

FROM NEEDS TO RIGHTS: RECOGNIZING THE RIGHT TO HEALTH IN ECUADOR

Center for Economic and Social Rights – Latin America Program

Photo: Jimmy Coronado

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PREFACE

Five years ago, the Center for Economic and Social Rights (CESR) carried out an investigation on the impact of the petroleum industry on the communities of the Ecuadorian Amazon. In that case, the violation of the right to health was obvious – the companies, including Petroecuador, were openly poisoning the water of the communities. With this report, we have extended the perspective, with the understanding that rights violations are not limited to the Amazon, nor to actions as direct as oil exploitation.

When we began this investigation, articles in the press appeared almost every day about the deaths and epidemics on the Coast linked to el Niño, the vast majority of which were avoidable, if the government had taken minimum preventative steps. This also implicates a violation of the right to health with effects equally catastrophic for the victims. It was this generalized negligence and the enormous human impacts that motivated the elaboration of this report.

This report is based on an extensive investigation undertaken by public health expert, Betsi Pendry, and a lawyer specializing in economic rights, Isabela Figueroa. Chris Jochnick, Legal Director of CESR, prepared the human rights analysis and wrote the report, and Tamara Jezic did the translation. Paulina Garzón, the Latin American Coordinator for CESR, helped with the investigations and was in charge of editing Spanish edition of the report, and Miguel Arauz and Gala Ortiz were responsible for the design and publication. The report benefited a great deal from interviews and information provided by Dr. Francisco Huerta (former Minister of Health) and Dr. Carlos Larrea, and was possible thanks to the support of the Public Welfare Foundation and the Ford Foundation.

CESR is a non-profit organization that promotes social and environmental justice through human rights. The Center believes that human rights are essential to confronting systematic poverty and environmental degradation, and directs its efforts towards bringing public pressure to bear on decision-makers. All of the Center's projects rely on the collaboration of scientists and lawyers to document violations of economic, social and cultural rights, and on the collaboration of local organizations to raise public awareness and struggle for political change.

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I. INTRODUCTION

Ecuador, the "island of peace" between its neighbors Peru and Colombia, is not widely known for violations of human rights. But violations of human rights go beyond torture and killings. When one scratches the surface, violations of basic rights such as the rights to health and food claim far more lives in Ecuador than all the death squads in Latin America combined. This report underscores the long-standing neglect of these rights and the consequent cost in terms of human suffering

The report does not provide original social research,¹ but instead makes the essential connection between well-documented poverty, malnutrition, and health problems and the fundamental right to health. Framing these issues in terms of rights provides a new context for resolving the problems: first by insisting on accountability from government institutions and second by turning the passive victims of neglect into active agents.

Most human suffering is neither natural nor inevitable - it is the result of deliberate human decisions and policies. Human rights provide a framework to scrutinize those decisions and to insist on accountability from the decision-makers. Just as governments are responsible for the suffering caused by arbitrary detentions, they are equally responsible for the far more pervasive suffering caused by arbitrary cuts in health and welfare spending or by discriminatory or negligent policies depriving wide sectors of the population access to basic goods. By demanding explanations and responsibility for violations, human rights expose the hidden policies and structures that create and tolerate poverty, hunger and environmental degradation.

Human rights also require active participation. More than simply receiving goods, a right means the capacity and opportunity to claim those goods for oneself. Human rights are fundamental to a working democracy because they both ensure and require that people are able to take part in the decisions that affect their lives.

The report focuses on only a narrow slice of the social and economic problems facing Ecuador with the intention of underscoring their human rights implications. By linking these problems with human rights, the report hopes to contribute to a wider dialogue about economic, social, and cultural rights in all facets of public decision-making. And by demonstrating the relevance of rights to human suffering generally, the report hopes to encourage greater use of human rights instruments by the full range of civil sectors involved in economic, social, and cultural development.

¹ Many studies about development and poverty in Ecuador already exist, two of which have provided a strong foundation for this report. The first, *Pobreza y Capital Humano en el Ecuador*, was published in 1997 by two institutions linked to the Ecuadorian state -- the Secretaría Técnica del Frente Social (Technical Secretariat of the Social Front, STFS) and the National Institute of Statistics and Census; and the second, *the Ecuador Poverty Report*, is a comprehensive study on poverty in Ecuador also published in 1997 by the World Bank.

II. BACKGROUND: DEVELOPMENT, POVERTY AND INEQUALITY IN ECUADOR

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. UN Committee on Economic, Social and Cultural Rights²

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. Technical Secretariat of the Ministry of Welfare³

Ecuador's economic development over the past thirty years is paradoxical. On the one hand, the economy has experienced tremendous growth, especially during the 1970's, due to earnings from the oil industry. Nevertheless, between 1975 and 1996, Ecuador's foreign debt grew 2,800%, from less than \$500 million to over \$14.7 billion,⁴ making Ecuador the most indebted country in South America.⁵ In spite of the oil wealth and many related loans, Ecuador emerged from this period with a level of poverty far exceeding that of thirty years ago.⁶

While many factors such as international markets and natural disasters are beyond governmental control, much of the responsibility for Ecuador's socioeconomic problems are directly linked to the priorities and actions of successive administrations. The existing poverty, inequality and lack of basic services are the predictable results of policies that have consistently favored certain minority interests at the expense of others.⁷

It is now well established that economic growth alone will not automatically raise living standards. The United Nations recently underscored this point by listing five forms of economic growth that do more harm than good.⁸ Ecuador's development path is notable for manifesting all five forms:

1. Jobless growth: *growth that does not expand employment opportunities.* Ecuador's economic growth has been accompanied by decreasing labor protections, decreasing salaries, and rising unemployment.⁹ Between 1982 and 1990, employment nation-wide declined from 52.6% to 45.9%. In the urban sector, employment has decreased by 10% and in the rural sector by 5%, making Ecuador a country with one of the highest unemployment rates in Latin

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).

⁴ El Comercio, (September 29, 1997).

⁵ Ecuador's external debt in 1993 was equivalent to 107% of its gross domestic product, UNDP, *Human Development Report* (1996), p.172.

⁶ According to the World Bank, in 1975, 65% of the rural population was living below the poverty line, and 40% of the urban population; by 1994, 67% of the rural population and 40% of the urban population was living below the poverty line. (cited in *Pobreza y Capital Humano*, p.13)

⁷ See Luis Jácome, Carlos Larrea, Rob Vos, *Políticas Macroeconómicas, Distribución y Pobreza en el Ecuador*, Quito, CORDES, 1997; For example, the development model adopted during the "oil boom" focusing on imports and capital growth, principally favored urban and modernized sectors and harmed the agricultural sector. Carlos Larrea, "Ajuste Estructural, Distribución del Ingreso y Empleo en el Ecuador" *Economía y Humanismo: revista del Instituto de Investigaciones Económicas - PUCE* (Quito) 4 (1997).

⁸ United Nations Development Program (UNDP), *Human Development Report 1996*, New York, UNDP, 1996, p. 2-4.

⁹ These problems are described in the latest report of the Inter-American Commission on Human Rights "Report on the Situation of Human Rights in Ecuador" (1997), p.21.

America.¹⁰ Along with rising unemployment, salaries have decreased 22% between 1988 and 1992 in the urban sector and 32% in the countryside.¹¹

2. Ruthless growth: *growth that only benefits a small sector of society.* The economic growth of the last 30 years has opened an enormous gap between rich and poor; as described by the World Bank in 1997, “the distribution of wealth is highly skewed.”¹² Between 1965 and 1993, the poorest 20% of the population’s share of national income dropped from 6.3% to 2%.¹³ In urban areas, the richest 5% of the population earned 42 times more than the poorest 5% of the population in 1990, and the richest earned 65 times more than the poorest in 1995.¹⁴ The petroleum industry has generated billions of dollars in foreign exchange, but the towns most affected by oil production, still lack basic sanitation services and potable water, and the communities in these areas are the poorest in Ecuador. As the World Bank reports, “field visits to the urban areas of Napo Province indicate, however that local public service levels and coverage are in a calamitous condition.”¹⁵

3. Voiceless growth: *growth that fails to empower or increase participation.* “Policy-makers once debated whether they should choose economic growth or extensive participation, assuming that these were mutually exclusive,” states the United Nations Development Program. “That debate is dead.”¹⁶ Two characteristics of Ecuadorian growth have undermined participation. First, decisions about social budgets and programs are overly centralized, leaving few opportunities for affected communities to influence them. Second, the liberalization of the economy and privatization of basic industries have placed more power and influence in the hands of distant institutions like transnational corporations and the International Monetary Fund, thereby removing many important development decisions from the normal democratic processes.¹⁷ These steps have not been accompanied by efforts to strengthen the participation and role of workers and communities.

4. Rootless growth: *growth that undermines local communities and cultures.* Development in the three regions of Ecuador -- the Coast, the Sierra and the Amazon -- has deprived many communities of their territories and means of subsistence, causing a migration towards the cities, where these immigrants lack the traditional protections offered by communal life. Between 1950 and 1982, the urban population increased by close to 5% annually, growing from 28% of the national population to 51%. Today, 59% of the national population is urban.¹⁸ This migration is directly linked to the concentration of land (in 1994, 1.6% of the total farms controlled 43% of the land in the Sierra and 3.9% of the farms controlled 55.1% of the land in the Coast) and the governmental programs and policies that have impeded necessary reforms.¹⁹

5. Futureless growth: *growth that squanders future resources for short-term benefits.* 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 region²⁰ and

¹⁰ Carlos Larrea, “Ajuste estructural, distribución del ingreso y empleo en el Ecuador”, *Economía y Humanismo: revista del Instituto de Investigaciones Económicas - PUCE*, (Quito) 2 (1997), p. 42.

¹¹ Carlos Larrea M., “Ajuste estructural, distribución del ingreso y empleo en el Ecuador”, *Economía y Humanismo: revista del Instituto de Investigaciones Económicas - PUCE*, (Quito) 2 (1997), p.63.

¹² World Bank, *Ecuador Poverty Report*, Washington, WB, 1996, p. xiv.

¹³ Kay Treakle, *Ecuador: Structural Adjustment and Indigenous and Environmentalist Resistance*, 1997, p.299.

¹⁴ Carlos Larrea, “Pobreza, Inequidad y Desarrollo en el Ecuador Contemporáneo”, *Economía y Humanismo: revista del Instituto de Investigaciones Económicas - PUCE* (Quito) 4 (1997), p. 105 (figures based on the average of months between July and November, 1995)

¹⁵ J. Hicks et al., *Ecuador: Development Issues and Options for the Amazon Region*, WB, 1990, p.19.

¹⁶ UNDP, *Human Development Report 1996*, New York, UNDP, 1997, p.4.

¹⁷ Development in the Amazon clearly demonstrates the marginalization of local populations by the government and transnational corporations.

¹⁸ Secretaría Técnica del Frente Social, *Pobreza y Capital Humano en el Ecuador*, Quito, STFS, p.8 (1997).

¹⁹ World Bank, *Ecuador Poverty Report*, *op. cit.*, p.34. The subsidies and policies of the government are directed towards the large land-holders, making any re-distribution of land more difficult. *Ibid.*

²⁰ STFS, *Plan Nacional de Desarrollo Social*, *op. cit.* p. 187.

has led to the second highest rate of deforestation of tropical forest in South America.²¹ It is estimated that over-fishing has resulted in a loss of close to 70% of the fish on the Coast.²²

Many officials excuse Ecuador's poverty with the argument that short-term suffering is an inevitable cost of an economic model in which benefits will eventually "trickle down" to the majority of the population. This argument not only violates the fundamental human rights principle that human beings cannot be considered means to some speculative ends, but is also refuted by current understandings about sustainable development.

Today, the most influential economists are unanimous about the importance of human capital in development. Institutions like the International Monetary Fund and the World Bank, which have long insisted on structural adjustment and sacrifice, today insist on the importance of poverty alleviation, education and health care. The President of the World Bank, citing the crises in Japan and Russia, strongly rejected current economic orthodoxy in his recent speech to global leaders: "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 greater equity and social justice ... no amount of money put together in financial packages will give us financial stability."²³

The World Bank estimates that sustainable growth is a product of three factors: human development, natural resources and physical capital. Of these three, human development – implying both education and health -- accounts for approximately 64% of sustainable development.²⁴ A recent study by the Bank emphasizes that the lack of human development in terms of education and health in Latin America is "the main factor" of slow economic growth. The lack of investment in human capital has resulted in "an increasing number of functional illiterates, which has weakened the process of economic growth and the stab links to the world economy."²⁵

Moreover, it is a fundamental principle of human rights that the rights of one sector of the population cannot be sacrificed for the benefit of others. Neither torture nor killings can be justified on the pretext of security and peace; in the same way, the impoverishment of the most vulnerable in society cannot be justified by the prospect of economic growth for all. As the United Nations Committee on Economic, Social and Cultural Rights has stated: "The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavors to protect the most basic economic, social and cultural rights become more, rather than less, urgent."²⁶

The fact that Ecuador has the resources to provide for all its citizens and yet more than half the population suffers from chronic poverty evidences a "prima facie" case of economic and social rights violations.²⁷ The Ecuadorian government must be held accountable for the massive and increasing deprivation of fundamental rights, occasioned by irresponsible decisions and activities, by the lack of control over private actors, and by the overall inequities and ineffectiveness of government programs.

III. THE SOURCE AND CONTENTS OF THE RIGHT TO HEALTH

THE SOURCE OF THE RIGHT TO HEALTH

The right to health is one of the fundamental rights guaranteed under international and national law. As affirmed by the Universal Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the

²¹ Smith J. "Problems flow into Amazon" *Los Angeles Times*, December 14, 1989.

²² STFS, *Plan Nacional de Desarrollo Social*, *op. cit.* p. 188.

²³ "Excerpts from Remarks at Global Lender's Talks (10/7/98)
<http://www.nytimes.com/library/world/global/100798imf-text.html>

²⁴ World Bank study based on the experiences of 192 countries, cited in UNDP, *Human Development Report*, *op. cit.*, p.7.

²⁵ Juan Londoño, *Poverty, Inequality, and Human Capital Development in Latin America, 1950-2025*, Washington, WB, 1996, p.35.

²⁶ Committee on Economic, Social and Cultural Rights, General Comment # 2, (1990).

²⁷ Committee on Economic, Social and Cultural Rights, General Comments #s 3 and 4 (1990, 1991)

health and well-being of himself and of his family, including food, clothing, housing an medical care and necessary social services.”²⁸ Similarly, the American Declaration of the Rights and Duties of Man provides that “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care.”²⁹

This right is reaffirmed by a number of other declarations and treaties ratified by Ecuador. The most important are the International Covenant on Economic, Social and Cultural Rights (“ICESCR”),³⁰ which guarantees the rights to food, health, and an adequate standard of living, and the San Salvador Protocol to the American Convention on Human Rights,³¹ which similarly guarantees the rights to health, food, and a healthy environment. Additionally, Ecuador has ratified several treaties which provide additional protections for children,³² women³³ and indigenous peoples³⁴ in terms of economic, social and cultural rights (“ESCR”) and civil and political rights. These treaties require the government to take extra measures to confront the particular threats and the inequalities suffered by these populations.

While the government and the courts of each country are responsible for monitoring and assuring these rights, their work is supported by international oversight institutions. In terms of ESCR, the United Nations Committee on Economic, Social and Cultural Rights, consisting of 18 international experts (including one Ecuadorian³⁵), is responsible for promoting compliance with the Covenant. The Inter-American Commission on Human Rights also monitors ESCR under the authority of the Organization of American States.

THE CONTENTS OF THE RIGHT TO HEALTH

The general neglect of ESCR on the part of national courts and international institutions has left a void in terms of legal precedents and definitions of these rights. This void has been incorrectly interpreted as proving that these rights are not justiciable – that they are not capable of being enforced by courts and are therefore not really “rights,” but merely aspirations. The international human rights institutions and many national court systems have clearly rejected this notion and have begun to define the contents of each right and the corresponding obligations. Their work has been facilitated by several declarations of the United Nations and by a group of international experts, composed of judges and academics, who have defined ESCR in well-known documents such as the Limburg Principles and the Maastricht Guidelines. The decisions and commentaries of these human rights institutions and experts and various international declarations provide clear definitions of the obligations linked to the right to health.

While the treaties and oversight bodies recognize that most rights cannot by guaranteed over-night, they make a number of immediate demands on governments with a view to ensuring such basic principles as equity and non-discrimination as well as steady progress in realizing the rights. These obligations are not limited by a government’s financial resources - regardless of its state of development and financial pressures, each government is obliged to take certain concrete steps and to prioritize the basic needs of its population. As the United Nations Committee explains, “despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction.”³⁶

The following principles define the basic obligations inherent to all rights, including the right to health:

²⁸ Universal Declaration of Human Rights, art. 25

²⁹ American Declaration on the Rights and Duties of Man, art. XI

³⁰ International Covenant on Economic, Social and Cultural Rights, arts. 11, 12

³¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador”, arts. 11, 12

³² International Convention on the Rights of the Child

³³ Convention on the Elimination of all forms of Discrimination against Women

³⁴ Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)

³⁵ Jaime Marchan Romero, Ecuadorian Ambassador to Chile, is a member of the Committee

³⁶ Committee on Economic, Social and Cultural Rights, General Comment 4 (1991)

RECOGNITION: the State has the obligation to fully recognize human rights in its Constitution, laws and policies.

RESPECT: the State has the obligation to avoid activities or measures that threaten or impede the full realization of human rights.

NON-DISCRIMINATION AND EQUITY: the State has the obligation to avoid discriminatory laws and measures and to actively redress existing discrimination in terms of laws, policies and conditions (*de jure* and *de facto* discrimination).

PRIORITIZE: the State has the obligation to prioritize human rights in its programs, policies and budgets

ASSURE: the State has the obligation to adopt basic measures that assure the population the full enjoyment of rights.

PROTECT: the State has the obligation to enact and enforce the necessary legislation to ensure that human rights are not violated by private actors.

PARTICIPATION: the State has the obligation to promote the public's ability to secure its rights through transparency, information, public education about the rights, and opportunities to participate.

REMEDIES: the State has the obligation to provide effective remedies for human rights violations.

ACCOUNTABILITY: the State has the obligation to provide effective accountability for realizing rights through evaluation, planning and effective oversight.

IV. VIOLATIONS OF THE RIGHT TO HEALTH

While the overwhelming poverty and deprivation in Ecuador suggest gross violations of economic, social and cultural rights, it is important to link these statistics to the specific failings of the government under the ICESCR and related human rights instruments. This section evaluates the government's policies, priorities, and laws relating specifically to the right to health based on the principles elaborated above

RECOGNITION: the State has the obligation to fully recognize human rights in its Constitution, laws and policies.

Obligation

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” **International Covenant on Economic, Social and Cultural Rights**, art. 12.1

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.”

International Covenant on Economic, Social and Cultural Rights, art. 2.1

“Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” **American Convention of Human Rights, art. 2**

“In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good.” **Protocol of San Salvador, art. 12.2**

“[A State violates ESCR by its] failure to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.” **Maastricht Principles, art. 15**

The primary obligation of the State is to recognize the right to health as a “right” and a “public good” in its Constitution, laws, policies and treaties. This recognition provides the essential legal support for ministries, the congress, the courts and for society to ensure the enjoyment of this right. As a right, health is essential and inalienable, and as a public good, the government has the responsibility to ensure access to the health system for all members of society.

Evaluation

The specific right to health is neither mentioned nor elaborated in the current Constitution. Instead, health is included only indirectly as part of the right to an adequate standard of living.³⁷ As such, it is deprived of its legal and political power. The new Constitution³⁸ has greatly improved this deficiency, declaring that the State will guarantee the right to health through the means of food security, provision of potable water, basic sanitation, and the possibility of uninterrupted access to health services. Nevertheless, the new Constitution does not recognize health as a public good, which means that universal access is not guaranteed.³⁹

The laws and policies of the Congress and ministries demonstrate a complete ignorance of the right to health. The state has cut back on public provision of health and nutrition programs without any justification or reference to its over-riding duty to ensure health care as a matter of right. Similarly, the right to health is entirely ignored in the agreements signed by Ecuador with multilateral banks (e.g. agreements mandating structural adjustments that undermine health protection), and with transnational corporations (e.g. the mining and petroleum corporations threatening the health of nearby communities).

RESPECT: the State has the obligation to avoid activities or measures that threaten or impede the full realization of rights.

Obligation

Any deliberately regressive measures ... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” **UN Committee on Economic, Social and Cultural Rights**⁴⁰

“[The IESCR is violated by] the reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.” **Limburg Principles, 14(g)**

Respecting a right is the most basic governmental obligation. The government simply has the obligation to abstain from violating rights. In terms of the right to health, laws, policies and activities of the government should not threaten the health of the population, nor impede its access. This component of the right also includes the obligation of progressiveness and the prohibition on regressiveness, meaning that the government should not undermine existing levels of health or access, except under inevitable circumstances, and in these cases the government should assure that the most vulnerable sectors are protected. As the United Nations Committee on Economic, Social and Cultural Rights has declared, “even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.”⁴¹ Ecuador’s new

³⁷ Constitution of the Republic of Ecuador, (Reformed 1-24-95), art. 14

³⁸ Constitution of the Republic of Ecuador, (Approved 8-10-98), art. 42

³⁹ Article 43 states that public medical services will be provided free of charge for “those persons that require it” leaving it to lawmakers to determine the meaning of that phrase. Constitution of the Republic of Ecuador, (Approved 8-10-98)

⁴⁰ Committee on Economic, Social and Cultural Rights, General Comment 3 (1990)

⁴¹ Committee on Economic, Social and Cultural Rights, General Comment 3 (1990)

Constitution draws an even clearer line under the right to health: “the fiscal allocation for public health shall increase annually by the same percentage as total other budgetary expenditures of the Central Government. There shall be no budgetary reductions in this area.”⁴²

Evaluation

In Ecuador, the violation of the obligation to respect the right to health include cases such as the following:

Avoidable cuts in the health budget and the lack of contingency plans for the most vulnerable sectors. In the past several years, Ecuador has experienced an increase in almost all indicators measuring poor health: infant mortality, low birth weight and maternal mortality. Nonetheless, instead of extending the health programs to confront these problems, successive governments have cut the health budget in a manner described as “drastic” by the Pan-American Health Organization.⁴³ These cuts do not correspond to emergency situations, and the government has adopted wholly inadequate measures to protect the most vulnerable populations and the population most affected by these cuts.⁴⁴

Cuts in programs or subsidies for essential goods without contingency plans for the most vulnerable groups. The economic and social adjustments introduced by various governments have resulted in arbitrary cuts in social programs, frequently programs directed to the most vulnerable populations.⁴⁵ To take only one example, it is estimated that of the 1.5 million Ecuadorian children under the age of five, almost one-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 1994.⁴⁶

Activities of public entities that contaminate the environment and/or provoke systematic harms to the health of communities. The petroleum operations carried out by Petroecuador, a governmental institution, in the Ecuadorian Amazon have had grave impacts on the health of the local population.⁴⁷ 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.⁴⁸ 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.⁴⁹

NON-DISCRIMINATION AND EQUITY

Obligation

“State Parties undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” **The International Covenant on Economic, Social and Cultural Rights, art. 2.2**

⁴² Constitution of the Republic of Ecuador, (Approved 8-10-98), art. 46

⁴³ Pan American Health Organization, *Health Conditions in the Americas*, PAHO, 1994, vol. II, p.194

⁴⁴ WB, *Ecuador Poverty Report*, *op. cit.* pp. 53-80

⁴⁵ STFS, *Pobreza y Capital Humano*, *op. cit.* p. XXIX

⁴⁶ WB, *Ecuador Poverty Report*, *op. cit.* p. 24.

⁴⁷ see Center for Economic and Social Rights, *Rights Violations in the Ecuadorian Amazon* (1994); Judy Kimerling, *Amazon Crude* (1995)

⁴⁸ *Ibid.*

⁴⁹ See *Bulletins 1-3*, Red de Monitoreo, (Quito) (1997-1998).

“State parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.” **UN Committee on Economic, Social and Cultural Rights** ⁵⁰

“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” **Convention on the Elimination of all Forms of Discrimination Against Women, art. 3**

States have the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.. **Declaration on the Right to Development**⁵¹

No discrimination is one of the basic principles of all human rights. Traditionally, it has been understood as a prohibition on laws that discriminate against certain sectors of the population (*de jure* discrimination). However, ESCR go further than legislation on the understanding that discrimination has its roots in the social, cultural and economic structures of a country (*de facto* discrimination) and that equal enjoyment of rights requires positive action on the part of the government to confront these existing inequities. The ICESCR and other treaties⁵² require governments to prioritize certain sectors of the population, which for reasons of historic discrimination or innate vulnerability, don't have the same access to ESCR. These populations include women, minorities, children, elderly, indigenous groups, rural populations, and the poor. The Inter-American Commission on Human Rights emphasized this obligation in its last report on Ecuador (1997):

“The Convention necessarily require the State to ensure conditions whereby the rights of vulnerable and marginalized groups within its society such as those disadvantaged by the effects of poverty are protected. The broad principles of non-discrimination and equality reflected in Articles 1 and 24 of the Convention require action to address inequalities in internal distribution and opportunity... The Commission recommends that the State ensure that the policies it adopts do not place a disproportionate burden on the marginalized and most vulnerable sectors of society, particularly those disadvantaged by poverty.”⁵³

Evaluation

Ecuador is a country with one of the highest levels of inequality in the world and the third highest rate of inequality in Latin America.⁵⁴ Governmental policies continue to discriminate against certain populations and the government has taken few actions to confront structural discrimination against larger portions of the population. Violations are amply demonstrated by the differences in expenditures and resources granted to different social groups and by the lack of programs to confront the growing structural inequalities between groups and regions.

Discrimination against rural populations. 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

⁵⁰ Committee on Economic, Social and Cultural Rights, General Comment 4 (1991)

⁵¹ Declaration on the Right to Development, art. 2

⁵² Eg. Convention on the Elimination of all forms of Discrimination against Women, Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), International Convention on the Rights of the Child

⁵³ Inter-American Commission on Human Rights “Report on the Situation of Human Rights in Ecuador” (1997), pp. 26, 27.

⁵⁴ Juan Luis Londoño, *Poverty, Inequality, and Human Capital Development in Latin America, 1950 - 2025*, (1996), p.4 (the only countries with higher levels are Honduras y Peru).

were concentrated in the three cities of Quito, Guayaquil and Cuenca.⁵⁵ There is one doctor for every 537 people in urban areas, and one per 3142 people in rural areas.⁵⁶ 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.⁵⁷ The government spends six times more on Social Security for urban affiliates than for rural affiliates.⁵⁸

Lack of programs to confront *de facto* discrimination and to protect the vulnerable populations. Women, children and ethnic minorities lag in all socioeconomic indicators, from both overt and structural discrimination. According to the government's 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."⁵⁹ 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."⁶⁰ Ecuador has the fourth highest rate of maternal mortality in Latin America⁶¹ and according to the World Bank, more than 30% of these deaths are easily preventable through appropriate prenatal control.⁶² As a demonstration of the massive inattention to the health of women and children, 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).⁶³ The government has systematically failed to address this disproportionate suffering despite the availability of low-cost options for addressing it.⁶⁴

PRIORITIZE: the State has the obligation to prioritize human rights in activities, policies and budgets.

Obligation

"The essence of the legal obligation incurred by a government is to ensure the economic and social aspirations of its people, by assigning priority to the basic health, nutritional and educational necessities. The prioritization of the "right to survival" and basic necessities is a natural out-growth of the right to personal security." **Inter-American Commission on Human Rights**⁶⁵

"[The Covenant] imposes an obligation to move as expeditiously and effectively as possible" towards the full realization of economic, social and cultural rights. **UN Committee on Economic, Social and Cultural Rights**⁶⁶

In the use of available resources due priority shall be given to the realization of the rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services. **Limburg Principles, art. 28**

⁵⁵ STFS, *Pobreza y Capital Humano*, op.cit., p. 46

⁵⁶ WB, *Ecuador Poverty Report*, op. cit., p. 231.

⁵⁷ WB, *Ecuador Poverty Report*, op. cit., p. 28

⁵⁸ STFS, *Plan Nacional de Desarrollo Social*, Quito, 1996, p. 60.

⁵⁹ STFS, *Pobreza y Capital Humano*, op. cit., pp. XII y 55

⁶⁰ UNICEF, *Yo Cuento Contigo*, Quito, UNICEF, 1996, p. 46.

⁶¹ El Comercio, May 25, 1998.

⁶² WB, *Ecuador Poverty Report*, op. cit., p. 77

⁶³ STFS, *Plan Nacional de Desarrollo Social: Ecuador 1996-2005*, op. cit. p. 74.

⁶⁴ WB, *Ecuador Poverty Report*, op. cit.

⁶⁵ Inter-American Commission on Human Rights, *Ten Years of Activities*, 1982, p.322 (translation, CESR).

⁶⁶ Committee on Economic, Social and Cultural Rights, General Comment 3 (1990)

The obligation to prioritize means that the government must give the same or greater priority to health as to other rights and governmental interests in terms of resources, laws and attention. The failings and shortages of the health sector must be measured against other governmental policies and priorities. As the Committee on Economic, Social and Cultural Rights declares, “in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”⁶⁷

Evaluation

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.”⁶⁸

In 1990, the average health expenditure was \$25 per person in Ecuador, compared to \$186 in Costa Rica, \$153 in Chile, \$58 in El Salvador and \$59 in Peru.⁶⁹ Between 1990 and 1993 this per capita expenditure fell 37%⁷⁰ and in 1995, the government invested approximately US\$1.00 per month per person in the area of health.⁷¹ 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 45%.⁷² Military expenditures have also risen consistently, with an increase of 62% during the period, 1990-1993.⁷³

There is no economic reason for the absence of basic health and nutrition programs and potable water – these are the result of political decisions. The World Bank estimates that Ecuador could establish a program to assure the entire population with a diet fortified with basic vitamins and minerals, spending less than \$2 million per year.⁷⁴ While Ecuador has recently increased its military spending, it has cut back on nutritional programs. In 1994, only 4% of the children in need were being reached.⁷⁵ In comparison, Peru (Ecuador’s primary military threat) has recently cut military spending drastically, while its nutritional programs cover 84.5% of the population in need.⁷⁶

Promote: the State has the obligation to undertake affirmative steps aimed at assuring the population the most basic level of rights.

Obligation:

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b. The improvement of all aspects of environmental and industrial hygiene;
- c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

⁶⁷ Committee on Economic, Social and Cultural Rights, General Comment 3 (1990)

⁶⁸ STFS, *Pobreza y Capital Humano*, op. cit. p. 108

⁶⁹ STFS, *Pobreza y Capital Humano*, op. cit. p. 52.

⁷⁰ WB, *Ecuador Poverty Report*, op. cit., p. 69

⁷¹ STFS, *Pobreza y Capital Humano*, op. cit., p.53.

⁷² El Comercio, July 15, 1998, p.B3

⁷³ SIPRI “Ecuador Military Expenditure, 1987-1996, web site: www.sipri.se (1997)

⁷⁴ President Jamil Mahuad spent US\$3,656,000 during the first part of his electoral campaign. El Comercio, July 21, 1998.

⁷⁵ WB, *Ecuador Poverty Report*, op. cit., p.24.

⁷⁶ WB, *Ecuador Poverty Report*, op. cit., p.24.

- d. The creation of conditions which would assure to all medical service and medial attention in the event of sickness. **International Covenant on Economic, Social and Cultural Rights, art. 12.2**

“In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

- a. Primary health care, that is, essential health care made available to all individuals and families in the community;
- b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
- c. Universal immunization against the principal infectious diseases;
- d. Prevention and treatment of endemic, occupational and other diseases;
- e. Education of the population on the prevention and treatment of health problems, and
- f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.” **Protocol of San Salvador, art. 10.2**

“Everyone shall have the right to live in a healthy environment and to have access to basic public services.” **Protocol of San Salvador, art. 11**

“States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

Convention on the Elimination of all Forms of Discrimination Against Women, art. 12

“States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter ail, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers.”

International Convention on the Rights of the Child, art. 24.

In addition to prioritizing health in the national budget, the State should adopt immediate measures designed to ensure the most basic necessities for the entire population. These measures should be aimed at establishing the essential conditions necessary for healthy, human development, beginning with potable water, access to primary health (including prenatal and postnatal care for mothers), and access to adequate nutrition. These three needs are the roots of the great majority of health problems and they are within the capacity of any government to ensure. Accordingly, they are specified in all the major international conventions and declarations relating to the right to health.

Evaluation

The Ecuadorian State has clearly failed to meet its minimal obligations in these three areas and this failing is directly tied to wide-ranging health problems and unnecessary deaths. The government’s few successes, like recent vaccination campaigns, underscore the unrealized possibilities within other equally vital areas.

Access to potable water: access to potable water is one of the fundamental conditions necessary to confront child and adult mortality. In Ecuador, illnesses linked with contaminated water are the principle causes of death for

children between one and four years old.⁷⁷ Thirty years ago, Ecuador recognized the primary importance of providing universal access to clean water and sanitation and committed itself, alongside regional neighbors, to ensuring potable water for 80% of the urban population and 50% of the rural population, and sanitation for 70% of the urban population and 50% of the rural population.⁷⁸ Twenty-six years later, the country is still far from these goals. There have been few improvements for the majority of the population and many people have experienced a deterioration in conditions. 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%.⁷⁹ 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%.⁸⁰

Access to primary health care: 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.⁸¹ 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.⁸² The Technical Secretary 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.”⁸³

With reference to the priorities enumerated in the Conventions, Ecuador’s failure to comply is alarming. During half of births (48%), the mother is alone or assisted only by untrained people.⁸⁴ The percentage of births occurring in health establishments has dropped from 40% in 1990 to 28% in 1994.⁸⁵ 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.⁸⁶

The results of poorly allocated funds, along with cuts in the health budget and the general inefficiency of this sector, are predictable – an overwhelming incidence of serious and preventable health problems. While Latin America has improved in basic indicators like low birth weight, maternal mortality and infant mortality, the indicators in Ecuador are going in the opposite direction, in some cases drastically. Between 1982-88 the percentage of low birth weight babies was 10% in Ecuador, 7% in Chile, 15% in Colombia, 12% in Bolivia and 9% in both Peru and Venezuela.⁸⁷ During 1993, that level increased to 17% in Ecuador, while it has decreased to 5% in Chile, 9% in Bolivia, 5.8% in Peru, with slight increases in Colombia (17%) and Venezuela (12%).⁸⁸ In terms of maternal mortality, Ecuador’s rate of maternal deaths, 120 per 100,000 births during the 1980s, rose to 150/100,000 in 1993.⁸⁹ Ecuador was the only country in the region with a rising rate. The same tendency is true in terms of infant mortality: increasing mortality in Ecuador compared with decreasing rates in the region.

⁷⁷ PAHO, *Health Conditions in the Americas*, op. cit., p.190.

⁷⁸ STFS, *Pobreza y Capital Humano*, op. cit., p. 36.

⁷⁹ STFS, *ibid.* p. 38

⁸⁰ STFS, *ibid.* p. 38.

⁸¹ “The professional medical culture tends to favor curative treatment and the public health system has given priority to high-cost investments in the central hospitals.” *Pobreza y Capital Humano*, op. cit., p. 55.

⁸² Figures provided by the Centro de Estudios y Promoción para el Desarrollo Social (cited in El Comercio, March 12, 1998). These three levels are defined as “primary” – promotion and protection of health; “secondary” – curative treatment that doesn’t require hospitalization; and “tertiary” – rehabilitation.

⁸³ STFS, *Plan Nacional de Desarrollo Social: Ecuador 1996-2005*, op. cit., p.56.

⁸⁴ STFS *Pobreza y Capital Humano*, op. cit., p. 50.

⁸⁵ STFS *Ibid.* p. 50.

⁸⁶ STFS *Ibid.* pp. 50, 51.

⁸⁷ UNDP, 1990

⁸⁸ UNDP, 1996, PAHO, 1997

⁸⁹ UNDP, 1990, UNDP, 1996, PAHO, 1997

Access to adequate nutrition: 45% of Ecuadorian children under the age of five suffer from malnutrition, one of the highest rates in South America. The reach of Ecuador's nutritional programs is only 4%. Bolivia's programs cover 40% of the child population, Peru 84.5% and Colombia 29.2%.⁹⁰ The Technical Secretary of the Social Front declared last year, "Up to this moment, none of the state programs have been effective in resolving the nutritional deficiencies of the population detected over a century ago. The FASBASE project was intended to provide micro-nutrients like Vitamin A and Iron through the massive distribution of enriched products. However, this program still has not been initiated."⁹¹

PROTECTION: the State has the obligation to enact and enforce the necessary regulations to ensure that human rights are not threatened by private actors.

Obligation

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. ICESCR, art. 2.1

"The violations have their origins ... in the failure to provide indispensable medical attention to the affected persons and in the omission of the Government to adopt timely and effective measures to protect the human rights of the Yanomamis."

Inter-American Commission on Human Rights⁹²

"The question of State responsibility clearly arise in circumstances in which the State does not take whatever measures are available to it to remove clear threats to the rights." **UN Committee on Economic, Social and Cultural Rights**⁹³

The State, as the ultimate authority, has the obligation to assure that the rights of its citizens are not violated by all other actors. As the Inter-American Court declared, a state violates the rights of its citizens "when the state permits private persons or groups to act freely and with impunity in a manner prejudicial to human rights."⁹⁴ The obligation of protection requires effective monitoring by means of laws, regulations and control institutions.

Evaluation

Many rights, including the right to health, are violated by industries and private persons, due in large measure to the State's lack of control. Ecuador suffers from a dearth of effective regulations and regulatory bodies and violations of the state's duty to protect the right to health are wide-ranging. The following examples are only illustrative:

Domestic Violence. the abuse of women and children by their partners and members of the family constitute one of the most grave 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.⁹⁵ 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.⁹⁶ The State is complicit in these violations through its failure to educate the population and to assist

⁹⁰ WB, *Ecuador Poverty Report*, *op. cit.*, p. 24

⁹¹ STFS, *Pobreza y Capital Humano*, *op. cit.*, p. 39.

⁹² *Case of the Yanomamis*, Resolution No. 12/85, case no. 7615, March 5, 1985

⁹³ Concluding Observations on the Report on Iran, E/C.12/1993/7 (1993)

⁹⁴ *The case of Velásquez Rodríguez*, Inter-Am. Ct. H.R. OEA/Ser.L/V/III.19 (August 31, 1988)

⁹⁵ CECIM, cited in the *Plan Nacional*, *op. cit.*, p. 140.

⁹⁶ *Ibid.* p. 140

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.⁹⁸

The recently enacted Law Against Violence Against Women and the Family represents an important step forward, but it is still only one piece of the much larger response required by such an extensive and formidable problem.

Consumer products. 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.⁹⁹ 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.¹⁰⁰

Healthy Environment: Ecuador does not have an independent environmental regulatory body.¹⁰¹ The only public regulation of the petroleum industry (the largest and one of the most harmful in terms of health and the environment) falls under the control of the Ministry of Energy and Mines and of 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.¹⁰² As a result, the industry is one of Latin America's most notorious polluters and communities suffer regular contamination of their water and lands.¹⁰³

PARTICIPATION: the State has the obligation to promote participation in the realization of rights through transparency, public education, and opportunities to participate.

Obligation

“The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity ... It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.” **Declaration and Plan of Action of the World Conference on Human Rights**, art. 25

A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social, and cultural rights. Popular participation is required at all stages, including the formulation, application and review of national policies. **Limburg Principles, art. 11**

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation implementation and evaluation of plans and programmes for national and regional development which may affect them directly. **Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries.**

⁹⁷ UNICEF, *Yo Cuento Contigo*, *op. cit.*, pp. 61, 68.

⁹⁸ STFS, *Plan Nacional de Desarrollo*, *op. cit.*, p.140.

⁹⁹ Cisneros, Tatiana y Troya, María José *Alimentos Seguros para Todos*, Tribuna Ecuatoriana de Consumidores y Usuarios

¹⁰⁰ Interview with María José Troya, Director of the Tribuna Ecuatoriana de Consumidores y Usuarios, 7 de julio, 1998

¹⁰¹ The institution charged with protecting national parks, INEFAN, only covers activities in protected areas, and the Sub-secretary of the Environment has no resources for oversight.

¹⁰² See *Rights Violations in the Ecuadorian Amazon* (CESR, 1994);

¹⁰³ See *Bulletins 1-3*, (Red de Monitoreo, 1997-1998)

State Parties have the obligation to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

International Convention on the Rights of the Child, art. 24(e)

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held

by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in the decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.

Rio Declaration on the Environment and Development, princ. 10

Participation means more than electing representatives. To be effective, it has to be present in the everyday life of communities. The right to health includes the right of the public to participate in the decisions that affect health conditions and access to services. This right obliges the government to assure the following: 1) transparency in law-making, decision-making and oversight, 2) education about peoples' rights and the basic elements of health, and 3) effective mechanisms aimed at assuring communities' greater influence and participation concerning their health.

Evaluation

Many of the problems in Ecuador's health sector are related to the absence of real participation. There is a lack of transparency in decision-making, a lack of relevant information and scarce opportunities for popular participation. The system for allocation of resources and the structures of decision-making are extremely centralized with little influence from regions and no space for representatives outside the ministries.¹⁰⁴ Additionally, the final decisions about projects do not come from the Ministries of Health or Welfare, but from the Ministry of Finance, which has the power to cut projects arbitrarily.

There are no governmental programs to educate the public about the right to health and the population at large lacks basic information about personal health. The Technical Secretary of the Social Front reports that, "The fundamental concepts of integral health, promotion of health, self-care, health as a consequence of economic, social, political, biological determinants, are not understood by society, in many cases not even by health professionals. This lack of understanding about health concepts and lack of a culture of health is reflected in public institutions."¹⁰⁵

Public health organizations exist in a few communities, but even in these cases, the influence at the local level is limited by a centralized control over resources and programs. "The system is excessively bureaucratic - the designation of funds at the provincial level has to pass through about 24 steps."¹⁰⁶ This lack of real opportunities for participation has undermined the efforts of public institutions:

The supply [of services] is sufficient to meet the population's demand; however, the population does not use the services of the State, because, among other reasons, the supply fails to recognize the needs of the population and the diversity of the demand. There public institutions have attempted to induce changes in the behavior of the demand, rather than meeting the real necessities of the populations.¹⁰⁷

REMEDIES: the State has the obligation to provide effective remedies for human rights violations.

¹⁰⁴ STFS, *Pobreza y Capital Humano, op. cit.*, p. XXX

¹⁰⁵ STFS, *Plan Nacional, op. cit.*, p. 58.

¹⁰⁶ *Ibid.* p. 59.

¹⁰⁷ STFS, *Plan Nacional, op. cit.*, p. 58.

“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

The States Parties undertake: 1.to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; 2.to develop the possibilities of judicial remedy; and 3.to ensure that the competent authorities shall enforce such remedies when granted.”

American Convention on Human Rights, arts. 25 (1) (2)

State parties shall provide for effective remedies including, where appropriate, judicial remedies.

Limburg Principles, art. 19

One of the critical components of a “right” is the capacity to assert and vindicate it through effective judicial means. Legal remedies offer not only the essential opportunity for each citizen to defend his or her rights but also offer an important control over public policies and legislation. The lack of effective judicial recourse weakens the legitimacy of a right, undermines citizen initiative and reinforces the sense of impunity of public institutions.

Evaluation

Ecuador’s new Constitution, in article 17, declares that “the State will guarantee to all its citizens, without any discrimination, the free and effective exercise and enjoyment of the human rights established in this Constitution and in the declarations, pacts, conventions and other international instruments in force.”¹⁰⁸ Article 18 of the Constitution states that “the rights and guarantees determined in this Constitution and in the international instruments in force, will be directly and immediately applicable before any judge, tribunal or authority.”¹⁰⁹ In theory, the Constitution guarantees the ability to vindicate international human rights and to challenge laws and regulations in national courts.

While the Constitution represents an important step in meeting the obligation of judicial remedies, the State must also ensure that remedies are in fact accessible and effective. In Ecuador, a host of logistical and political obstacles make it almost impossible to vindicate the systematic violations of economic, social and cultural rights. Among the most important obstacles are the high level of corruption, inefficiency and racism of the courts and a code of civil procedure that places many procedural barriers in the way of law suits.¹¹⁰

Without providing a systematic evaluation of these obstacles, some commentary from Ecuador’s most esteemed jurists provides a general sense of the judicial malaise. Dr. Alejandro Ponce Martínez, a well-known law professor, recently affirmed that “the corruption has reached unimaginable levels, the judicial norms and principles lack effectiveness and new problems that come up in the judicial system are avoided, hidden, are not confronted or are completely ignored.”¹¹¹ The ex-Minister of the Tribunal of Constitutional Guarantees, Dr. Ernesto López Freire emphasizes that “according to the Constitution there is an independent Judicial Function, but in reality it is weak, vulnerable to political and economic pressures, inefficient, without sufficient human and economic resources, and with a high level of corruption and disparagement.”¹¹²

¹⁰⁸ Constitution of the Republic of Ecuador, (Approved 8-10-98), art. 17

¹⁰⁹ *Ibid.*, art. 18

¹¹⁰ Declarations signed by Julio César Trujillo Vázquez (ex-president of the Tribunal de Garantías Constitucionales) and Dr. Ramiro Larrea Santos (ex-president of the Corte Suprema de Justicia of Ecuador) entered in the lawsuit *Aguinda vs. Texaco* (October, 1994). Although the most recent version of the Ecuadorian Civil Process Code was approved in 1987, the majority of the articles are rooted in the 17th Century.

¹¹¹ Dr. Alejandro Ponce Martínez, Presentation “El Profesional del Siglo XXI” Quito, October 18, 1993

¹¹² Declaration of Dr. Ernesto López Freire, entered in the lawsuit *Aguinda vs. Texaco* (October, 1994).

These obstacles have created a pervasive cynicism in which the victims of human rights violations, even if they have the resources to file a lawsuit, lack the hope and the motivation to claim their rights. As evidence of this, in spite of 25 years of massive violations of the right to health by oil companies in the Amazon, only a handful of claims have been filed in national courts and none successfully. Even judges admit publicly that these victims have no real possibility of vindicating their rights.¹¹³

ACCOUNTABILITY. the State has the obligation to provide effective accountability in the realization of rights through regular evaluation, planning and an effective system of monitoring.

Obligation

The essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation. Therefore States Parties must: 1) ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant; 2) monitor the actual situation with respect to each of the rights on a regular basis and [be] aware of the extent to which the various rights are, or are not, being enjoyed by all individuals. **UN Committee on Economic, Social and Cultural Rights**¹¹⁴

A state violates the Covenant by its failure to monitor the realization of economic social and cultural rights, including the development and application of criteria and indicators for assessing compliance. **Maastricht Principles, art. 15**

Governments do not enjoy the luxury of guaranteeing human rights at their own discretion. They must establish formal oversight mechanisms to assure the realization of human rights. These mechanisms include regular evaluations, planning and monitoring linked to the commitments and obligations under human rights instruments. Without these steps, it is impossible for a government to assure consistent compliance with its obligations.

Evaluation

The Ecuadorian State has failed in its obligation of accountability on two levels. First, the State institutions, including Congress and the Ministries, have not incorporated ESCR into their work and have not undertaken any formal evaluation or monitoring of these rights. Consequently, the State has failed to meet the most basic commitment under the ICESCR which requires a report on compliance with the Covenant's obligations; this despite the embarrassing fact that one of the 18 members of the Covenant's Committee is a member of the Ecuadorian government.

Second, in the area of health, the government has demonstrated a systematic lack of planning, evaluation and effective follow through. Among others, the Pan-American Organization of Health, the Technical Secretary of the Social Front, and the World Bank have strongly criticized the state of disarray of Ecuador's current health. The system is comprised of five separate and largely uncoordinated branches. According to the government's research institute: "The sum of them, which is neither a comprehensive nor coordinated structure, is still incapable of resolving the inadequate coverage of the rural population and the urban marginalized population - 30% of the population still does not have access to any health service."¹¹⁵

The structural problems as a consequence of the disorganization of the Ministry of Health include: "1) lack of programs of prioritization of national objectives in local solutions; 2) non-existence of objectives and measures destined to the most vulnerable areas; 3) non-existence of a national initiative or strategy in the creation,

¹¹³ See Declarations cited in *Rights Violations in the Ecuadorian Amazon* (CESR, 1994) pp. 64-68.

¹¹⁴ Committee on Economic, Social and Cultural Rights, General Comment 1 (1989)

¹¹⁵ STFS, *Plan Nacional, op. cit.*, p. 57.

implementation and promotion of an integrated health system that principally promotes basic attention in all regions of the country, before curative medicine.”¹¹⁶ Large gaps in the provision of basic health services also exist, along with the poor quality of existing services. This situation was identified by the World Bank in 1992, in which almost half of the hospital beds remain empty due to the insufficiency of bedcovers and medicines, conducting a sub-utilization of services in areas where they are most needed.¹¹⁷

Many of the initiatives with the most potential have been cut or arbitrarily abandoned by new ministers or governments, as was the case, for example, with the Community Nutritional Network (described above) and a program designed to enrich flour with micronutrients (recently reinitiated after being inexplicably abandoned). According to the Technical Secretary of the Social Front: “there is no automated system of follow-up and evaluation of proposed health actions as part of the goals of the plans and programs, nor any quality control of services.”¹¹⁸ The World Bank’s recent investigation of the government’s programs covering mothers and children was highly critical: “(1) they do not supply children or lactating mothers with nutritional aid over a continuous period of time, which undermines their nutritional impact; (b) they are often tiny in scope; and (c) they generally operate independently of each other so whatever impact that could be achieved is jeopardized.”¹¹⁹ According to the Bank, “none of the [seven] reviewed programs monitored its beneficiary group by means of continuous evaluation or surveys.”¹²⁰

The government’s research institute clearly outlined these problems in a 1996 report:

The Ministry of Finance, not being a technical health institution, assigns budgetary resources based on past spending. The health departments receive the assigned budgetary resources, without regard for the number of persons attended, nor the number of cases of illness resolved. This system precludes any possibility of incentives for the human resources that might permit for improving on quality and quantity. In sum, the Central Ministry of Public Health undertakes no real technical or administrative supervision, follow-up or evaluation. There does not even exist an inventory of equipment and buildings that would allow for the replacements when necessary.¹²¹

CONCLUSIONS AND RECOMENDATIONS

The health crisis in Ecuador has been well-documented. The crisis does not suffer a lack of ideas or plans; it lacks political will and follow-through. Accordingly, this report was not aimed at providing new information to supplement the many existing studies, but rather to provide a new framework based on human rights to promote compliance with the urgent steps required to assure the right to health. The realization of this right requires the full participation of the public and affected communities. This report seeks to motivate greater interest and efforts from society to watch over their rights and struggle to vindicate them through social, political and legal action.

Along those lines, the following recommendations are aimed at facilitating greater participation – procedural steps - and do not deal with the substantive components of the right to health (e.g. access to health services). The recommendations follow from the government obligations presented above.

The government should undertake with the following minimum steps:

- Publicly and formally recognize economic and social rights and their corresponding obligations within governmental activities, including policies, budgets, legislation and international agreements.

¹¹⁶ STFS, *Plan Nacional, op. cit.*, p. 58.

¹¹⁷ WB, *Ecuador Poverty Report, op. cit.*, p. 69.

¹¹⁸ STFS, *Plan Nacional, op. cit.*, p. 58.

¹¹⁹ WB, *Ecuador Poverty Report, op. cit.*, p. 23.

¹²⁰ WB, *Ecuador Poverty Report, op. cit.*, p. 235.

¹²¹ STFS, *Plan Nacional, op. cit.*, p. 61.

- Undertake regular and public evaluations concerning the fulfillment of the obligations linked to treaties covering economic and social rights
- Ensure transparency and accountability on the part of Congress and the Ministries within the legal framework of economic and social rights and with the active participation of civil society
- Establish effective judicial remedies for violations of economic and social rights by means of new regulations, judicial education, and institutions like the “defensor del pueblo.”
- Strengthen the influence of the Ministries of Health and Social Welfare in the fiscal decisions concerning health and welfare
- Establish structures and processes to ensure effective participation at the local and national levels concerning social investment, budgetary priorities, and activities and programs related to public health; specifically, decentralize the public health sector and strengthen local institutions like the existing Town Health Councils.

The governmental focus of these recommendations should not obscure the obligations of other actors, including the international community, multilateral banks and private companies. Although their human rights obligations are not as broad as those of the government, these other actors have the fundamental obligation to assure that their activities, their agreements and contracts, and their economic and political influence neither impede nor violate the right to health. These minimal obligations must be publicly recognized and monitored to assure that the activities of these other actors do not contribute to rights violations.

Finally, it is essential to emphasize the importance and the duty of social participation in the defense of the right to health. These recommendations are aimed at assuring more opportunities and influence for civil society and affected communities in the realization of their rights. This will also require active organizing among popular sectors and non-governmental organizations to overcome the existing apathy and lack of knowledge about economic and social rights. The importance of human rights in the struggle for social justice must be openly recognized, in order to motivate communities to utilize these rights in a more protagonist role on behalf of their own welfare. It is hoped that this report will promote and strengthen such activities.

BIBLIOGRAPHY

Abramovich, Víctor, y Christian Courtis, *Hacia la exigibilidad de los derechos económicos, sociales y culturales. Estándares internacionales y criterios de aplicación ante los tribunales locales*, Buenos Aires, CELS, 1997.

Bulletins of the Red de Monitoreo, 1-3 Frente de Defensa, Quito, 1997/98

Center for Economic and Social Rights, *Rights Violations in the Ecuadorian Amazon*, New York, CESR, 1994.

Comisión Económica para América Latina y el Caribe, *Panorama Social de América Latina*, Santiago de Chile, CEPAL, 1996.

Craven, Matthew, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Oxford, Clarendon Press 1995.

Govindaraj R., Cristopher J. L. Murray, Gnanaraj Chellaraj, *Health Expenditures in Latin America*, Washington, WB, 1995.

Hicks J. *et al*, *Ecuador: Development Issues and Options for the Amazon Region*, Washington, WB, 1997.

Interamerican Commission for Human Rights, *Diez años de actividades*, Washington, OEA, 1982.

Interamerican Commission for Human Rights, *Report on the Situations of Human Rights in Ecuador*, Washington, OEA, 1997.

Kimerling, Judy, *Amazon Crude*, New York, NRDC, 1991.

Larrea, Carlos M., “Pobreza, Inequidad y Desarrollo en el Ecuador Contemporáneo”, *Economía y Humanismo: Revista del Instituto de Investigaciones Económicas - PUCE*, (Quito) 4 (1997): 77-108.

Larrea, Carlos M., “Ajuste Estructural, Distribución del Ingreso y Empleo en el Ecuador”, *Economía y Humanismo: Revista del Instituto de Investigaciones Económicas - PUCE*, (Quito) 2 (1997): 33 - 85.

Larrea Carlos, Luis Jácome y Rob Vos, *Políticas macroeconómicas, distribución y pobreza en el Ecuador*, Quito, CORDES, 1997,

Leary, Virginia “The Right to Health in International Human Rights Law” *Health and Human Right: an international quarterly journal* (Boston) 1 (1994)

Lee Haeduck, José-Luis Bobadilla, *Health Statistics for the Americas*, Washington, WB, 1994.

Living Standards Measurement Study, *Constructing an Indicator of Consumption for the Analysis of Poverty: Principles and Illustrations with reference to Ecuador*, Washington, WB, 1996.

Londoño, Juan Luis, *Poverty, Inequality, and Human Capital Development in Latin América, 1950-2025*, Washington, WB, 1996.

Mann Jonathan, Lawrence Gostin, Sofia Gruskin, Tryen Brennan, Zita Lazzarini, Harvey Fineberg, "Health and Human Rights," *Health and Human Right: an international quartely journal* (Boston) 1 (1994)

Pan-American Health Organization, *Situación de la Salud en el Ecuador*, Quito, OPS, 1997.

Pan-American Health Organization, *Indicadores Básicos 1996*, Quito, OPS, 1996.

Pan-American Health Organization, *Indicadores Básicos 1997*, Quito, OPS, 1997.

Pan-American Health Organization, *Health Conditions in the Americas*, Washington, PAHO, 1994.

PROVEA, "Salud como un Derecho" (1995)

Secretaría Técnica del Frente Social, *La Geografía de la Pobreza en el Ecuador*, Quito, STFS, 1996.

Secretaría Técnica del Frente Social, *Pobreza y Capital Humano en el Ecuador*, Quito, STFS, 1997.

Secretaría Técnica del Frente Social, *Plan Nacional de Desarrollo Social: Ecuador 1996-2005*, Quito, STFS, 1996.

Treakle, Kay, *Ecuador: Structural Adjustment and Indigenous and Environmental Resistance*, 1997.

UNICEF, *Decálogo por las Niñas y los Niños del Ecuador*, Quito, UNICEF, 1996.

UNICEF, *Estado Mundial de la Infancia 1997*, New York, UNICEF, 1997.

UNICEF, *Estado Mundial de la Infancia 1998*, New York, UNICEF, 1998.

UNICEF, *Proyecto Subregional Andino para el Control de Deficiencias de Micronutrientes: Memoria*, Paipa, UNICEF, 1996.

United Nations Development Program, *Human Development Report 1996*, New York, UNDP, 1996.

United Nations Development Program, *Poverty Eradication; a policy framework for country strategies*, New York, UNDP, 1995.

United Nations Research Institute for Social Development, *Structural Adjustment in a Changing World*, Washington, UNRISD, 1994.

World Bank, *Ecuador Poverty Report*, Washington, WB, 1996.

World Bank, *Report on World Development 1990: Poverty*, Washington, WB, 1990.

World Bank, *World Development Indicators*, Washington, WB, 1997.

Graphs (included in the print version)

- A. Ratio of income differential between the richest and poorest 5% of the population, between 1990-94
- B. Investment in education as a percentage of the general budget
- C. Government spending per capita in the field of health (US dollars)
- D. Number of doctors per 2000 persons, 1994 -- Urban/Rural -- World Bank
- E. Rural/urban indigence in the provinces Sucumbios and Chimborazo 1994 -- % of the population below the poverty line
- F. Access to basic services – Population with access to potable water – Population with access to sewage systems – source: PAHO
- G. Poverty among different populations -- Poverty – Indigence
- H. Percentage of the annual budget designated for health and military
- I. Distribution of the National Budget -- Debt Servicing – Health – Education – Welfare – Military – Others
- J. Variation between health spending and debt servicing, 1988 – 1997
- K. Government spending by sector – Education – Health and community development – Interest on the Debt
- L. Malnutrition and the coverage of programs aimed at children under 5 years, 1990
- M. Population without access to basic services – Health, Potable water, Sanitation
- N. Incidence of low wieght babies (less than 2.5kgs)
- O. Rate of Maternal Mortality (per 100,000 live births) – National average, 62.7 per 100,000
- P. Percentage of births not attended by health professional – 1995
- Q. Percentage Children covered by nutritional programs – 1994
- R. Percent variation in the rate of maternal mortality between 1987 – 1993
- S. Rate of infant mortality (per 1000 live births) – Regional average