

QUITO DECLARATION

On the enforcement and realization of economic, social, and cultural rights in Latin America and the Caribbean
(July 24, 1998)

PREAMBLE

1. **RECOGNIZING** that economic, social, and cultural rights (ESCR), like civil and political rights, are an indivisible part of human rights and international human rights law, as expressed in the Universal Declaration, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the American Declaration on the Rights and Duties of Man, the Declaration on Social Guarantees, the American Convention on Human Rights and the Optional Protocol of San Salvador.
2. **REMEMBERING** that ESCR have been reaffirmed and developed through many additional international instruments, such as the Convention on the Rights of the Child, the Convention for the Elimination of All Forms of Discrimination against Women, the conventions of the International Labor Organization such as Convention No. 169 on indigenous and tribal peoples and those conventions regarding the fundamental rights of workers, the Declaration of the General Assembly of the United Nations on the Right to Development, and the declarations of Teheran, Vienna, Copenhagen, Rio, and Beijing, among others.
3. **TAKING INTO ACCOUNT** that ESCR are part of the fundamental values of a true democracy, understood as a set of social and political practices rooted in the participation and free self-determination of citizens and peoples.
4. **STRESSING** that promoting ESCR constitutes an obligation of special urgency and importance for all societies and governments, in view of the fact that 50 years after the adoption of the Universal Declaration of Human Rights, ESCR are not only systematically threatened and violated, but are also widely unknown and ignored.
5. **OBSERVING** that the failure to respect and fulfill ESCR is clearly demonstrated by the growing poverty, hunger, absence of basic services, and discrimination prevalent in our region. Latin America is the area with the highest socio-economic inequalities in the world and suffers hundreds of thousands of avoidable deaths each year.
6. **UNDERSCORING** that ignorance about ESCR in Latin America often comes from reducing the problem to a vicious circle whereby poverty, inequality, and the absence of development are seen as necessary or regrettable consequences of immutable economic reality that cannot be modified, when in fact human rights, as universally accepted principles, must establish the framework in which an economy should function.
7. **SIGNALING** that market globalization, economic integration arising from the pressures of powerful economic interest groups in the North, the tremendous amounts of resources designated to repaying the region's external debt, structural adjustment programs, and development based on the neo-liberal model all constitute major threats to ESCR.
8. **DENOUNCING** the social exclusion that is severing the basic ties of integration, threatening the cultural identity of indigenous and Afro-American minorities, and fostering social apartheid and violence.

9. AFFIRMING that ESCR recognize the dignity of the person and his/her condition as the subject of development and that these rights must guide the laws, policies, and activities of governments and other political and economic actors and must challenge those laws, policies and activities that threaten the dignity of the person.
10. RECOGNIZING that impunity in the face of severe violations of civil, political, economic, social, and cultural rights leads to the breakdown of the ethical values of our society, it is imperative that States organize judicial structures to determine the truth about violations, punish those responsible, and ensure reparations to the victims.
11. RECOGNIZING that violations of ESCR threaten both the domestic peace of States and world peace, and that the lack of respect for ESCR is one of the causes of public insecurity which has led to the militarization of police forces and a further deterioration of civil and political rights.
12. MINDFUL OF the most recent declarations about ESCR emerging from the commitments of Latin American civil society, especially the Declaration and Plan of Action of the Latin American Seminar on Human Rights as an Instrument to Confront Poverty organized by ALOP (Santiago de Chile, September 1997), the Plan of Action of the Latin American leagues of the International Human Rights Federation (Dakar, December 1997), the Declaration of the Meetings of NGOs of Cuernavaca (February 1998), the Declaration and Plan of Action of the South American Platform of Human Rights, Democracy, and Development (Lima, March 1998), and the Declaration and Plan of Action of the Human Rights Forum of the Peoples Summit (Santiago de Chile, April 1998), we, the representatives of networks and NGOs dedicated to human rights, development, workers' rights, indigenous peoples, and women's rights, gathered in Quito, Ecuador on July 22, 23, and 24, 1998, hereby declare the following:

DECLARATION OF PRINCIPLES ON THE ENFORCEMENT AND REALIZATION OF ESCR IN LATIN AMERICA AND THE CARIBBEAN

I. GENERAL PRINCIPLES

13. The source of all human rights is human dignity. Democracy, justice, peace, development, and respect for human rights and fundamental liberties are interdependent and mutually reinforcing.
14. Human rights are universal, indivisible, interdependent, and enforceable and ESCR have the same legal status, importance, and urgency as civil and political rights.
15. Enjoyment of ESCR is essential to the effective, egalitarian, and non-discriminatory enjoyment of civil and political rights. The promotion of civil and political rights without considering the full enjoyment of ESCR ignores social inequities and permits intolerable discrimination favoring those sectors that benefit from the unequal distribution of wealth.
16. The person is the subject of all rights and liberties, and human rights include the opportunities and capabilities to ensure for oneself the enjoyment of those rights.
17. States have the primary obligation of respecting, protecting, and promoting ESCR before the international community and their citizens. Nevertheless, other actors such as multinational corporations and multilateral organizations also have the duty to respect these rights and are accountable to them. Because of this, civil society as much as the

- international community and the States, when confronted with violations by deed or omission committed by actors such as multinational corporations and/or multilateral agencies, should adopt, individually or by means of international cooperation, effective measures to prevent and sanction violations of these rights.
18. ESCR are directly linked to international trade and finance treaties being adopted in the framework of the current process of globalization, so that compliance with, protection, and promotion of these rights must be included as elements within these agreements.
- II. PRINCIPLES ON THE ENFORCEMENT AND REALIZATION OF ESCR
19. Enforcement is a social, political, and legal process. How, and the extent to which, the State fulfills its obligations regarding ESCR must be the subject of scrutiny by organizations in charge of monitoring compliance with standards that impose and guarantee these rights, and should also involve the active participation of civil society as an inherent condition for the exercise of their citizenship. ESCR are subjective rights whose enforceability can be exercised individually or collectively.
 20. ESCR set the minimum standards that the State must meet in economic and social terms to guarantee the functioning of a just society and to legitimate its own existence. In order to achieve this minimum socioeconomic order, international instruments relating to ESCR do not impose blanket formulas, but require that the State at least mobilize the means within its reach to cover the minimum needs of the population and define policies aimed at progressively improving the standard of living of the population by expanding the enjoyment of these rights.
 21. There are obligations common to all human rights, including at a minimum, an obligation of respect, an obligation of protection, and an obligation of satisfaction. Thus, no category of right is *per se* more or less enforceable, rather each human right has different types of enforceable obligations.
 22. The State has the obligation to prevent and sanction ESCR violations by private actors. While the State is responsible for failing to fulfill its duty to protect ESCR, private actors must be held accountable for their actions and for the consequences of those actions under domestic laws.
 23. ESCR are enforceable by means of different channels: judicial, administrative, political, and legislative. The presentation of legal cases involving these rights makes greater sense in the framework of comprehensive political and social action, both national and international.
 24. International and constitutional instruments for the protection of ESCR are operational and establish rights that are directly enforceable even when they are not included in legal regulations. In this sense, judges are obliged to directly apply these instruments and to acknowledge the rights established by these instruments.
 25. Many ESCR violations are felt and shared by the collectivity, and accordingly the enforceability of ESCR applies to both individual and collective cases.
- III. OBLIGATIONS OF THE STATE AND OTHER ACTORS

A. Obligations of the State

26. The contents of ESCR and their corresponding obligations have been established in various documents and by various institutions, including the Principles of Limburg and Maastricht, the Declaration of Bangalore, and the Comments and Observations of the United Nations Committee on Economic, Social, and Cultural Rights.
27. ESCR set limits to the State's discretionary powers in public policy-making. The State must make it a priority and must employ the "maximum available resources" towards fulfilling its commitments to ESCR (Article 2.1 of the ICESCR)
28. The obligations of the State regarding ESCR consist of the following:
 - an obligation to respect ESCR, consisting of noninterference by the State in the freedom of action and the use of the resources of each individual or group in order to meet by themselves their economic and social needs;
 - an obligation to protect ESCR, consisting of safeguarding the enjoyment of these rights in the face of threats coming from third parties;
 - an obligation to fulfill ESCR, consisting of undertaking the necessary measures to satisfy the enjoyment of these rights;
 - an obligation to sanction offenses committed by public servants, as well as by persons or other judicially-recognized actors in cases of corruption that infringe or endanger ESCR.
29. In addition, the State has the following obligations:
 - a. **Obligation of non-discrimination:** In addition to the obligations of equal treatment and non-discrimination, the State's obligation extends to the adoption of special measures, including differential legislative and political measures, for women, vulnerable groups and historically unprotected sectors such as the elderly, children, physically handicapped persons, the terminally ill, persons with chronic medical problems, persons suffering from mental illness, natural disaster victims, persons living in high-risk areas, indigenous communities, or/and groups living in conditions of extreme poverty.
 - b. **Obligation to adopt immediate measures:** The State is obligated to adopt measures in a reasonably short period of time from the very moment they ratify the instruments relating to ESCR. These measures should consist of concrete, deliberate actions aimed as clearly as possible at enforcing all rights as a whole. In all cases, it is the State's responsibility to justify its inertia, delay, or deviation in attaining these objectives. The following are among its immediate obligations:
 - i. **The obligation to adjust the legal framework:** The State is obligated to adapt its legal framework to international standards on ESCR
 - ii. **Obligation to produce and disseminate information:** The right to information is an indispensable tool to ensure the effectiveness of citizen monitoring of public policies in the economic and social sectors. It also contributes to the State's surveillance of the degree of effectiveness and the obstacles to enforcing the ESCR, also taking into account the groups that are in a situation of vulnerability. The State must ensure the necessary means to guarantee access to public information in conditions of equality. It should also produce information on the effectiveness of ESCR, as well as on the obstacles or

- problems that prevent their adequate application, and about the condition of the most vulnerable groups.
- iii. The obligation to provide legal recourse and other effective resources: Given the essential similarity between civil and political rights and ESCR, the State, as well as the international community, should secure the necessary legal, or other types of, resources in order to ensure that rights are enforced in case of violations.
 - c. The obligation of guaranteeing essential levels of rights: The State has the minimum obligation of ensuring an essential application of each one of the rights. This obligation is applicable even in periods of severe resource constraints stemming from adjustment processes, economic recession, or other factors. In these situations, the State should establish priorities for the use of public resources, identifying those vulnerable groups that will benefit from them, in order to effectively allocate all available resources.
 - d. The obligation of progressiveness and the correlative prohibition against regressiveness: The State has the obligation to take a course of action aimed at ensuring the full effectiveness of ESCR, and therefore its inertia, unreasonable delay in acting, and/or the adoption of measures that constitute setbacks in enforcing these rights are contrary to the principle of progressiveness. The State is prohibited from implementing regressive policies, which are understood to be those that have as their object or effect a decline in the enjoyment of ESCR, specifically:
 - i. Regulatory standards that appear to be regressive are presumptively invalid, and the State is obliged to fully justify this type of standard under strict scrutiny;
 - ii. Progressiveness implies that the State should immediately set strategies and goals to achieve full effectiveness of ESCR, with a verifiable system of indicators that allow for full supervision from social sectors. Progressiveness implies the immediate application of the minimum contents of ESCR in order to guarantee a life of dignity and the minimum conditions for subsistence.
 - iii. In accord with Principle 72 of the Limburg Principles, the State Party will be considered to have infringed the Pact if, for example:
 - it fails to take a step which it is required to take by the Covenant;
 - it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;
 - it fails to implement without delay a right which it is required by the Covenant to provide immediately;
 - it willfully fails to meet a general accepted international minimum standard of achievement, which is within its powers to meet;
 - it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
 - it deliberately retards or halts the progressive realizations of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
 - it fails to submit reports as required under the Covenant.
30. All persons must be guaranteed the capacity to exercise their rights as citizens, and their equality, both formally and materially, in order to ensure the full realization of ESCR.

31. Opportunities to participate must be created for citizens in the budgetary process, the design, implementation, and oversight of development plans, and the monitoring of compliance with international treaties and human rights instruments. As well, citizen participation must also be guaranteed in State reform and deregulation processes, the design and implementation of public policies, and in the activities of the State and other economic and social actors that affect their rights globally, regionally, nationally, and locally.
32. The States are directly responsible if they allow natural or legal “persons,” such as national or foreign companies, to undertake activities in their territory that infringe the ESCR of the population located in their jurisdiction; or if they protect or permit the abusive and discriminatory exercise of some rights that involve the violation of other rights, such as food or work, or lead to the exploitation of women or child labor.
33. The effectiveness of ESCR requires a commitment by governments and other branches of public power (legislative and judicial) and control agencies (Ministry of the Interior, prosecutor, ombudsman, among others) to adopt all the measures that are within their reach to satisfy ESCR, including legislative, judicial, administrative, economic, social, and educational measures, in order to guarantee the rights established in the ICESCR.
34. With an eye towards fully satisfying ESCR, public policies must be aimed at an equitable redistribution of income, by levying preferential and selective taxes on assets, large wealth, and commercial transactions, before taxing salaries or incomes of individual labor with undifferentiated or regressive consumption or value-added taxes.
35. The State’s commitment to the creation of an economic, political, social, cultural, and legal environment that is favorable to social development requires energetic actions aimed at eradicating poverty, promoting full employment and equity between men and women as a priority in economic and social policies, fostering social integration based on promoting and protecting all human rights, as well as tolerance, respect for diversity, equal opportunity, solidarity, security, and the participation of all persons and disadvantaged and vulnerable groups, without any discrimination.
36. A serious commitment to the obligations of the States with respect to ESCR requires that commitments to pay external creditors must be subordinated to the duty of promoting full access to, and enjoyment of, ESCR by citizens, so that structural adjustment programs agreed upon with international financial organizations must be subordinated to social development and, in particular, to the eradication of poverty, the generation of full, productive employment, and the promotion of social integration mindful of gender and cultural diversity.

B. Obligations of international institutions

37. In macro-economic transactions and in the application of structural adjustment policies, multinational corporations, intergovernmental financial institutions (World Bank, IDB, IMF), the World Trade Organization, and the Group of Seven must accept responsibility for violations of ESCR, especially in poor countries such as those of Latin America.
38. In conformity with the mandate of the Charter of the United Nations and its constitutive instruments, intergovernmental institutions have the following obligations:

- a. To ensure that their policies and activities respect ESCR, and do not contribute to the violation of ESCR through a lessening of protections conferred upon these rights or by introducing obstacles to their enjoyment.
- b. To ensure that their policies and activities promote ESCR, especially by strengthening the capacity of populations to vindicate and exercise these rights by themselves.
- c. To ensure maximum transparency in their activities and the full participation of target populations in the formulation of policies and activities.
- d. To evaluate, monitor, and assume responsibility for their role in violations of ESCR.

IV. MOST COMMON ESCR VIOLATIONS IN LATIN AMERICA DEMANDING REDRESS

39. The failure to recognize the State's obligations with respect to ESCR in its different branches, not only in lawmaking but also in the design and control of the budget by Congress, in economic and social policy-making, in the supervision of government and ministry activities, and in the decisions of the courts.
40. The lack of regular monitoring and evaluation regarding compliance with ESCR and the consequent nonexistence of effective measures to avoid violations of ESCR.
41. The absence of policies to ensure a more equitable distribution of the benefits of development with the resulting concentration of wealth that prevents universal access to basic services.
42. The absence of effective and affirmative policies to overcome the *de facto* discrimination suffered by women.
43. The absence of effective and affirmative policies to overcome the *de facto* discrimination against sectors that are socially segregated and living in a situation of vulnerability such as indigenous peoples, migrants, and displaced populations, in the realization of their ESCR.
44. The lack of transparency in the formulation and development of policies and activities of the State relating to ESCR. This includes the lack of dissemination of information in the preparation of reports about compliance with ICESCR and the Recommendations of the UN Committee on ESCR regarding these reports.
45. The lack of distribution of information and education about ESCR.
46. The corruption of public officials in the implementation of social budgets and the ineffective use of public resources, which undermine the full enjoyment of ESCR.
47. The lack of recognition and respect for ESCR in international economic integration agreements, the payment of the external debt, and the application of structural adjustment programs.
48. The prioritization of other interests of the State over the full and effective exercise of ESCR.

49. The lack of effective action by the States to address threats to, and violations of, ESCR by private actors, such as companies that disregard their obligation to respect the fundamental rights of workers and the rights of communities to a healthy and protected environment.

V. APPEALS TO GOVERNMENTS, OTHER ACTORS, AND CIVIL SOCIETY

A. To the States in general

50. That they ratify the ICESCR, if they have not already, and support the initiative to adopt an Optional Protocol to the ICESCR, as a means to guarantee the minimum exercise of ESCR in the region.
51. That they fulfill their obligation to evaluate and report on compliance with the ICESCR and the other treaties regarding ESCR, with the prior participation of society, regularly submitting reports to the United Nations system agencies in charge of their verification and monitoring compliance with all recommendations.
52. That they guarantee that, within the framework of constitutional reforms, ESCR assume constitutional rank and benefit from specific and adequate mechanisms for legal protection that will guarantee their enforceability and justiciability in courts of law.
53. That they harmonize domestic legal standards with the principles of the ICESCR and other international legal instruments relating to ESCR.
54. That they provide legal assistance to persons who lack the economic resources to defend their ESCR. It is the duty of the States to fully compensate victims of ESCR violations.
55. That they establish public oversight agencies, if there is no ombudsman or public defender institutions specifically handling ESCR, or that they at least empower the existing institutions with specific functions to enforce ESCR.
56. That they adopt a development model focusing on the human being, in which development is measured not only by economic growth, but by the population's enjoyment of their civil, political, economic, social, and cultural rights,.
57. That they establish mechanisms for public consultation with respect to international trade agreements, contracts, and treaties, especially regarding their impact on ESCR.
58. That they adopt effective measures to eradicate corruption in public office, especially in the handling of the budget, and penalizing this type of conduct.
59. That they ensure that in states of emergency or siege, the exercise and enjoyment of ESCR are not abolished or suspended.

B. To the States of the Americas

60. That they incorporate the issue of poverty elimination based on ESCR as the central core in the agenda of national priorities and, subsequently, adopt measures adequate to address the multi-dimensional and complex character of poverty.
61. That they ratify the Protocol of San Salvador and all other international instruments linked to promoting and protecting ESCR, especially those of the ILO, those referring to women, children, migrant workers, indigenous peoples, and Afro-American

- communities, ensuring their realization and relevance to current demands for these rights in Latin America.
62. That they review the Inter-American system of human rights protection with the participation of the non-governmental sector in order to improve the effectiveness of the Commission and the Inter-American Court of Human Rights in protecting human rights, especially ESCR.
 63. That they ensure the strengthening and realization of the commitment to ESCR by the various entities and organizations of the OAS, the Commission, and the Court.
 64. That they guarantee that the principles of international treaties and agreements relating to ESCR be respected and complied with in relation to the Free Trade Agreement of the Americas (FTAA) and the other regional and international economic integration agreements.
 65. That they promote the adoption of a Social Charter of the Americas aimed at guaranteeing the full and equitable enjoyment of ESCR by all citizens of the region.
 66. That they guarantee the free circulation of workers, promoting the regularization and recognition of the rights of migrant workers and displaced population inside each country.
 67. That they ensure the participation of civil society in the process of designing, adopting, implementing, and supervising the region's economic integration.
 68. That they promote the adoption of international ESCR monitoring mechanisms to facilitate the enforcement of these rights.
 69. That they review the impact of external debt payment on the exercise of ESCR, comparing income from international cooperation and outlays for paying the external debt, in order to clearly determine whether there is any real inflow of development assistance, and apply the corresponding corrective measures.
 70. That they establish an international ceiling on public spending for the armed forces and national security, as well as a proportional percent linkage between this spending and social spending, ensuring adequate resources to attend to ESCR for the entire population, and adopting this ratio as a verifiable development index.
 71. That they fulfill their obligation to teach human rights in their national education systems, in so far as many of the international treaties and declarations concerning human rights contain special duties for the States aimed at providing public education and training for public officials about the specific rights that these treaties and declarations guarantee.
- C. To intergovernmental institutions and their bodies
72. That the intergovernmental institutions of the United Nations (especially those involved in international technical and economic cooperation) and their member States recognize their responsibilities and obligations with respect to the Universal Bill of Human Rights and their own constitutive charters.
 73. That, when these institutions prepare their programs and plans of activities, they coordinate and harmonize their policies and assess their impact on all human rights as a whole, and especially their impact on ESCR.

74. That they establish and/or perfect mechanisms and opportunities allowing affected populations and NGOs engaged in promoting ESCR to participate in, or be consulted about, UN programs and activities.
75. That they establish norms facilitating the equal participation of all States in the decision making of international financial institutions.
76. That the General Assembly of the United Nations and/or ECOSOC request a consultative opinion from the International Court of Justice about whether the practices and policies of the International Monetary Fund (IMF) and the World Bank are in line with their constitutive purposes and with the United Nations Charter.
77. That they establish, especially in the Bretton Woods institutions, mechanisms to monitor speculative capital flows.
78. That the Declaration of the Indigenous Peoples be adopted without undermining its contents, that this Declaration become a Convention before the Decade of the Indigenous Peoples comes to an end (year 2004), and that a Permanent Indigenous Forum be created as part of the United Nations System.

D. To civil society

79. That insofar as ESCR cannot be implemented without the active participation of society as a whole, and the affected communities in particular, Latin American social movements and organizations should assume the task of promoting these rights.
80. That society as a whole be made aware that ESCR are enforceable and justiciable human rights.
81. That theoretical discussions are strengthened to achieve greater specificity in both the minimum contents of ESCR and the intangible or essential core of each right, so that the holders of these rights can be guaranteed a minimum adequate standard of living based on a concept of a life of dignity that is enforceable at all times and in all places. This essential core of ESCR should be informed by the experience of those who live on the brink of survival.
82. NGOs are an especially important channel for providing and disseminating information about ESCR, promoting and supporting activities linked to enforceability, and providing assistance to the various special agencies for human rights promotion and protection in the United Nations and the Organization of American States, including assistance in the application of the recommendations of these bodies. It is therefore important to enhance NGO access to the entire international system.
83. That the organizations and movements involved in promoting ESCR join efforts as quickly and thoroughly as possible to exert an impact on public policies (social spending, taxation, development plans), guaranteeing a maximum allocation of resources for the effective application of ESCR, and to monitor, supervise, and socially verify the level of ESCR compliance inside each country. To do this, they should design suitable measuring instruments or use existing ones and promote the elaboration of independent reports on compliance for national and international fora.
83. That training programs about concepts, strategies, and methodologies of legal and political enforceability of ESCR be multiplied and aimed at different leading segments of civil society and the organizations that represent them, so as to build up their capacity to

act and exert an impact on the formulation and application of public policies involving these rights

84. That, in collaboration with trade union organizations and consumer groups, monitoring of the activities of private economic actors be fostered so that these actors comply with international standards to protect the human rights and fundamental liberties of the individual.
85. That campaigns be carried out in different countries in order to establish Codes of Conduct and/or minimum common protection clauses for the fundamental rights contained in international human rights law and the International Labor Organization (ILO). Additionally, such campaigns should be undertaken in relation to state reform and deregulation processes, as well as the privatization of public services and other state policies.
86. That the importance of incorporating a gender approach be emphasized in all activities involving the promotion of human rights and, in particular, addressing violence against women and children in their public and private lives, the right to health, including reproductive and sexual health, and the protection of women's integrity, physically, psychologically, and sexually.

E. To multinational and national companies

87. That they adopt social ethics guidelines and codes of conduct that ensure the harmonization of their activities with their duty to respect all human rights.
88. That they scrupulously respect the standards of the ILO regarding the promotion and protection of the fundamental rights of workers.
89. That they take responsibility, including legal responsibility, for their actions and the impacts of these actions, relating to the ESCR of their workers, the users and consumers of their products or services, and/or the populations generally affected by their productive or commercial practices.
90. That they allow independent oversight and/or regular monitoring by civil society over those actions of an economic, social and/or cultural nature.

Quito, 24th of July, 1998

Affirmed by

Latin American NGOs

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- LADH

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International Organizations

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- NCOS

Freya Rondelez

Canada

- CERA

Bruce Porter

The United States

- AFSC (Andean Service Committee)
- COHRE
- Ford Foundation (Brazil office)
- MacArthur Foundation

Rocio Romero
Grahame Russell
Edward Telles
Kimberly Stanton.

France

- International Federation of Human Rights

Francoise Mathe Canada

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- UN Committee on ESCR

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