant to embark upon the new and complicated task of ESCR.
- Lack of resources: While resources are a problem for all human rights groups, there can be no question that ESCR advocates face the most difficult struggle of all. Some of the larger foundations like Ford, MacArthur and NOVIB have come

around to ESCR in recent years, but the overwhelming share of resources available to human rights advocacy is still oriented towards the traditional fields of CPR or newer fields like women's rights. While ESCR are making ground, the influence of corporate and government interests in funding spheres make it unlikely that ESCR will ever capture a significant share of available human rights resources.

Advantages

While the obstacles to ESCR advocacy are more obvious, there are definite advantages that should also be taken into account. Among the most important are:

- The potential to mobilize populations: Given how widespread poverty and economic hardship are in developing countries, basic survival issues like health, education, food and housing, are more likely to mobilize people than torture or free speech. This is particularly true in Latin America, where dictators and repression are no longer such pressing issues and where development has left so many people behind. There is a much broader potential constituency among the grassroots for ESCR advocacy.
- The strong existing social movements: Latin America enjoys strong social movements capable of taking full advantage of human rights instruments. Among the most important are indigenous, women's, labor and environmental movements, all of which have begun to incorporate more general economic and social justice issues like structural adjustment programs and free trade agreements into their agendas. The Catholic Church and more community-based groups are also strong potential allies.
- Familiarity with human rights: The history of human rights struggles in Latin America (as opposed to other developing regions) has laid a strong foundation for the expansion into ESCR. The value of human rights is well understood by the public and advocacy groups and there exists a wealth of experience in using rights instruments. The OAS system has yet to take ESCR violations seriously, but the Commission has shown increasing interest and evolving instruments like the San Salvador Protocol on ESCR, and others concerning indigenous and women's rights, offer new hope for ESCR advocates.
- Sympathetic government and Congressional leaders ESCR advocates are likely to find allies within the government branches, particularly Congress. Many governments are genuinely concerned about economic and social conditions and feel beleaguered by international pressures pushing for harsh adjustment measures. Under such conditions, ESCR may bolster government positions in front of multilateral banks, foreign governments and private industries. Congressional allies are likely to be particularly important given the budgetary issues and programmatic nature of these rights. There will always be sympathetic members of Congress eager for the legal and political support offered by ESCR advocates.
- The evolving international consensus around development priorities: International pressures driving harsh structural adjustment programs are losing their footing. ESCR advocacy should benefit from the emerging consensus around two basic rules: that social investment is essential for economic growth and that participation is both a right and a support to development. In the words of the World Bank President: "We must address the issues of long-term

equitable growth on which prosperity and human progress depend. We must focus on the social issues. If we do not have equity and social justice.

ANNEX: 3. Promoting Rights to Health and a Healthy Environment in the Ecuadorian Amazon

A. Background

The Center for Economic and Social Rights' work in the Ecuadorian Amazon (the "Oriente") serves to highlight many of the obstacles and advantages to ESCR advocacy and offers some concrete strategies. By way of background, CESR got its start nine years ago during the Gulf War. It grew out of a pair of missions organized by U.S. graduate students to Iraq in the war's aftermath that documented the devastating impacts to Iraqi society caused by the bombing of civilian infrastructure. The missions were a harbinger of future ESCR work: 1. They required enormous amounts of social science research and expertise; 2. They were controversial – 90% of the U.S. public supported the war and many human rights figures were still lauding the widely heralded "clean weapons" and adherence to Geneva Conventions, 3. Their impact depended almost entirely on the ability to sensationalize the data and downplay politically unpopular positions (thus the mainstream press headlines: "170,000 civilian deaths" rather than "U.S. violates international law"), 4. They targeted international actors (the U.S. and UN) and were at odds with all the major political and economic forces; 5. They struggled to find practical, clean-cut solutions; 6. They were funded under the guise of international peace and security, rather than ESCR.

CESR was established with the initial strategy of finding and addressing high profile ESCR violations in order to raise awareness about ESCR and to develop concrete advocacy models. One of CESR's first projects confronted the petroleum-related contamination of the Oriente, perhaps the most biologically diverse and fragile environment on earth and home to a number of threatened indigenous groups. When CESR first investigated the issue, multinational petroleum corporations alongside the State company had been operating for 25 years in the area with virtually no governmental oversight. They had dumped billions of gallons of toxic wastes into the environment, poisoning the land and waterways and causing serious health and nutritional problems to surrounding communities. Indigenous groups had been driven off traditional lands and some were on the edge of extinction. Local environmentalists and indigenous federations had managed to draw attention to the problems, but their campaigns lacked both scientific and legal clout.

B. Strategy -goals

CESR's first step as an international "outsider" was to meet with all of the most active groups working on the issue. The struggle against oil involves two primary social sectors, indigenous groups fighting to protect their cultures, territory, wildlife and environment, and campesinos or "colonos" (who make up 70% of the Oriente population) struggling with contaminated farmlands and drinking water and the loss of livestock. Since many of the colonos arrived alongside the oil companies, indigenous groups often blame them for the deforestation and loss of land and wildlife. A number of NGOs and institutions also play a role in the Amazon, including environmental

groups (both national and international), local human rights groups, health promoters, development groups, the Catholic Church missions, the petroleum workers union and the local radio station.

In its first trip to Ecuador, CESR spent a week interviewing these organizations in Quito and the Amazon. The campaign against oil had begun a few years before, but it was still relatively fresh. Groups were struggling with all of the obstacles listed above and were not well united. Based on its discussions with these organizations, CESR sought to collaborate with the principal activist sectors -- indigenous groups, environmentalists and a nascent campesino coalition – and decided that its most useful contribution would come from providing three things: scientific proof of the harms caused by oil, raising awareness about the rights violations implicated, and strengthening local campaigns. Its strategy involved four discrete steps:

- documenting the violation of ESCR
- publicizing the findings
- undertaking legal and political initiatives, both in Ecuador and abroad
- building capacity and strengthening local actors

1. Documenting the violations of ESCR

CESR's first step was in line with traditional human rights fact-finding. However, documenting violations of the rights to health and a healthy environment (RHHE) required more than legal investigation and interviews. CESR found a number of experts affiliated with the Harvard School of Public Health and a private environmental consultant to volunteer their time to the project. With a team comprised of a doctor, two lawyers, an Ecuadorian biologist, a toxicologist, and a public health expert, CESR spent two weeks in the Amazon collecting samples from local water supplies and interviewing and examining local residents. In subsequent trips, CESR interviewed local activists, indigenous leaders, lawyers, government officials, and representatives from the State and private oil companies.

A U.S. laboratory found high levels of toxic wastes linked to oil production in the water samples and the doctor's examinations found signs of exposure to these contaminants. The Quito interviews uncovered a total absence of effective regulation of the oil industry and an absence of basic legal protections for affected Amazonian residents (not a single successful legal action at the national level). Based on international treaties and the national Constitution, the Ecuadorian government was in clear violation of the RHHE.

However, these rights do not enjoy the same level of legal precision of CPR and there is little legal commentary and few precedents to determine the exact nature of government obligations and corresponding violations. Accordingly, CESR took a minimalist approach and highlighted only the most unambiguous violations:

- a. violations of the obligation to respect the RHHE based on the government's direct involvement in contaminating drinking water supplies through the activities of the State oil company, Petroecuador;

- b. violations of the obligation to protect the RHHE based on the government's lack of regulation and control over private oil companies who were systematically violating the RHHE;⁴
- c. violations of procedural obligations related to the RHHE including rights to an effective remedy and to information based on the many legal obstacles and the lack of citizen access to basic information about activities threatening their health.

The RHHE include a number of additional obligations to “promote” and “fulfill” the right, which might include ensuring potable water and access to basic medical services for all Amazon residents, and participation in health programs and development decisions. However, given the existing lack of political and legal support for ESCR, CESR stuck to only the most obvious, least controversial obligations.

CESR also faced a difficult issue relating to private actors. While, Petroecuador was a major player in the Amazon, most of the damage had been wrought by Texaco (a company with four times the annual earnings of Ecuador's GNP), and a number of other private companies were also active in violations. Additionally, the World Bank was funding development projects in the Amazon linked to petroleum. Local leaders and activists were much more concerned about the private companies, and viewed the exclusive focus on the state as unfair and even counter-productive. Based on these concerns, CESR included a section in its report discussing the role of private actors and the importance of holding them accountable and indigenous and environmental groups contributed introductory pieces about the abuses of Texaco, but the report's focus was still on the State's obligations.

2. Publicizing the findings

After producing the report in Spanish and English, CESR held press conferences in both the U.S. and Ecuador to publicize the findings. The fact that foreign scientists and lawyers linked to Harvard were involved in the study gave it weight with local and international media, but it also risked overshadowing the efforts of local groups to document the damages. Accordingly, CESR did all of its outreach and media work in collaboration with local groups.

Following the press conferences, CESR and local activists organized forums in Quito and the Amazon aimed at NGOs, government leaders, academics and community leaders to discuss the report's findings. CESR also worked with local partners to produce and disseminate a comic book to make the issues more accessible to a wider audience.

In terms of attracting media and public attention, the following issues were probably most helpful, in order: first, that it was a “Harvard-supported” study; second, that there was an increased risk of cancer; and third that it involved human rights violations.

⁴ According to the Inter-American Court of Human Rights, a state violates the rights of its citizens “when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized...” Velasquez Rodriguez Case, Inter-Am Ct. H.R. ¶166 (Aug. 31, 1988)

While oil development has impacted local communities in a number of ways, cancer was the one health issue that most attracted the media (e.g. the New York Times headline “Oil linked to risk of Cancer in Ecuador”). It provided a hook to raise a number of other issues, but sometimes eclipsed everything else (e.g. malnutrition and stomach problems linked to oil, which are far more prevalent). Human rights provided a new take on what had been largely viewed through an environmental or indigenous framework and definitely helped attract attention, but not as much as either of the first two issues. Rights were CESR’s primary concern and CESR highlighted them, along with corresponding government and industry obligations, at every chance.

3. Legal and Political initiatives

Given the complexity of the issue, CESR and partners took advantage of a number of different political and legal fora to pressure for changes. In Ecuador, the National Congress provided fertile ground. With the support of some progressive Congressional leaders, CESR and allies helped prompt a Congressional investigation of Texaco and Petroecuador that led to a three-day trip to the affected sites in the Amazon with the Minister of Energy and Mines, high ranking industry officials, Congressional members, the mainstream media and a handful of community leaders and NGOs (including CESR). The trip was widely covered in the media and opened a door to the Ministry of Energy and Mines for affected communities.

In the U.S., CESR and other U.S. NGOs helped organize visits of Ecuadorian environmental and indigenous leaders with the U.S. State Department, Congressional representatives, and World Bank officials. These meetings were designed to raise awareness of the conduct of U.S. multinationals in Ecuador and to bring pressure on the companies and Ecuadorian government to make reforms. CESR also helped bring a groundbreaking lawsuit on behalf of Ecuadorian plaintiffs against Texaco in U.S. federal courts, based largely on the scientific study,⁵ and helped bring Ecuadorian representatives to speak at Texaco shareholder meetings as an additional way of pressuring the company.

Two separate legal actions related to the oil issue were brought before international commissions. In 1990, a U.S. environmental group brought a complaint to the Inter-American Human Rights Commission on behalf of an Ecuadorian indigenous federation protesting the activities of a private oil company. Five years after the complaint was filed, the Commission visited Ecuador and devoted a section of their 1997 Country Report to the problems caused by oil development in the Oriente that touched on both industry activities and government neglect. Another case relating to Texaco and brought before the International Water Tribunal in Europe elicited similar support for the rights of indigenous groups facing oil companies. The Tribunal has no governmental authority, but it helped attract international attention.

Among these various legal initiatives, the most useful (and most resource- and time-consuming) has been the lawsuit. Despite the lack of progress on the case, it has

⁵ The suit was initially dismissed on the grounds of *forum non conveniens* (e.g. Ecuador would be the more appropriate site for the case), it was reinstated by the Court of Appeals and is awaiting a decision.

attracted enormous media attention in Ecuador and internationally and has provoked a great deal of Congressional and governmental activity in Ecuador. The suit has reinforced the idea among the Ecuadorian public that “rights” are at stake and that the industry has been acting with irresponsible double standards. Texaco has clearly felt pressure from the lawsuit and has made payments to some of the most prominent Amazonian indigenous leaders to undermine organizing around the case. While the OAS and IWT actions were both successful, they were in large part hollow victories as very little follow-up was done around either case. The decisions have not been the subject of any organizing or media attention and neither Texaco nor the government has responded directly.

4. Capacity Building

CESR was intent on using the report to raise awareness about the rights to health and a healthy environment and to promote long-term oversight and activism around these and other ESCR. Towards that end, CESR worked with local environmentalists and indigenous leaders to organize workshops among Amazon communities focused on oil-related impacts and rights.

These workshops and the lawsuit helped spark the formation of “the Frente de Defensa de la Amazonia” a coalition of primarily colono communities joined to support the Texaco suit and to resist irresponsible oil activities. The Frente leads efforts with other institutions in the Amazon (the Church, development groups, the regional radio station, high schools and NGOs) to monitor and report on oil activities and to educate residents about their rights. While corruption and political campaigns have distracted the Amazon indigenous federation, the Frente has successfully established itself as a unique local voice on oil issues with close relations to congressional and social leaders and the national media.

Rights training has become a central piece of capacity building among a number of NGOs and indigenous groups working in the Amazon. These efforts, along with organizing and consciousness-raising, have had a tremendous impact on the dynamic of oil development in the Amazon. In 1993, when CESR first visited the Oriente, many residents had no idea about the link between oil and health problems and oil activities were simply accepted as part of the normal course of development. Six years later, not only are these communities aware of the impacts, they know that their rights are being violated and they are often active in denouncing violations.

ANNEX: 4. Lessons

The case of the Oriente offers a number of lessons for ESCR advocacy. Almost all of the positive and negative factors listed above were present in some fashion and strategies were effective to the extent that they took these factors into consideration. The following analysis evaluates the obstacles facing ESCR advocacy in the Oriente, the impact of ESCR in confronting the oil problem, and the most effective strategies.

A. Obstacles

Some of the obstacles encountered in the Oriente may be particular to that context, as it is rare to find two opposing sides with such enormous power imbalances: petroleum companies like Texaco with annual earnings four times greater than Ecuador's GNP and responsible for 50% of external exchange for the country *versus* poor and isolated indigenous and campesino communities. Nonetheless, the study underscores many of the difficulties encountered in almost any struggle over ESCR. Among the most important were:

- *the political and economic forces arrayed against the communities:* Ecuador's oil boom has drastically changed the country and oil earnings now account for approximately half of the national budget. The government, the military, the multilateral banks, the U.S. government, the state oil company and a number of powerful private companies are all highly invested in increasing oil production. No other industry comes close to the influence exercised by these interests in Ecuador. Additionally, the majority of these actors are not directly implicated by human rights treaties making claims against them more tenuous;
- *the lack of awareness and recognition of ESCR:* Despite the fact that Ecuador's Constitution has ratified all the major human rights treaties relevant to ESCR (including ILO 169), has a member on the UN Committee on ESCR, a member on the OAS Court, and the first High Commissioner for Human Rights, until very recently, ESCR were almost entirely absent from the public debate. There are no legal precedents supporting them and very little awareness or understanding about them among NGOs, the public, and representatives from the Congress and Ministries. Accordingly, the institutions charged with overseeing petroleum, the environment, and ESCR (the Defensor del Pueblo), until very recently have been woefully underfunded and ineffective;
- *the lack of resource:* documenting violations of the RHHE caused by petroleum is extremely difficult. Water samples cost up to US\$00/sample and can't pinpoint the source of the contamination, and an increase in health problems is equally difficult to measure and even harder to link to any one cause like contaminated water. Given these obstacles and the lack of precedents, bringing legal complaints also requires greater effort. Additionally, working in remote areas like the Amazon is logistically demanding. To the extent that resources for this work have been available, it has come for related issues like indigenous rights or environmental conservation;
- *divisions among sectors and advocates:* confronting a problem of this magnitude and complexity, without the support of traditional human rights allies, has required a broad coalition of groups extending from the communities to the United States. Inevitably with collaborative efforts of this sort, divisions have

arisen and often undermined the work. Some of these division arose from simple cultural and economic differences or differences in interests among allies. But these have been greatly exacerbated by the oil industry which has taken advantage of its enormous financial capacity to corrupt and co-opt indigenous leaders and to sow distrust among communities and between communities and their allies.

B. Successes:

The struggle against irresponsible development in the Oriente goes back many years and it remains a very active fight. Over the last half-decade, the most obvious successes in this struggle include the following:

- the Amazonian population and the general public is much more aware of the impact of oil development and the fact that it violates a number of rights and these issues are regularly raised in the mainstream media;
- an active network of communities and local institutions in the Amazon have organized around the issue of oil and have found a powerful voice in the national debate over future development;
- local indigenous groups are much better informed about the risks of oil development and their rights and in most cases have succeeded in forcing companies to consult/negotiate with them before beginning operations in their territories
- the Congress is much more concerned and active in overseeing environmental and social issues related to oil and is working on a new and stronger law, with the participation of social leaders, to control future oil development
- private companies no longer dump their wastes, as was the practice with Texaco, and take pains to negotiate agreements with local communities before beginning their operations;
- a number of international institutions have put pressure on the government and industry including the World Bank (a loan was held up by the issue), the OAS, the IWT, and the U.S. Congress and State Department
- for the first time in Ecuador's history, two large parks were recently declared off-limits to industrial development;
- popular protests, including sit-ins, have twice forced the government to reverse itself on the Texaco case in order to support the Ecuadorian plaintiffs;

C. The role of ESCR

Activism around the RHHE has played an important part in the larger struggle over the Oriente's development. However, given the number of actors and the complexity of the petroleum issue, it is difficult to measure the precise role of any particular strategy or the impact of "rights" in general. Accordingly, the following conclusions are more anecdotal than empirical:

- *encouraging affected communities to take action*: Paulo Freire suggests that overcoming "a consciousness of internalized subordination" is the first step in the decision to take action and towards that end rights offer a particularly valuable tool. Framing the problem of oil contamination in terms of rights has provided legitimacy to the complaints of affected communities and has

encouraged a long-overdue sense of injustice that has helped in organizing and mobilizing these communities. Community members are more likely to risk/dare raising their complaints in front of government and industry officials and the general public if they can supported by legally recognized rights.

- *increasing public pressure on the government and industry*: calling a long-accepted problem a “rights violation” suggests that things could be different and that somebody is responsible. The language of rights has helped spark Congressional investigations and contributed to a public sense that something was wrong. It has definitely helped increase the level of “shame” attached to government neglect and industry activities;
- *engaging international and government institutions*: the U.S. State Department, the World Bank, the OAS, transnational corporations (shareholders and executives), and government institutions are all more likely to take notice of complaints based on international treaty obligations. Rights provide a language that these bodies are forced to recognize. NGOs and community representatives have had success involving these institutions in their struggle and rights have played a critical role in those efforts;
- *attracting media and public attention*: as discussed above, rights are not the most important factor in attracting attention, but they have definitely helped;
- *providing a common rallying point*: rights offer standards for evaluating government and industry conduct. In the case of Ecuador, violations of legal norms have provided a focus for campaigns directed at new legislation, regulations and industry conduct. Rights have often united different social sectors and NGOs behind particular initiatives.

D. Most effective strategies

Among the most effective strategies used to confront irresponsible development in the Oriente were:

- *Building capacity at the local level*: Amazon communities are capable of playing a critical role in the defense of their environment. “Participation” is in vogue with international institutions like the World Bank and communities enjoy a number of rights concerning the development of their territories. Many of these communities are eager to take a more active role, but they lack the necessary information and support. ESCR provide an important tool to both energize and support grassroots struggles and ESCR advocates have to encourage these sectors given both the paucity of support at higher levels and the need to bring in local knowledge and vigilance to make ESCR effective.
- *Working with Congressional allies*: Congressional leaders have played a key role in oil development in the Oriente. They establish the framework for development and conservation, provide funding for oversight agencies, and have the power to investigate and influence all the important actors. Sympathetic members of Congress have helped activists get information, put pressure on Ministers and company officials, raised the problem in the media, and have begun to develop stronger legislation.
- *Targeting non-state actors*: The Ecuadorian government has neither the resources nor the political willingness to fully protect the RHHE in the Amazon. Accordingly, it has been necessary to target other actors equally implicated in violations, particularly private companies. While these companies are not

technically accountable to human rights treaties or the Constitution, they are politically and morally accountable and that can be just as effective, particularly in the absence of legal channels. ESCR have helped pressure these companies and have provided a framework to fill in regulatory vacuums. For instance, in a recent proposal from Occidental Petroleum to a small indigenous community, the company promised to respect all international human rights treaties, including ILO 169, in its relations with the community and work activities in the Oriente. As moral and political instruments, ESCR can be effectively employed with multilateral banks, foreign lenders, trading partners and any other institution concerned about its public profile.⁶

- *raising awareness about rights through concrete legal action*: the U.S.-based lawsuit against Texaco has probably done more than anything else to raise the profile of the oil problem and to change the terms of the debate from one of government needs and environmental problems to one of rights and violations. It would be difficult to duplicate the lawsuit as these sorts of cases are both extremely costly (already running well beyond 0,000 and it has yet to be accepted) and rarely successful. But less extreme cases at the domestic level or in front of international tribunals could also serve to provoke public interest, change common understandings, and put pressure on the government. The key is assuring that information about the cases is widely disseminated, and that they are part of larger campaigns rather than isolated events.

V. Conclusions

While the promotion of the RHHE in the Oriente has required a long-term investment in the region and has encountered a number of setbacks, on balance, it has been very successful. The impact of rights language and instruments – of “rights advocacy” – is not only evident within the struggle over oil, but has spread to a number of other contexts. ESCR have become common currency among Amazonian communities, and community groups have been encouraged to use these rights in their work more generally. The media, the government, the public, the judiciary, lawyers, social movements and a wide variety of NGOs have been exposed to ESCR through the struggle around oil. This consciousness raising and experience with the legal ESCR instruments is bound to have ripple effects. The newly established Defensor del Pueblo has taken an interest in the issue of oil development and has sought help from NGOs to oversee and promote ESCR more generally. The National Human Rights Plan backed by the government contains a number of progressive and detailed commitments to ESCR. Recent campaigns around health, education, worker rights, indigenous rights and external debt have all employed the rhetoric and instruments of ESCR and have begun to develop legal actions around these rights.

⁶ There is nothing disingenuous about extending obligations to these other actors. As clearly stated in the Universal Declaration of Human Rights and reiterated in all subsequent human rights treaties “The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that *every individual and every organ of society* shall . . . promote respect for these rights and freedoms.” Preamble, (emphasis added).

It would be hard to point to any concrete gains (e.g. less poverty) based on these activities, but there is much reason to hope that the public awareness and increased activism will eventually translate into greater respect for ESCR. ESCR will rarely enjoy the quick, tangible fixes and legal victories common to the CPR field (freed activists or punished torturers), making grassroots, sustained activism the critical frontier. This work is more complicated, slower, and harder to measure, but there are many new allies warming to the task and as the field matures, advocacy efforts will only grow more powerful.