

CHAPTER VIII

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THE HUMAN RIGHTS SITUATION OF THE INHABITANTS OF THE INTERIOR OF ECUADOR AFFECTED BY DEVELOPMENT ACTIVITIES

Introduction

The interior of Ecuador, known as the Oriente, is home to approximately 500,000 inhabitants. It has been the home of indigenous peoples, including the Quichua, Shuar, Huaorani, Secoya, Siona, Shiwiar, Cofan and Achuar for hundreds of years. Over the last several decades, pursuant to the discovery of commercially viable oil deposits and the opening of roads, the area has become home to settlers who have relocated from the highlands and the coast.

The attention of the IACHR was first drawn to this region of Ecuador by the filing of a petition on behalf of the indigenous Huaorani people in 1990. The petitioners alleged that the most basic human rights of the Huaorani were threatened by oil development activities about to commence within their traditional lands, and sought that the Government be required to halt development activities in the concession area known as "Block 16." The complaint alleged that these activities threatened the physical and cultural survival of the Huaorani as an indigenous people. The fundamental harm alleged was that oil exploitation activities would contaminate the water, soil and air which form the physical environment of these communities, to the detriment of the health and lives of the inhabitants.

In studying the petition, and in reviewing information submitted by and gathered from other sources concerning the human rights conditions in the Oriente, the Commission determined that the situation as a whole merited further attention.⁽¹⁾ With respect to the Huaorani, in addition to Block 16, other concession areas within or adjacent to their traditional lands were slated for development, including Blocks 8, 9-13, 14, 17 and 22. Other sectors of the Oriente and other indigenous peoples, particularly the Cofan, Siona-Secoya and Quichua peoples, have been subjected to the full impact of oil development and production for up to several decades. Settlers who have come to the region more recently have also been affected by oil exploitation.

It was in this context that a delegation travelled to the Oriente during the Commission's on site visit to Ecuador. In Lago Agrio, the delegation met with representatives of the Shuar, Siona and Secoya peoples, as well as representatives of campesino organizations, the Carmelite Mission, and the Frente por la Defensa de la Amazonia. The delegation spoke with individuals as it travelled east to Dureño, and returned to Lago Agrio to head south to Shushufindi. Near Shushufindi, they met with members of the organization La Delicia and with representatives and residents of the settlement of La Primavera. From there they travelled to Coca, and held a series of meetings, principally with representatives of the Huaorani and Quichua peoples, as well as with representatives of the Capuchin Mission, the Rainforest Information Center and the Sierra

Club Legal Defense Fund. Additionally, the Commission met in Quito with a range of Government officials whose responsibilities bear on questions relevant to the interior, including the Minister of Mines and Energy and the Subsecretary for Indigenous and Afro-Ecuadorean Affairs, and with indigenous leaders and representatives of human rights and environmental groups.

This Chapter details the present situation in the Oriente, reviews the applicable legal regime, and sets forth the Commission's conclusions and recommendations.⁽²⁾ The focus of this discussion is on the ability of the Oriente's inhabitants to realize their rights to life and physical security in an environment that has been subjected to severe environmental pollution. The information received and analyzed by the Commission, as well as the data and insights gathered during its on site observation, have largely substantiated the concerns voiced by the affected population, thereby prompting the recommendations which conclude this chapter.

The Situation in the Oriente

Ecuadorean law provides that all subsurface minerals are the property of the State. Consequently, the State exploits oil and mineral deposits, either directly through the state-owned oil company PetroEcuador, or indirectly, through concessions and service contracts with foreign oil companies.

The exploitation of oil resources in the Oriente since the 1960's, when commercially viable deposits were first discovered, has had a profound impact on the region and its people.⁽³⁾ The north Oriente, comprising the provinces of Napo and Sucumbios, has been most affected, as development activities were initially centralized there. However, the area available for oil and mineral development has gradually been expanded. New concessions have been established, and additional bidding rounds have been opened by the Government over the last several years.⁽⁴⁾ Current Oriente operations involve, inter alia, over 300 producing wells, regional oil refineries, secondary pipelines, transfer lines and gas lines, and the network of roads that serves the industry.

The individuals and groups from whom the Commission has received information, both during and after its on site visit, represent both settler and indigenous communities. These inhabitants of oil development sectors have been unanimous in claiming that the operations generally, and the improper handling and disposal of toxic wastes in particular, have jeopardized their lives and health. They claim that oil exploitation activities taking place in or near their communities have contaminated the water they use for drinking, cooking and bathing, the soil they cultivate to produce their food, and the air they breathe. Residents of affected sectors indicated that their rivers, streams and groundwater were contaminated with crude oil and toxic production wastes released into the environment due to improper treatment and disposal of toxic wastes, collapsed or leaching waste pits, and oil spills. These are, in most cases, the only water sources available for drinking, cooking and bathing, as well as for the watering of livestock, domestic animals and wildlife. Residents of a number of communities complained that the air they breathe is contaminated when waste oil and gas are burned off without any kind of emission controls. Numerous people live and walk along roads which have been sprayed with waste crude, and complain that they are constantly exposed to this oil and oil-coated dust particles in the air.

The Commission was advised by representatives of communities near oil development sites that, as a result of exposure to contaminated water, soil and air, some of their members suffered from skin diseases, rashes, chronic infections and fevers, gastrointestinal problems, and that the children particularly suffered frequent bouts of diarrhea. CONFENIAE and the Unión de

Promotores Populares de Salud de la Amazonia Ecuatoriana provided specific data comparing the health situation of communities adjacent to oil development sites with those further away.(5)

In addition, a number of people told the delegation that contamination of the physical environment was hindering their ability to feed their families. The Commission has received reports that the pollution of local rivers, streams and lakes has contaminated the fish residents depend on as a dietary staple, and that development activities and contamination have driven away the wildlife they hunt as an important source of protein. In a number of instances, separation stations, exploratory or production wells, and waste pits are located immediately adjacent to or even within local communities. Many facilities, including those the Commission observed, are not fenced in or otherwise secured. Settlers reported that animals they raise to eat and to sell had become sick from drinking contaminated water, or had died after drinking from or becoming trapped in local waste pits. In several cases, the Commission received reports from settlers who had lost animals, fields or crops due to oil spills which had spread onto their land.(6)

The inhabitants allege that the Government has failed to regulate and supervise the activities of both the state-owned oil company and of its licensee companies. They further allege that the companies take few if any measures to protect the affected population, and refuse to implement environmental controls or to utilize existing technologies employed in other countries. Those who spoke before the delegation indicated that the Government had failed to ensure that oil exploitation activities were conducted in compliance with existing legal and policy requirements. Throughout its travels in the Oriente, the delegation received claims that the Government of Ecuador has violated and continues to violate the constitutionally protected rights of the inhabitants of the region to life and to live in an environment free from contamination.

Oil development and exploitation do, in fact, alter the physical environment and generate a substantial quantity of toxic byproducts and waste. Oil development activities include the cutting of trails through the jungle and seismic blasting. Substantial tracts of land must be deforested in order to construct roads and build landing facilities to bring in workers and equipment. Installations are built, and exploratory and production wells drilled. Oil exploitation then generates byproducts and toxic wastes through each stage of operations: exploratory drilling, production, transportation and refining.

Reports have only recently begun to document how these toxic byproducts have been dealt with. Waste products generated by exploratory drilling(7) have reportedly been disposed of in open pits, which may overflow and spill into rivers, streams and groundwater. Other wastes have reportedly been disposed of in buried pits, which, without proper lining or capping may leach into the environment.(8) Waste oil from the testing process has, in some cases, reportedly been burned off without temperature or environmental controls.(9)

In the production phase, oil extracted from wells is pumped to separation stations.(10) Drilling and produced water wastes have generally been collected in waste pits at well sites and separation stations, although some operations have recently begun efforts to reinject a percentage of such wastes. Waste pits have reportedly often been unlined, susceptible to collapse and to being washed out by heavy rains, and constructed so that when the contents reach a certain level they drain to lower-lying areas away from the pit. The contents of the waste pits, reportedly often left untreated, may eventually leach into adjacent soil and ground water. The Ministry of Energy and Mines reportedly estimated that some 19 billion gallons of these produced water wastes had "been dumped without treatment into the waters and soils of the Oriente" since 1972.(11) Drilling wastes vary from site to site, but typically may contain such toxins as arsenic, lead, mercury, benzene, naphthalene and other hydrocarbons.(12) Some companies have sprayed waste crude oil

over local roads, ostensibly to keep down the dust. The run off from the roads drains into adjacent fields, groundwater and streams.

Crude oil has also been released into the environment through spills in the production and transportation phases of operation, particularly through spills from the Trans-Ecuadorean Pipeline.(13) The Ecuadorean Government reported that, as of 1989, 30 different spills from the Trans-Ecuadorean pipeline had involved the release of a total of 16.8 million gallons of crude.(14) There have been a number of substantial spills in the interim, and ruptures in secondary pipelines have resulted in substantial additional discharge into the environment. An additional 1,000 to 2,000 gallons of oil reportedly spill from the flowlines connecting the wells to the stations every two weeks.(15) It has been estimated that since 1972, over "30 billion gallons of toxic wastes and crude oil have been discharged into the land and waterways of the Oriente."(16)

The Commission delegation which travelled from Lago Agrio to Coca visited five different oil production sites: Dureño One, Atacapi, Shushufindi North, a site adjacent to the Population Center of Primavera, and finally a site known as Pozo Nueve de Agua Rico. Some of the roads the delegation travelled over had been sprayed with crude oil. The production sites observed appeared to vary in terms of functionality. In at least two of the sites, visibly impure production water was being discharged into adjacent tributaries on the day of the visit. At each of the sites it could be seen that the waste pits are constructed with pipes which allow for drainoff to lower lying areas when the contents reach a certain level. That these lower lying areas tend to lead to streams or rivers was clearly evidenced in the cases of the Shushufindi North and Pozo Nueve de Agua Rico sites.

At the site near Primavera, equipment was in place to evacuate crude and other heavy deposits from a portion of a large unlined waste pit. The Pozo Nueve de Agua Rico site consisted of one lined and a larger unlined waste pit. The Commission was met there by a company representative who explained that this site had already been subjected to an intensive clean up, and a certificate was produced attesting that the pool had been tested and the water found to be within acceptable contamination limits. Visual inspection indicated that the surface of both pits was covered with a film of oil. At the back of the larger unlined pit the delegation saw that a narrow channel had recently been dug. The channel was still separated from the pit by a strip of earth, but once that had been removed, the channel would have the effect of draining the pit into an area leading directly to a river.

At the Dureño One site, natural gas and other byproducts were being burned off by a flare some 20 feet off of the ground. At Shushufindi North, byproducts were being burned off from a pipe located at ground level directly over the first waste pit. At the Primavera and Pozo Nueve de Agua Rico sites, refuse soaked with crude was being incinerated in small open fires on the ground.

Government Action on the Issue of Oil Development

In recent years, the Government has taken certain legislative and policy measures to address the effects of oil development on the people and the environment of the Oriente. The September 1993 establishment of the Environmental Advisory Commission of the Presidency to coordinate action in this sphere led to the June 1994 issuance of Executive Decree 1802, entitled "Basic Environmental Policies of Ecuador,"(17) outlining national priorities in this area. During a meeting with the Commission, the Minister of Mines and Energy informed its members that, for almost a decade, companies interested in exploiting petroleum had been required to submit

environmental impact and other plans.(18) Decree 1802 specifies that companies are required to prepare an Environmental Impact Study and a Program of Environmental Mitigation, as well as to seek the corresponding authorization prior to the initiation of activities which could degrade or contaminate the environment. The Development Plan adopted during the Durán-Ballén Administration calls for foreign companies to apply the highest standards and requirements of their home country in their operations in Ecuador, without prejudice to compliance with Ecuadorean law. As noted by the Government in its observations of March 19, 1997, the Environmental Advisory Commission was transformed into the Ministry of the Environment in August of 1996.(19)

Ecuadorean law provides certain protections against environmental pollution, including the Law for the Protection and Control of Environmental Contamination, concerning the protection of air, soil and water resources. Contamination which is harmful to human life, health and well-being, harmful to the flora and fauna, or which degrades air, water or soil quality is prohibited.(20) The 1981 Law of Forestry and Conservation of Natural Areas and Wildlife provides for the protection of designated national parks or natural reserves. Additional legislation speaks to oil exploitation operations, contractual requirements, and other aspects of environmental protection.(21) Notwithstanding the existence of an emerging corpus of environmental regulation, little implementation or enforcement action has been taken.(22)

Responsibility for action in this sphere has to date been decentralized. While the Ministry of Mines and Energy, through the DINAMA, bears principal responsibility for environmental matters, questions concerning health, water and water quality come within the jurisdiction of the Ministry of Health. The Instituto Ecuatoriano Forestal de Areas Naturales y Vida Silvestre is in charge of environmental protection zones and national parks. Processes to inform local communities about the effects of development would fall within the responsibility of the Public Relations Ministry. It seems likely that the recent establishment of the Ministry of the Environment will enhance coordination in this sphere.

One of the Government's most visible activities with respect to the effects of oil development has been its effort to ensure that Texaco finance and implement a plan to clean up areas that were contaminated during the company's twenty-plus years of operation in the Oriente. In the spring of 1992, after Texaco withdrew from its exploitation operations in Ecuador, the Government contracted for an environmental audit to assess the situation resulting from the company's operations. Based on the results of that process, the Government and Texaco signed a series of agreements in late 1994 and 1995 obliging the company to undertake certain activities to remedy the environmental consequences of its operations in the Oriente. These reportedly include clean up activities, revegetation efforts, and the establishment of a one million dollar fund to be used for projects developed by a particular indigenous federation and approved by Texaco and the Ministry of Mines and Energy.

The response of the affected communities has evidently been mixed. A number of communities have indicated their rejection of the audit and the agreements signed to date on the stated basis that: they were excluded from direct participation in the process, the agreement did not adequately repair the damages suffered, and the process failed to provide for any independent review or evaluation of the results.(23) The Confederation of Indigenous Nationalities of the Ecuadorean Amazon [CONFENIAE] communicated its rejection of the accords to the Minister of Mines and Energy at the end of 1995, indicating that the agreements failed to take into account "20 years of oil spills, deforestation [and] water contamination," failed to provide guarantees, and failed to address causes of ongoing contamination.(24) Some leaders indicated that they lacked

sufficient information to take a position, while other communities welcomed the planned clean up activities as a positive step.

The Applicable Legal Framework

1. Relevant Domestic Law

The domestic law of Ecuador recognizes the relationship between the rights to life, physical security and integrity and the physical environment in which the individual lives. The first protection accorded under Article 19 of the Constitution of Ecuador, the section which establishes the rights of persons, is of the right to life and personal integrity. The second protection establishes "the right to live in an environment free from contamination." Accordingly, the Constitution invests the State with responsibility for ensuring the enjoyment of this right, and for establishing by law such restrictions on other rights and freedoms as are necessary to protect the environment. Thus, the Constitution establishes a hierarchy according to which protections which safeguard the right to a safe environment may have priority over other entitlements.

The amendments to the Constitution adopted in 1996 complement the foregoing protections. The new provisions set forth that the State will protect the right of the population to a safe environment and guarantee sustainable development. The Constitution now provides that the following shall be regulated by law: the preservation of the environment, ecosystems and biodiversity; the prevention of environmental contamination; the sustainable development of natural resources; the requirements that public and private activities affecting the environment must meet; and the establishment of a system of natural protected areas. These recent amendments also set forth the legal framework of state and individual responsibility for violations of norms to protect the environment.

Ecuador is Party to or has supported a number of instruments which recognize the critical connection between the sustenance of human life and the environment, including: the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights,(25) the ICCPR and the ICESCR, the Stockholm Declaration, the Treaty for Amazonian Cooperation,(26) the Amazon Declaration,(27) the World Charter for Nature,(28) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere,(29) the Rio Declaration on Environment and Development(30) and the Convention on Biological Diversity.(31)

2. Relevant Inter-American Law

The realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated.

The American Declaration of the Rights and Duties of Man, which continues to serve as a source of international obligation for all member states, recognizes the right to life, liberty and personal security in Article I, and reflects the interrelationship between the rights to life and health in Article XI, which provides for the preservation of the health and well being of the individual.(32) This priority concern for the life and physical preservation of the individual is reflected in the American Convention in Article 4, which guarantees the right to life, and Article 5, which guarantees the right to physical, mental and moral integrity.

The right to life recognized in Article 4 of the American Convention is, as noted in Chapter IV of this report, fundamental in the sense that it is nonderogable and constitutes the basis for the realization of all other rights. Article 4 protects an individual's right to have his or her life respected: "This right shall be protected by law [n]o one shall be arbitrarily deprived of his life." The right to have one's life respected is not, however, limited to protection against arbitrary killing. States Parties are required to take certain positive measures to safeguard life and physical integrity. Severe environmental pollution may pose a threat to human life and health, and in the appropriate case give rise to an obligation on the part of a state to take reasonable measures to prevent such risk, or the necessary measures to respond when persons have suffered injury.

Analysis

The Commission recognizes that the right to development implies that each state has the freedom to exploit its natural resources, including through the granting of concessions and acceptance of international investment. However, the Commission considers that the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights protected by the American Convention.

The Government stated in its observations on the present report that the environment had been damaged by deforestation, erosion, the over-exploitation of resources, and high levels of contamination from oil exploitation and mining. As has been recognized by the Government of Ecuador and numerous international observers, it is clear that the activities of the state-run oil company and the acts and omissions of licensee companies have resulted in severe environmental pollution. The Ministry of Mines and Energy has reported this in various figures and assessments it compiled (some of which are cited in this report), and the Government has acknowledged it as a factual matter, as, for example, in the series of remediation agreements signed with Texaco. The Executive policy directive of June, 1994 acknowledged that some entities performing oil exploitation activities have used sub-standard technology to the detriment of society and the environment. In July of 1994, a Commission of the National Congress, responding to and supporting the suit that had been filed by several indigenous groups against Texaco abroad, noted by resolution the serious injury to health and life sustained by the inhabitants of the affected sectors.(33)

Human exposure to oil and oil-related chemicals, through the skin or ingested in food or water, or through fumes absorbed via the respiratory system, has been widely documented to cause adverse effects to human health and life. In the instant case, emerging data indicates the considerable risk posed to human life and health by oil exploitation activities in the Oriente. The Unión de Promotores Populares de Salud de la Amazonia Ecuatoriana [UPPSAE] carried out a study in 1993 to gather specific data on the effects of oil exploitation on the health of settler communities.(34) The study examined 1,465 people in ten communities established by settlers around Dureno and Pacayacu in Sucumbios Province. 1,077 of the study subjects lived in oil-contaminated areas, and 388 in non-contaminated areas. There are five petroleum camps in the area. The results of the study indicated significantly higher rates of spontaneous abortion,(35) headache, nausea, anemia, dermatitis and fungal infection in the population exposed to oil.(36)

A representative of CONAIE reported that the organization had surveyed 21 communities along the Napo and Quinchiyacu Rivers affected by oil development activities, and had found that roughly three fourths of the community members complained of gastro-intestinal problems; half, of frequent headaches; a third of skin problems; and just under a third of other body aches and fevers. It was also noted that various studies done on the effects of oil contamination indicated

that affected populations are at a greatly increased risk of cancer and other grave illnesses. The Director of the Coca Hospital has been cited as indicating an increase in infant mortality due to water contamination and accidents related to petroleum, and local health workers have reported a rise in birth defects, juvenile illnesses and skin infections.(37)

The Center for Economic and Social Rights, an NGO based in New York, conducted a project to collect and analyze water samples from development-affected sectors of the Oriente. The samples were taken from water used for drinking, bathing and fishing, and from produced water (from oil processing), and analyzed for levels of polycyclic aromatic hydrocarbons (linked to health effects ranging from skin irritation to cancer) and volatile organic compounds (which commonly include benzene and benzene derivatives linked to skin, nervous system and blood disorders, leukemia, and which may harm fetal development).(38) The study concluded that Oriente residents are exposed to levels of oil-related contaminants far in excess of internationally recognized guidelines, and that human ingestion of water or fish from the waters sampled poses a significantly increased risk of serious health effects including cancer, neurological and reproductive problems.(39)

Oil development activities have also been linked, directly and indirectly, with problems in food supply and malnutrition.(40) The sectors of Orellana, Shushufindi and Sacha, which are centers of petroleum development activity, register the highest indicators of malnutrition in Ecuador.(41) As stated in the preamble of the World Charter for Nature, adopted by the UN General Assembly in 1982: "Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients."

According to the Government's own figures, billions of gallons of untreated toxic wastes and oil have been discharged directly into the forests, fields and waterways of the Oriente.(42) The resulting consequences for the inhabitants of the affected areas have been and remain grave. The right to life and the protection of the physical integrity of the individual are norms of an imperative nature. Article 2 of the American Convention requires that where these rights are not adequately ensured through legislative and other means, the State must take the necessary corrective measures. Where the right to life, to health and to live in a healthy environment is already protected by law, the Convention requires that the law be effectively applied and enforced.

The information analyzed above on the impact of oil exploitation activities on the health and lives of the affected residents raises serious concern, and prompts the Commission to encourage the State of Ecuador to take the measures necessary to ensure that the acts of its agents, through the State-owned oil company, conform to its domestic and inter-American legal obligations. Moreover, the Commission encourages the State to take steps to prevent harm to affected individuals through the conduct of its licensees and private actors. The State of Ecuador must ensure that measures are in place to prevent and protect against the occurrence of environmental contamination which threatens the lives of the inhabitants of development sectors.(43) Where the right to life of Oriente residents has been infringed upon by environmental contamination, the Government is obliged to respond with appropriate measures of investigation and redress.(44)

CONCLUSIONS

The American Convention on Human Rights is premised on the principle that rights inhere in the individual simply by virtue of being human. Respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and to preservation of physical well-being. Conditions of severe environmental pollution, which may cause serious

physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being.

In the context of the situation under study, protection of the right to life and physical integrity may best be advanced through measures to support and enhance the ability of individuals to safeguard and vindicate those rights. The quest to guard against environmental conditions which threaten human health requires that individuals have access to: information, participation in relevant decision-making processes, and judicial recourse.

Access to information is a prerequisite for public participation in decision-making and for individuals to be able to monitor and respond to public and private sector action. Individuals have a right to seek, receive and impart information and ideas of all kinds pursuant to Article 13 of the American Convention. Domestic law requires that parties seeking authorization for projects which may affect the environment provide environmental impact assessments and other specific information as a precondition. However, individuals in affected sectors have indicated that they lack even basic information about exploitation activities taking place locally, and about potential risks to their health. The Government should ensure that such information as the law in fact requires be submitted is readily accessible to potentially affected individuals.

Public participation in decision-making allows those whose interests are at stake to have a say in the processes which affect them. Public participation is linked to Article 23 of the American Convention, which provides that every citizen shall enjoy the right "to take part in the conduct of public affairs, directly or through freely chosen representatives," as well as to the right to receive and impart information. As acknowledged in Decree 1802, while environmental action requires the participation of all social sectors, some, such as women, young people, minorities and indigenous peoples, have not been able to directly participate in such processes for diverse historical reasons. Affected individuals should be able to be informed about and have input into the decisions which affect them.

The right to access judicial remedies is the fundamental guarantor of rights at the national level. Article 25 of the American Convention provides that "[e]veryone 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...." This means that individuals must have access to judicial recourse to vindicate the rights to life, physical integrity and to live in a safe environment, all of which are expressly protected in the Constitution. Individuals and NGO's have indicated to the Commission that, for various reasons, judicial remedies have not proven an available or effective means for individuals threatened by environmental pollution to obtain redress.

The norms of the inter-American human rights system neither prevent nor discourage development; rather, they require that development take place under conditions that respect and ensure the human rights of the individuals affected. As set forth in the Declaration of Principles of the Summit of the Americas: "Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly."

As the Commission observed at the conclusion of its observation in loco: "Decontamination is needed to correct mistakes that ought never to have happened." Both the State and the companies conducting oil exploitation activities are responsible for such anomalies, and both should be responsible for correcting them. It is the duty of the State to ensure that they are corrected.

RECOMMENDATIONS

Given that it is the obligation of the State to respect and ensure the rights of the inhabitants of the Oriente, and the responsibility of the Government to implement the measures necessary to remedy the current situation and prevent future oil and oil-related contamination which would threaten the lives and health of these people, and having noted the concern expressed by some government officials over the seriousness and scope of this problem, the Commission recommends and encourages the State to adopt the measures necessary to translate this concern into preventive and remedial action.

The Commission recommends that the State continue and enhance its efforts to address the risks identified by the Ministry of Mines and Energy with respect to other development activities, such as gold mining being carried out in the Oriente, which poses a serious risk of contamination and danger to human health, due to the use by small-scale operators of unsophisticated methods involving mercury and cyanide.

The Commission recommends that the State implement the measures to ensure that all persons have the right to participate, individually and jointly, in the formulation of decisions which directly concern their environment. The Commission encourages the State to enhance its efforts to promote the inclusion of all social sectors in the decision-making processes which effect them.

Given that the American Convention requires that all individuals of the Oriente have access to effective judicial recourse to lodge claims alleging the violation of their rights under the Constitution and the American Convention, including claims concerning the right to life and to live in an environment free from contamination, the Commission recommends that the State take measures to ensure that access to justice is more fully afforded to the people of the interior.

Finally, as the right to participate in decision-making and the right to effective judicial recourse each require adequate access to information, the Commission recommends that the State take measures to improve systems to disseminate information about the issues which affect them, and to enhance the transparency of and opportunities for public input into processes affecting the inhabitants of development sectors.

Endnotes

1. The initial processing of the communications led the Commission to conclude that a number of the claims raised by the petitioners appeared to be prospective in nature. With this in mind, and given the already apparent indications that the situation complained of was not isolated to the Huaorani people, but appeared to have important bearing on the situation of many inhabitants of the region, the Commission determined that the situation should be treated within the framework of a general evaluation of the human rights situation in the area.
2. The situation in the Oriente with respect to oil exploitation has special implications for the indigenous peoples for whom the Amazon Basin has been home for ages beyond memory. These issues, which center around the right of indigenous peoples to special protection and preservation of their cultures, are dealt with in Chapter IX.
3. A consortium led by Texaco and Gulf first discovered commercially viable quantities of petroleum in the traditional lands of the Cofan people in 1967.
4. Pursuant to the seventh round of bidding for oil and gas production licensing, opened during the first half of 1994, foreign companies were awarded contracts to develop six additional blocks in the Oriente of 200,000 hectares each. See, Latin American Weekly Report, 10 February 1994, at 52; 23 June 1994, at 268. Three other blocks

were opened for development along the Pacific coast, and additional blocks extending further south have been designated for an eighth round. *Id.* at 268.

5. This data is discussed, *infra*, in the section entitled "analysis."
6. Residents from the Canton of Shushufindi, members of the local Precooperativa, provided a list of the animals they had each lost over time for such reasons: "21 head of livestock;" "15 head of livestock;" "18 head of cattle;" "8 pigs, two horses, seven cows;" "15 pigs, two horses;" and "8 head of cattle, 11 pigs and hens." One resident living adjacent to the North Station presented the certificate of a veterinarian attesting to his eight dead cattle. Another community testified to similar losses in a meeting with the Commission.
7. It has been estimated that each exploratory well drilled "produces an average of 4,165 cubic meters of drilling wastes containing a mixture of drilling muds (used as lubricants and sealants), petroleum, natural gas, and formation water from deep below the earth's surface (containing hydrocarbons, heavy metals and high concentrations of salt)." Center for Economic and Social Rights [CESR], "Rights Violations on the Ecuadorean Amazon," 1 HEALTH & HUMAN RTS. 83, 84-85 (Fall, 1994), citing J. Kimerling, *Amazon Crude* (1991), which attributes the per well estimate to Drilling Department of Ecuador's National Directive of Hydrocarbons. Kimerling, at p. 59 n. 24.
8. J. Kimerling, *supra* at 61.
9. *Id.* at 59 (citing 1989 estimate by DINAMA that each exploratory well produces approximately 42,000 gallons of waste oil).
10. The oil is then separated from wastes comprised of formation water, oil remnants, gas and toxic chemicals. The vast majority of the natural gas which is separated from the petroleum is burned off as waste, without temperature or emission controls. *Id.* at 63 (noting that DINAMA was studying the advisability of reinjecting the gas for later reclamation); CESR, *supra* at 85.
11. J. Kimerling, *supra*, at 65. The produced water wastes also contain petroleum. It is estimated that "roughly 2,100 to 4,200 gallons of oil are discharged every day" as part of these wastes. *Id.* (citing Ministry of Mines and Energy, 1989).
1. One Government study involving 187 wells found that crude oil was systematically dumped into the forest, farmlands and various bodies of water. See, Fundación Natura, "Desarrollo y Conservación en la Amazonia Ecuatoriana," at 13 (citing DIGAMA study of 1987). Another Government study which tested samples of water taken from streams and rivers near production sites found elevated levels of oil and grease in every sample, and concluded that oil development was linked to deterioration of both land and aquatic ecosystems. Kimerling, at 67, citing CEPE, "Análisis de la Contaminación Ambiental en los Campos Petroleros Libertador y Bermejo," 1987.
12. See, Kimerling, *supra*, at 59 (listing additional toxins).
13. The Texaco-Gulf consortium (see n. 3, *supra*) constructed the Trans-Ecuadorean Pipeline, completed in 1972. The pipeline, or Sistema del Oleoducto Trans-Ecuatoriano (SOTE) runs for just under 500 kilometers from Lago Agrio to Esmeraldas on the Pacific Coast.
14. Kimerling, *supra* at 69. The comparison often cited is to the 10.8 million gallon spill from the Exxon Valdez.
15. CESR, *supra*, at 85, citing sources including interviews with Minister of Energy and Mines and DINAMA personnel. See, Kimerling, *supra*, at 63 (citing DINAMA as source for data on spills from flowlines).
16. CESR, *supra*.
17. The documents entitled "Basic Principles for Environmental Action in Ecuador" and "Basic Environmental Policies of Ecuador" were approved in December 1993 and June of 1994, respectively. An "Ecuadorean Environmental Plan" was reportedly in development at the time of the Commission's visit.
18. The Minister further indicated that, since approximately 1988, development contracts with the Government had included clauses concerning the defense of the environment, and that agreements arising out of the seventh round would contain strong measures in this regard.

19. Until mid-1996, the Ministry of Energy and Mines had been tasked with environmental oversight through its Subsecretariat of the Environment and the Dirección Nacional de Medio Ambiente (DINAMA).
20. Law for the Prevention and Control of Environmental Contamination, Ch. I, para. 1, R.O. No. 97, May 31, 1976. Implementing regulations were passed concerning water in 1989, and for air in 1991. See e.g., Law of Waters, art. 22, R.O., No. 69, May 30, 1972; General Regulations for the Application of the Law of Waters, arts. 89-90, R.O., No. 233, Ja. 26, 1973.
21. See generally, Ministry of Energy & Mines and PetroEcuador, *Environmental Legislation: Compilation of Laws, Regulations and Norms Related to the Environment and the Conservation of Nature, for the Hydrocarbon and Mining Sector*, Sept. 1993.
22. In fact, Decree 1802 acknowledged that, while Ecuadorean law provided a sufficient theoretical framework for environmental action, compliance with extant regulations had been partial. The policy directive accordingly called for action to reinforce the effective and efficient application of the existing regulations.
2. Community and NGO representatives indicated that existing remedies have proven ineffectual in providing protection in this sphere, and referred to the filing of a claim before the Tribunal of Constitutional Guarantees in 1989 seeking to prevent the Government from authorizing oil exploitation in the Yasuni National Park. The Corporación de Investigaciones Jurídico-Ecológicas y de Defensa de Vida (CORDAVI) had argued that the planned exploitation would violate the Constitutional right of the Park's inhabitants to live in a safe environment, and violate the Forestry Law's prohibition of exploitation in protected areas. The Tribunal's ruling of October 2, 1990 held that the right to live in a safe environment mandated that no further exploitation be permitted in protected areas. However, on October 31, 1990, the Tribunal issued a second opinion allowing the concessions, without having received filings from the parties and absent any explanation for the reversal.
23. It should be noted that members of the Cofan, Quichua and Secoya communities and settlers affected by Texaco's oil exploitation activities filed a class action suit against the company in federal district court in New York (the site of Texaco's headquarters), on November 3, 1993. This was closely followed by a second filing on behalf of a class of Peruvian plaintiffs seeking damages to remedy what they allege to be the downstream contamination caused by Texaco's operations in Ecuador. See, *Aguinda v. Texaco*, Complaint dated Nov. 3, 1993, No. 93 CIV. (S.D.N.Y.); *Jota et al. v. Texaco*, CIV., S.D.N.Y.
24. *El Comercio*, 27 de dic. de 1995, at C2.
25. Ecuador deposited its instrument of ratification on March 25, 1993. The Additional Protocol will enter into force upon the deposit of the eleventh ratification.
26. 17 I.L.M. 1045 (1978).
27. 28 I.L.M. 1303 (1989).
28. G.A. Res. 37/7, U.N. Doc. A/37/51 (1982).
29. 161 U.N.T.S. 229 (1940).
30. 31 I.L.M. 874 (1992).
31. 31 I.L.M. 818 (1992).
32. See, Article 29, American Convention, which specifies that "no provision of this Convention shall be interpreted as: ... d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have." See also, Advisory Opinion OC-10/89 of July 14, 1989 "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," Ser. A No. 10, para. 46.
33. Resolution of the National Congress "La Comisión de Fiscalización Frente a la Demanda de los Cofanes en Contra de la Texaco," de 4 de julio de 1994. The resolution affirmed the clear mandate of the Constitution to protect the right to live in an environment free from contamination, and recognized that this right had been subject to grave violation. The resolution cautioned that human life and health, as well as the Amazonian ecosystem had been endangered.

34. UPPSAE, *Culturas Bañadas en Petroleo: Diagnóstico de salud realizado por promotores*, 1993.
35. The study showed that women residing within 200 meters of oil contaminated sites experienced lower live birth rates than the same women had experienced when living in other areas of the country, and that women living within 200 meters of such sites had a higher rate of spontaneous abortion than women living more than 200 meters away from the sites. UPPSAE study, p. 56, fig. 22, 23.
36. Rates of anemia, tuberculosis and malnutrition were reported to be twice as high in areas designated as oil-contaminated. Skin infections were four times more likely in such areas. UPPSAE study, p. 61.
37. Hoy: Blanco y Negro, "La Calamidad Amazonica," No. 26, Domingo 23 de octubre de 1994, p. 2.
38. CESR, at 12-20. "Fingerprinting" analysis was used to link contamination in samples to specific sources. For example, "[f]ingerprinting analysis of hydrocarbon distribution indicated that the contamination source of drinking water samples from the San Pablo spring ... and Shushufindi well ... matches the PAH distribution found in produced water from the Shushufindi North Station." Id. at 18, app. VI(a).
39. Id. at 19-20.
40. See, UPPSAE study, at 53.
41. See, E. Martínez, "Indicadores sociales y culturales de los impactos producidos por la actividad petrolera," in, *Acción Ecológica, Amazonia por La Vida* 41, 43-44 (1994)(citing, M. Chiriboga, R. Landín and J. Borja, *Los Cimientos de una Nueva Sociedad* (IICA 1989); CEPAR, 1993).
42. It may also be noted that, in 1992, pursuant to the claim of the non-governmental organization CORDAVI, the International Water Tribunal [an independent forum funded by European environmental organizations of a non-governmental and governmental character] held a juried hearing on claims that Petroecuador, Texaco and City Investing were responsible for having contaminated water sources in the Oriente. The Tribunal (which exercises no legal jurisdiction in Ecuador) found that the companies had failed to take adequate precautionary measures in their exploitation processes; had discharged large amounts of hazardous wastes into the waters and soils of the Oriente; and should therefore compensate the victims. International Water Tribunal, *CORDAVI v. Petroecuador, Texaco Petroleum and City Investing*, Amsterdam, February 20, 1992.
43. See, "Yanomami Case," Res. No. 12/85 Case 7615, in Annual Report of the IACHR 1985-86, OEA/Ser.L/V/II.66, Doc. 10 rev. 1 (1985) (finding violation of Article XI of Declaration where Government failed to implement measures of "prior and adequate protection for the safety and health of the Yanomami Indians" against invasion of groups of garimpeiros).
44. While the Commission has analyzed the human rights situation in the Oriente through the example of oil exploitation activities, it must be noted that other types of development activities raise similar factual and legal concerns. One pertinent example concerns the effects of gold mining in the interior. The processes employed involve various types of chemicals, including cyanide and mercury, which may be emitted into streams and rivers. The toxicity of these substances to humans has been thoroughly documented.

CHAPTER IX

HUMAN RIGHTS ISSUES OF SPECIAL RELEVANCE TO THE INDIGENOUS INHABITANTS OF THE COUNTRY

<http://www.cidh.oas.org/countryrep/ecuador-eng/chaper-9.htm>

Although the figures available vary widely, the percentage of the population described as indigenous is most frequently cited as between 35 and 45%.⁽¹⁾ The indigenous peoples of Ecuador are situated throughout the country in the northern coastal areas, the Sierra and in the Oriente. Ecuador is a major indigenous population center in Latin America.⁽²⁾

The indigenous peoples of Ecuador have significantly redefined their relationship with the structures of national government and with the non-indigenous population over the past several decades. The indigenous population has created a network of local and regional representative organizations (CONFENIAE, ECUARUNARI and COICE), which in turn belong to the national coordinating body CONAIE, which works with its counterparts to promote indigenous rights.

Among its long term goals, CONAIE has vigorously pursued official recognition of the indigenous population of Ecuador. In this regard, CONAIE has sought that the Constitution be amended to recognize Ecuador as a plurinational, plurilingual and pluriethnic state. While the 1995 amendments to the Constitution did not include the term plurinational, they did modify the definition of the State so that Ecuador is now recognized as “sovereign, democratic, unitary, decentralized, pluricultural and multiethnic.” This is the first time Constitutional recognition has been accorded to the different ethnic peoples and cultures of Ecuador.⁽³⁾ The Constitution sets forth that Spanish is the official language of Ecuador, and the language of intercultural relations. “Quichua and the other indigenous languages are recognized within their respective areas of use and form part of the national culture.”⁽⁴⁾

In its March 19, 1997 submission of observations, the Government indicated that its position with respect to the rights of indigenous peoples is clear. The Government characterized its action in this regard as endeavoring to equilibrate the diverse interests of the indigenous and other sectors of the population, and described the principal demands of the indigenous peoples of the country as recognition of: their existence as peoples, their native rights, the plural quality of the State, their rights to their land and territory, and their own juridical systems for the solution of conflicts. The Government “considers that the ethnic minorities and indigenous groups that form part of the Ecuadorean nationality have a right to their own culture and land,” and that the distinct cultural systems of these peoples have given Ecuadorean society a multicultural character. The Government noted the creation of the National Secretariat for Indigenous and Ethnic Minority Affairs in 1994 as an important step in defining the policies of the State with respect to its indigenous peoples.

Pursuant to reforms which allowed independent candidates to run for elected office, indigenous organizations undertook their first coordinated involvement in local and national politics during the 1996 elections. Indigenous and other groups, including labor unions, joined to form the political movement known as Pachakutik, which won 64 seats at the local and national levels. Pachakutik candidates won seats in the 82 member Congress, with CONAIE President, attorney Luis Macas, elected as one of twelve national deputies.

The indigenous peoples of the country face a number of serious obstacles to obtaining the full enjoyment of their rights and freedoms under the American Convention. Significant segments of the indigenous population suffer the effects of pervasive poverty, and little social spending is directed toward this sector.⁽⁵⁾ Indigenous individuals are subjected to discrimination, from both the public and private sectors. They experience obstacles in seeking to pursue their traditional relationship with the lands and resources that have supported them for thousands of years, and in seeking to practice and preserve their own cultures. One leader stated to the Commission that, although their peoples had inhabited these lands for thousands of years, the imposition of a European language and legal practices, without concomitant respect for their own culture and traditions, made indigenous Ecuadoreans feel like foreigners in their own land.

The Right to Equal Protection and to be Free from Discrimination

The American Convention protects the rights of minorities and prohibits minority discrimination. The American Convention, pursuant to the terms of Article 24, requires that all persons subject to the jurisdiction of a State Party be regarded as equal before the law, and be accorded equal protection of the law. This commitment is reinforced by the obligation set forth in Article 1.1 of the Convention to respect and ensure the guarantees set forth “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” The Constitution of Ecuador establishes that the State condemns all forms of colonialism and neocolonialism, as well as discrimination and racial segregation.

A frequent complaint concerns the treatment of indigenous inhabitants within the judicial system. Indigenous representatives indicated that legal processes fail to respect or take into account indigenous legal systems and traditions. Representatives complained that processes against indigenous defendants were conducted in Spanish, and that translation was not provided for those who understood only their native language. Article 8 of the American Convention states that “the right of an accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal” is a minimum guarantee. The Commission expects that the recognition accorded to indigenous languages in their areas of use through the recent amendments to the Constitution will ensure that translation between Spanish and the indigenous language of the defendant is available in every case where it is required.

The right to participate in the public life of one's country is established by Article 23 of the American Convention, which provides that every citizen shall enjoy the “right to take part in the conduct of public affairs, directly or through freely chosen representatives.” This guarantee includes the right to be elected and “to have access, under general conditions of equality, to the public service” of one's country. The results of the 1996 elections in Ecuador demonstrate that the indigenous peoples of the country are beginning to be able to exercise this right. However, it must be noted that, notwithstanding this advance, there are few indigenous Ecuadoreans serving in decision-making positions within the Executive or Judiciary, or within State agencies.

Land, Resources and Property Rights

Article 21 of the American Convention recognizes generally that: “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.” In light of Article 29 of the American Convention, which stipulates that the Convention may not be interpreted so as to restrict the enjoyment of any right recognized under domestic law, or another convention to which the State is party, it must be noted that the right of indigenous peoples to collectively or individually own the land they have traditionally occupied is

recognized in Article 11 of International Labor Organization (ILO) Convention 107, to which Ecuador is a party.(6)

The right to own property in all of its forms is recognized in Article 48 of the Constitution of Ecuador. The right to own land, specifically “land in production,” is guaranteed by Article 51. The monopolization of land is prohibited, as is the “latifundio” (system of dividing land into large estates). The Constitution provides that the structure of property rights in the rural sector is to have as its objective economic development, the raising of the standard of living, and the redistribution of wealth. The “colonization” or settlement of land is to be regulated in order to improve conditions of life for the campesino sector, to protect natural resources and the environment, and to strengthen the country's “living border.”

As noted by the Government in its March 19, 1997 submission of observations, the national process of agrarian reform terminated after some 30 years, and the agency charged with its implementation, the Ecuadorean Institute of Agrarian Reform and Colonization (IERAC), was replaced by the National Institute of Agricultural Development (INDA). The Government stated that the processes of “directed colonization,” and the consideration of large tracts of the Amazon basin as “tierras baldías” may be considered superseded. The policy of land distribution, the Government observed, is now based on the free market principles of the economic system.

The right to own real property is limited by, inter alia: legal provisions which control the characterization of and granting of title; the broader approach to development of rural areas which accords priority to settlement and to the full use of the land; and the State's ownership of and authority to exploit subsurface minerals.(7) These limitations prompt special consideration as they affect the ability of indigenous peoples to enjoy their rights under the American Convention. Indigenous representatives have informed the Commission that struggles over land have provoked ongoing tension and conflict between competing claimants in regions of the Sierra, including Yuracruz, Huaycopungo in Imbabura Province, Tunshi and Chiquicagua in Chimborazo Province, and in Tungurahua, as well as in the Oriente.

The Civil Code establishes that registered title is required to prove ownership of land, and any land which is not registered is deemed to belong to the State. The system of attributing title provides for the communal holding of real property; however, indigenous leaders complain of encountering consistent barriers to gaining communal title. They complain, for example, that extant legal provisions do not fully recognize the common organizational units of indigenous peoples, or their traditional methods of cultivation.

Communities and cooperatives are recognized in Article 46(3) of the Constitution as one of the basic sectors of the economy, and such groups are authorized to hold property communally. Indigenous communal ownership of land is specifically recognized under the Law of “Comunas.” However, while the Comuna (administered by an elected “cabildo”) is very popular in the Highlands, the Amazonian indigenous peoples utilize other forms of internal administration.(8) Additionally, the Law of Agrarian Development permits the State to expropriate land that has been left fallow for more than two years. This requirement is inconsistent with indigenous land use systems in some regions of the country. For example, Amazonian forest-dwelling indigenous peoples clear and cultivate small gardens on a rotating basis to maximize the productivity of the shallow top soil. Their methods of managing and harvesting the resources of the forest are consistent with their needs, and with the characteristics of the forest topsoil, which is shallow and poorly suited for the intensive cultivation models contemplated in the Law of Agrarian Development.

The Agrarian Development Law, which entered into force in August of 1994,(9) met certain concerns expressed by the indigenous sector of the population, while giving rise to others.(10) The law provides for more representation of affected social sectors in the process of implementing agrarian development policy.(11) The law also recognizes the right of indigenous peoples to continue their traditional forms of life, including inhabiting and managing their traditional forest areas. Despite the protest of many indigenous representatives, however, the new law provides for the division or alienation of communally held indigenous land when two thirds of the communal assembly so decides. This provision has been characterized as placing the legalization and maintenance of indigenous territory at risk.(12)

Another limitation on the ability of indigenous peoples to obtain title to their traditional lands is the provision of the Forestry Law which specifies that all land within the borders of legally designated natural reserves must be appropriated by or reverted back to the State. The law does not take into account that a number of these protected areas include lands traditionally inhabited by and of special importance to indigenous peoples.(13) In at least one instance (discussed below), the Government entered into a special arrangement that accorded a segment of the Cofan people rights to use and control a portion of the Cuyabeno reserve.

In its observations on the present report, the Government noted that a number of pertinent proposals for legal reform were under study, including to amend the Law of Colonization to revise the adjudication of tierras baldías, to better harmonize the use of the soil and resources, to consider the ancestral settlement of indigenous peoples and avoid interethnic conflict. Proposals were under consideration to reform the Law of Agricultural Promotion to benefit poor rural indigenous inhabitants, to revise the Water Law in favor of indigenous communities, and to revise the Law of Forestry to assign the administration, management and conservation of certain protected areas to the indigenous peoples of the area. Revisions to the Law of Comunas were also under consideration to make the law more consistent with the structures of indigenous communities. Moreover, the Government reported that plans were under study to eliminate economic activities in protected areas and to examine concessions granted in areas of high ecological value.

Respect for Indigenous Expression, Religion and Culture

Certain individual rights guaranteed by the American Convention on Human Rights must be enjoyed in community with others, as is the case with the rights to freedom of expression, religion, association and assembly. The right to freedom of expression, for example, cannot be fully realized by an individual in isolation; rather, he or she must be able to share ideas with others to fully enjoy this right. The ability of the individual to realize his or her right both contributes to and is contingent upon the ability of individuals to act as a group.(14) For indigenous peoples, the free exercise of such rights is essential to the enjoyment and perpetuation of their culture.

In construing these rights in relation to indigenous peoples, account must also be taken of the stipulation set forth in the American Convention that its provisions be interpreted so as not to restrict other rights and freedoms accorded under domestic law or other international instruments by which the state concerned is bound. Ecuador is Party to a number of international conventions which guarantee certain protections for ethnic and racial groups, including the ICCPR. International law, as expressed in Article 27 of the ICCPR, recognizes the right of ethnic groups to protection of “all those the characteristics which are necessary for the preservation of their cultural identity.”(15) This Article provides that, in states where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall enjoy the right, in community with

other members of the group, to enjoy their own culture, practice their own religion, and use their own language.(16) The International Convention on the Rights of the Child, to which Ecuador is a Party, expressly recognizes these same rights for children. Ecuador is also Party to the ICESCR, which recognizes the right of each person to take part in the cultural life of the community, and has ratified the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, which establishes similar guarantees, but has yet to enter into effect.

Such rights, protected in the case of individuals under the American Convention, or in the case of minority groups under the ICCPR:

depend on ... the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with other members of the group.(17)

As noted by the Commission, the OAS, for its part:

has established, as an action of priority for the member states, the preservation and strengthening of the cultural heritage of these ethnic groups and the struggle against discrimination that invalidates their members' potential as human beings through the destruction of their cultural identity and individuality as indigenous peoples.(18)

The indigenous peoples of Ecuador speak at least 23 different languages, at least nine of which are reportedly spoken by more than 10,000 individuals each.(19) Most common is Quichua, which is spoken throughout the country. In the Oriente, each of the seven principal peoples speaks their own language. Pursuant to the Constitution, indigenous languages are recognized in the areas where they are used, and form part of the national culture of Ecuador. More specifically, Article 27 of the Constitution establishes that in zones where the population is predominantly indigenous, Quichua or the other indigenous language spoken shall be used as the principal language of education, and Spanish will be used as the language of intercultural relations.

In certain sectors of Ecuador, particularly in the Sierra region, comprehensive programs of bilingual education have been developed and implemented.(20) In other areas, such as in the Amazon region, bilingual education is still in its initial stages of development. The Commission delegation which travelled to the interior was informed that few schools there offer bilingual education, and that there are few learning materials available to facilitate bilingual and bicultural learning. For example, Huaorani children are generally instructed in Spanish and are educated almost exclusively within the framework of the national curricula. Information gathered just prior to the Commission's visit indicated that, of the two dozen teachers working with Huaorani children, most were Mestizo or Quichua, and few were able to speak Huaorani. Thus, Huaorani children are abruptly separated from their native language and culture for the hours they spend in school each week. The lack of Huaorani teachers has been identified as an important barrier to improving the responsiveness of education in the Huaorani schools.

The Ministry of Education and Culture has indicated a commitment to meeting the educational needs of marginalized groups, including indigenous communities, with respect given to their cultural identity.(21) However, efforts to meet this commitment appear to have been limited by insufficient human and material resources. The Government indicated in its observations on the present report that the system of bilingual education had been strengthened, with the participation of indigenous organizations.

Respect for indigenous culture is also implicated in the recognition or non-recognition of forms of internal organization. This question was briefly referred to in the preceding section with respect to the legal recognition granted to “comunas” but the non-recognition of other forms of communal organization.

Indigenous community life, and therefore the viability of indigenous culture, depends upon the vitality of the group's social organization and, in many instances, the active implementation of local customary law. ...[N]on-recognition ... by the state legal system and public administration ... contributes to the weakening and eventual disappearance of indigenous cultures.(22)

The “prevention of discrimination, on the one hand, and the implementation of special measures to protect minorities, on the other, are merely two aspects of the same problem: that of fully ensuring equal rights to all persons.”(23) These protections also serve to establish the essential precondition for the enjoyment of other rights:

[t]he effective implementation of the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their own culture, to profess and practice their own religion and to use their own language requires, as an absolute precondition, that the principles of equality and non-discrimination be firmly established in the society in which those persons live.(24)

The Impact of Development Activities on the Human Rights and Physical and Cultural Survival of the Indigenous Peoples of the Oriente

Certain indigenous peoples maintain special ties with their traditional lands, and a close dependance upon the natural resources provided therein -- respect for which is essential to their physical and cultural survival.(25) This connection between indigenous territory and indigenous survival may be illustrated with reference to the human rights situation of the indigenous peoples of the Amazon region of Ecuador.

As noted above, the Commission's examination of the human rights situation in the Oriente was prompted by the filing of a petition on behalf of the Huaorani people which alleged them to be under the imminent threat of profound human rights violations due to planned oil exploitation activities within their traditional lands.(26) The petition indicated that the Huaorani are estimated to number between 1400 to 1500 individuals, and are often referred to as the least assimilated of the indigenous peoples of Ecuador. They historically occupied roughly 2 million hectares of land between the Napo and Curaray Rivers. Largely as the result of the efforts of missionaries, during the 1950's most of the Huaorani were centralized in a small area on the western edge of their traditional lands. This area, comprising some 66,570 hectares, was officially designated a “protection zone” in 1959, and a Huaorani Protectorate in 1983. An additional land grant of 612,560 hectares was accorded in 1990.(27) The area slated for development, designated as Block 16, is within these titled lands.

At the time of the petition, experimental wells had been drilled, and oil discovered in areas throughout Block 16. Initial development plans, as reported by the petitioners, called for the construction of approximately 120 wells clustered in two sectors, an estimated 90 miles of roads, a pipeline to connect the production facilities to the existing pipeline structure, an aircraft landing strip, field offices, quarters to house approximately 300 permanent staff, an electrical generating plant, water processing plant and other facilities. CONFENIAE asserted that the activities incident to development of the Block would irreparably harm the Huaorani, threatening their physical and cultural survival, in violation of the protections accorded by the American

Convention on Human Rights and the American Declaration of the Rights and Duties of Man.(28)

The general claims lodged concerning the Huaorani are not unique. Other indigenous peoples of the Ecuadorean Amazon maintain that the effects of oil development and exploitation in the Oriente have not only damaged the environment, but have directly impaired their right to physically and culturally survive as a people. The information made available to the Commission, as well the observations made by the delegation which travelled to the interior, indicate that the opening of the traditional lands of Ecuador's Amazonian indigenous peoples to oil exploitation and other development activities has resulted in a number of directly attributable consequences.

First among these is the influx of outsiders into the traditional homelands of the indigenous peoples of the Amazon. The oil boom initiated in the interior in late 1960's led to the construction of a network of roads, used to bring in workers and equipment, as well as to construct and service production sites and other facilities, into the heart of what had traditionally been indigenous territory. In this way, oil development opened and exposed the interior in a way that previous development and outside contact had not.

In addition to the non-native workers brought in to build roads and construct and operate facilities, the opening of roads funneled colonists, land speculators, and loggers into indigenous homelands. In the case of the Oriente, this colonization was encouraged by the State, and in fact deemed a national priority.(29) Settlers typically colonize the initial kilometers fronting both sides of a road. In most cases, controls on spontaneous colonization were either non-existent or ineffectual, leading to the result that wide swaths of non-indigenous settlement now divide blocks of previously indigenous territory. Under the Ley de Colonización de la Region Amazónica, enacted to encourage the settlement and productive use of the Oriente, once settlers began moving into the territory, much of it was deemed to be "tierras baldias" or unoccupied lands.(30) Legislation to encourage the colonization of the Oriente offered title to settlers who demonstrated their domain over these lands by clearing forest for agricultural uses.(31) Estimates of the number of settlers in the Oriente vary, but appear to be at least 250,000 to 300,000.

One consequence of the influx of non-native peoples into traditional indigenous territory is the exposure of indigenous inhabitants to previously unknown diseases and epidemics, to which they have developed no resistance. The encroachment of colonists, speculators and non-native company workers into previously isolated areas introduced such illnesses as the "common cold" and influenza. Viral diseases have taken a harsh toll,(32) and continue to do so in the case of the individuals and communities who have had less contact with outsiders, such as the Huaorani.(33) Oil company workers with colds enter such areas and infect local inhabitants, who can easily develop pneumonia and die.(34) In other cases, men from indigenous communities work for the oil companies, contract uncontracted illnesses, and import them back into their communities when they return home. While the indigenous peoples of the Amazonian interior have very sophisticated systems for the preservation of their health and well-being, they lack experience with these new diseases.

With the coming of the petroleum companies, came the epidemics. We didn't know anything about the flu, the measles, almost all the region was hit. Many fled. Those that stayed were finished [We] couldn't keep living the old way. It was all contaminated.(35)

The Commission has received reports that the introduction of previously unencountered diseases has resulted in numerous deaths over time. There are generally few public health facilities in the interior. There are health centers in some of the more densely populated settlements, and a

hospital in Coca. For many indigenous inhabitants of the Oriente, however, treatment for serious illness is not easily or widely available, as it involves evacuation to a health center or hospital via small plane.

Another consequence of the development of the Oriente and the influx of outsiders has been the displacement of indigenous inhabitants and communities. Oil exploitation activities have proceeded through traditional indigenous territory with little attention to the placement of facilities in relation to existing communities: production sites and waste pits have been placed immediately adjacent to some communities; roads have been built through traditional indigenous territory; seismic blasts have been detonated in areas of special importance such as hunting grounds; and areas regarded as sacred, such as certain lakes, have been trespassed. Many indigenous inhabitants responded to the initial years of development activity by retreating away from development and further into their traditional areas. It is reported that, pursuant to the initial introduction of oil exploitation activities in the area now called Lago Agrio, the last of the indigenous Tetetes were driven away, a circumstance believed to have hastened their extinction as a people.(36)

The Cofan, who now number only a few hundred members, were displaced from their traditional homelands and most now occupy a handful of non-contiguous communities in a portion of their former territory. Development came to their traditional territory, the Upper Aguarico River, in 1970, when the Texaco-Gulf Consortium established a base camp at Santa Cecilia.(37) Roads, production areas, landing strips and the pipeline cut their territory “into ribbons of nationalized infrastructure,” and colonists followed.(38) Although the Cofan had been granted title to some 9000 acres in this zone, demarcated accordingly, a road was constructed right through the titled lands.

In a notable recent development, the Government worked with one segment of the remaining Cofan to accord them special rights to use and control a portion of their traditional hunting grounds, which had been incorporated into the Cuyabeno Reserve when it was established. Normally the designation of land as a natural reserve precludes the possibility that indigenous inhabitants of the area can gain legal recognition of their rights to the land.(39) However, these members of the Cofan worked to secure a compromise arrangement with the Government and the INEFAN whereby they were accorded rights to use some 80,000 acres within the Reserve. The Cofan designed a plan designating portions of their section of the Reserve for high, medium and low intensity activities, allowing the group to sustain itself from part of the land while managing and preserving the rest. Moreover, they were legally deputized and made responsible for the preservation of the Reserve, which means that they are authorized to safeguard against any incursion by settlers.

The pressures resulting from the influx of settlers, and the displacement of a number of communities continues to generate tension and sometimes violent conflict. At the time of the Commission's observation in situ, recent reports received by CONFENIAE indicated that the Siona, the Quichua of Sucumbios and Pastaza, and the Achuar and Shuar had all been experiencing some level of conflict with colonists. The Huaorani and settlers along the local oil road live in close proximity, also with periodic episodes of tension.

The Government has, over time, taken certain measures to address the effects of oil and other development activity on the indigenous peoples of the Oriente. This has included, for example, the formation of inter-institutional commissions to centralize and coordinate measures including action to recognize indigenously held territory.(40) In fact, a number of indigenous communities or peoples have gained title to portions of their traditional lands.(41) Some individual

communities have pursued and been granted communal title by the IERAC. In other cases, large scale efforts have resulted in the delimitation of territory in favor of a people. The Siona and Secoya peoples reportedly hold title to portions of their land, and the Quichua of Pastaza, represented by OPIP, were accorded a substantial land grant of just over one million hectares.

The handling of the special agreement regarding the rights of the Cofan in the Cuyabeno Reserve, in particular, appears to demonstrate a noteworthy effort on the part of the Government to recognize the unique relationship of the indigenous inhabitants to the forest, and their special abilities to protect and manage it as a living resource. Importantly, the agreement appears to have been designed and concluded with the full and effective participation of the Cofan beneficiaries.

While it is clear that some important advances have been achieved, at the same time, the Commission has noted reports that many interior indigenous communities and groups continue to experience difficulty in legalizing their claims to territory. Indigenous leaders spoke particularly about the continuing designation of traditionally indigenous lands as “tierras baldias,” and about the bureaucratic obstacles which continue to hinder claimants seeking action or redress. There continue to be indigenous communities and groups who have yet to be accorded legal recognition of their land claims. At the time of the Commission's visit, CONFENIAE indicated that the indigenous population of the Ecuadorean Amazon numbered over 137,000, divided among seven peoples.(42) It was reported that approximately 3 million hectares had been legally recognized in favor of these peoples, benefitting approximately 55% of the total indigenous population.(43)

The Human Rights Situation of the Uncontacted Indigenous Inhabitants of the Oriente

Reports indicate that there are two or three indigenous bands in the Oriente who have rejected all attempts by outsiders to establish contact with them. It is generally accepted that a small group of Tagaeri continue to exist within the Oriente, and that two other uncontacted groups, the Taromenane and Oñamenane, possibly continue to exist in this region. The Tagaeri were reportedly driven from their homelands by the southward encroachment of Texaco's exploration activities -- they are believed to inhabit part of the concession known as Block 17.(44) Reports indicate that the Tagaeri have been threatened by company workers or bands of armed men hired to seek them out to harm or intimidate them, and by adventurers. The Commission delegation received detailed accounts of several such incidents.(45) It appears from these accounts that the Tagaeri perceive all attempts at contact as aggressive and hostile. The few dozen members of these bands who are believed to exist are presumably the last of Ecuador's uncontacted indigenous peoples.

The Government of Ecuador is obliged under Article 1.1 of the American Convention to respect and ensure the human rights of all the inhabitants of the country -- including the Tagaeri-Taromenane and any remaining Oñamenane. Fulfilling this obligation with respect to any uncontacted groups presents especially difficult and complex questions. Reports received pursuant to the Commission's on site visit indicate that the State has periodically taken steps to protect the Tagaeri-Taromenane from contact. It has been suggested that steps may be taken to extend some form of legal protection to the area they are believed to inhabit, in view of the possible opening of portions of their traditional lands to oil development. The implementation of adequate measures to protect these peoples will be of critical importance if this area is to be opened to development.

CONCLUSIONS

As indigenous representatives have explained, action taken by their people has focused on the need to protect their traditional territories, because displacement from these lands or damage to these lands “invariably leads to serious loss of life and health and damage to the cultural integrity of indigenous peoples.”(46)

The principle efforts in the struggles carried forward by the Indigenous Nationalities have concentrated on the recuperation and defense of their territories. Historically defended, we consider that these constitute the material sustenance which makes possible our present and future development, and which is additionally the foundation of our historical evolution and the permanent reference of our wisdom and our system of knowledge.(47)

The situation of indigenous peoples in the Oriente illustrates, on the one hand, the essential connection they maintain to their traditional territories, and on the other hand, the human rights violations which threaten when these lands are invaded and when the land itself is degraded. These themes are of equal importance for the indigenous peoples of the Sierra and coastal regions. For many indigenous cultures, continued utilization of traditional collective systems for the control and use of territory are essential to their survival, as well as to their individual and collective well-being. Control over the land refers both to its capacity for providing the resources which sustain life, and to “the geographical space necessary for the cultural and social reproduction of the group.”(48)

Within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival -- a right protected in a range of international instruments and conventions.

The objectives articulated by the State and by indigenous leaders in seeking to ensure the rights of the indigenous inhabitants share important common themes. The Government has characterized that:

Ecuadorean society is a unitary, pluricultural and pluriracial collective. In this context, the ethnic minorities or indigenous groups that form part of the Ecuadorean nationality have the right to their own culture and land; the indigenous population of Ecuador, demographically as well as historically, has had an important role in the formation of the country's nationality; the distinct ethnicities form their own cultural systems, a fact which has generated the multicultural character of Ecuadorean society.(49)

Indigenous representatives who have addressed the Commission have clearly stated that their objective is to develop the recognition that Ecuador is one State composed of many different cultures, ethnicities and nationalities, on the basis that unity will be found in celebrating this diversity.

RECOMMENDATIONS

The Commission recommends that public officials, particularly those involved in the administration of justice and law enforcement, receive appropriate training to respect the rights of indigenous individuals, and appropriate supervision to ensure that public services are performed in a non-discriminatory manner.

The Commission recommends that the State take the measures necessary to ensure, not only that its agents refrain from violative conduct, but that reasonable measures are taken to prevent discrimination within the private sector, and to ensure that when it occurs, it is treated as a human rights violation subject to appropriate sanctions.

Remedying discrimination also requires that attention be given by the State to ensuring a more equitable distribution of resources and social spending in areas with heavily indigenous populations.

Respect for indigenous expression, religion and culture implies special dispositions on the part of the State to ensure, for example, that bilingual education is available; that study plans and materials adequately reflect, communicate and respect the culture of the tribe; and that efforts are made to train teachers from within indigenous communities.

Given that the protection of the rights of indigenous individuals and communities affected by oil and other development activities requires that adequate protective measures be put in place before damage has been suffered, the Commission recommends that the State take the measures necessary through the INDA and other agencies to restrict settlers to areas which do not infringe upon the ability of indigenous peoples to preserve their traditional culture.

Such protection further requires that the State take the measures necessary to ensure the meaningful and effective participation of indigenous representatives in the decision-making processes about development and other issues which affect them and their cultural survival. "Meaningful" in this sense necessarily implies that indigenous representatives have full access to the information which will facilitate their participation.

The Commission encourages the State to take the steps necessary to resolve pending claims over the title, use and control of traditionally indigenous territory, including those required to complete any pending demarcation projects.

The Commission recommends that the State take whatever measures are necessary to guarantee the lives and physical integrity of the Tagaeri, and any Taromenane and Oñamenane who may survive in the forest, such as the establishment of some form of legal protection for the lands they inhabit, as their very extinction as peoples is at issue.

Endnotes

1. This figure is often cited as approximately 40%, but difficulties in identification and the lack of reliable census data on the breakdown between the indigenous and non-indigenous population leave the number imprecise.
2. See, M. Gonzalez, "How Many Indigenous People?," in *Indigenous People and Poverty in Latin America*, (G. Psacharopoulos & H. Patrinos eds. 1994), at 31.
3. Prior to the reforms, the Constitution had characterized the country as "sovereign, independent, democratic and unitary."
4. Prior to the 1996 reforms, Spanish was recognized as the official language, and Quichua and the other indigenous languages were recognized as forming part of the national culture.
5. In its March 19, 1997 submission, the Government noted that several programs had recently been initiated with the objective of enhancing the participation of indigenous peoples in areas of national production, including the Program of Community Agricultural Companies, using ancestral technologies and covering four communities, a program of credit for Integral Self-sufficient Farms, and the PRONADER programs of the Ministry of Social Welfare.

6. This Convention has been reformed by ILO Convention 169, to which Ecuador is not a party.
7. The fact that subsurface minerals pertain to and may be exploited by the State has had special implications for indigenous peoples. Traditional indigenous lands have been licensed by the State for timber-cutting on the coast, and for oil exploitation in the Amazon, and for gold-mining in the far reaches of Amazonia. As noted in a report by the United Nations Centre on Transnational Corporations, "Ecuador's oil boom will be short-lived [However] [t]he adverse impacts on indigenous peoples, and on the sustainable productivity of the forest, are irreversible." "Transnational Investments and Operations on the Lands of Indigenous Peoples," E/CN.4/Sub.2/1991/49, 17 July 1991, at 22 para. 6. This situation is further examined below.
8. The Law of Comunas recognizes in its preamble that by 1976 there were 1,244 comunas in the Highland region, compared with only eight in the Amazon region.
9. The law in effect was adopted after a different text approved in June of 1994 (Law Number 54) provoked a widespread uprising in indigenous communities throughout the country, and after the Tribunal of Constitutional Guarantees declared that Law 54 should be suspended pursuant to the filing of a claim of unconstitutionality by CONAIE. The Government then appointed a commission, including representatives of the indigenous and campesino sectors, to reexamine and reformulate some of the reforms.
10. See, "Voz de la CONFENIAE," No. 13, Julio -- Septiembre de 1994, at 8-9.
11. The law in effect replaced the Ecuadorean Institute of Agrarian Reform and Colonization (IERAC) with the Instituto Nacional de Desarrollo Agrario (INDA). The law provides that the INDA is to include two representatives each from the indigenous, "montubio," Afro-Ecuadorean and campesino social sectors to supervise the application of agrarian development policy.
12. See, "Voz de la CONFENIAE," supra n. 8, at 9.
13. Additionally, while these areas are theoretically protected from development, according to CEDENMA development is being pursued in the following: Parque Nacional Yasuni (Maxus, Elf), Reserva de Producción Faunística Cuyabeno (PetroEcuador, City), Reserva Biológica Limoncocha (Occidental), and the Parque Nacional Sumaco (Amoco-Mobil). Many of these areas have special importance to indigenous peoples as their homelands or traditional hunting grounds.
14. In the view of the Commission, for an ethnic group to be able to preserve its cultural values, it is fundamental that its members be allowed to enjoy all of the rights set forth by the American Convention on Human Rights, since this guarantees their effective functioning as a group, which includes preservation of their own cultural identity." IACHR, Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62, Doc. 10 rev. 3, 29 Nov. 1983, at 81.
15. Resolution No. 12/85, Case No. 7615 (Brazil), March 5, 1985, printed in, Annual Report of the IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1, Oct. 1, 1985, at 24, 31.
16. As this Commission has previously noted, Article 27 of the ICCPR affirms the principle that ethnic groups may require certain additional protections beyond those granted to all nationals, in order to bring about true equality among the nationals of that state. Miskito Report, supra note 12, at 76.
17. General Comment No. 23 (50) (art. 27) [of the ICCPR], adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994.
18. Yanomami Report, supra n. 13, at considerandum, para. 9. The Commission has also declared: "that for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states." Resolution of the IACHR "on the problem of special protection for indigenous populations," OEA/Ser.L/V/II.29, Doc. 38 rev., 1972.
19. M. Gonzalez, supra n. 2, at 32, citing, N. Hornberger, "Literacy in South America," 12 Annual Review of Applied Linguistics 1992 at 190.
20. In November of 1988, pursuant to a proposal offered by CONAIE, the General Regulation of the Education Law was reformed to place indigenous education under the authority of the National Headquarters of Intercultural Bilingual Education.

21. Asunto 4761, 10 de septiembre de 1993, Departamento de Planificación.
22. R. Stavenhagen, "Indigenous Peoples: Emerging Actors in Latin America," in *Ethnic Conflict and Governance in Comparative Perspective*, Working Paper 215 at 1, 12 (Latin American Program, Woodrow Wilson Center 1995).
23. F. Caportorti, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, para 585 (United Nations Centre for Human Rights 1991).
24. *Id.*, at para. 316.
25. See generally, "Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur," on "Human Rights and the Environment," E/CN.4/Sub.2/1994/9, 6 July 1994, paras. 77, 78-93. The Special Rapporteur cites, in particular, the case law of the Inter-American Commission on Human Rights dealing with human rights violations arising "as a consequence of land rights violations and environmental degradation" or "displacement from ... traditional indigenous lands." *Id.* at paras. 88-89.
26. The petition, dated June 1, 1990, was filed by the Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE) on behalf of the Huaorani People. Hearings on the petition were held on September 20, 1991 and Oct 4, 1993. The Organización de la Nacionalidad Huaorani de la Amazonia Ecuatoriana (ONHAE) became a co-petitioner in September of 1992.
27. The petitioners indicated that the lands designated as the Huaorani Protectorate comprised only 3.3% of their traditional lands. The 1990 grant amounted to approximately 33% of the lands traditionally inhabited by the Huaorani. See, CONFENIAE, *La Nacionalidad Huaorani y la Defensa de su Territorio 5-7* (Quito 1989), submitted as Annex 3 to Petitioners' submission to the IACHR of June 1, 1990.
 1. The petition further indicated that Block 16, when designated, had fallen within the boundaries of the Yasuni National Park. (protected natural areas are, in principle, not susceptible to development.) In April of 1990, however, the boundaries of the Park were changed to exclude the land designated as Block 16, which was subsequently included in the 1990 land grant to the Huaorani. The terms of the 1990 grant expressly preclude the Huaorani from impeding the exploitation of oil or minerals by Government or Government-authorized operations.
28. The petitioners alleged the imminent violation of the right to life and security of the person (Convention, Art. 4; Declaration, Art. I); the right to preservation of health and well-being (Declaration, Art. XI); the right to humane treatment (Convention, Art. 5); the right to protection of the family (Convention, Art. 17; Declaration, Art. VI); the right to freedom of residence and movement (Convention, Art. 22; Declaration, Art. VIII); the right to inviolability of the home (Convention, Art. 11; Declaration, Art. IX); the right to religious freedom and worship (Convention, Art. 12; Declaration, Art. III); the right to property (Convention, Art. 21; Declaration, Art. XXIII); and the right to privacy (Convention, Art. 11).
29. Prior to the 1995 reforms, Article 51 of the Constitution of Ecuador provided in pertinent part: "Settlement shall be organized and promoted so that the farming frontier may be extended and a well-balanced re-establishment of the population into the national territory may be obtained."
30. In a drive to stimulate agricultural production, the Government implemented a new series of agrarian laws in 1974 which predicated title on the productive use of at least 80% of the holding; land not visibly "productive" was regarded as *tierras baldías* and subject to redistribution by IERAC.
31. Many of the settlers in the Oriente are indigenous peoples from other areas, principally the Sierra as well as other parts of the Oriente, who have been displaced from their traditional territories. Other colonists are former laborers or farm workers, who came in search of land from which to provide for themselves and their families. As expressed by one settler, "to have land is to have security, life, health and family union."
32. See, E. Martínez, "Indicadores sociales y culturales de los impactos producidos por la actividad petrolera," in *Amazonía por la Vida 41* (Acción Ecológica 1994).
33. See, W. Vickers, Ph.D. (Anthropologist), Declaration Concerning the Planned Road Construction Through the Yasuni National Park and Huaorani Indian Territory (May 2, 1990), submitted as annex 7 to petition filed on behalf of the Huaorani on June 1, 1990.

34. See, James A. Yost, Ph.D. (Anthropologist), Assessment of the Impact of Road Construction and Oil Extraction Upon the Waorani Living on the Yasuni (Report prepared for Conoco Ecuador, Ltd.) (April, 1989), submitted as app. C to petition filed on behalf of Huaorani people on June 1, 1990. Dr. Yost, an anthropologist who has worked with the Huaorani for years, reported his personal experience of having buried many Huaorani and their babies who caught colds from outsiders and died from secondary pneumonia. He recommended the use of a quarantining system for non-native workers entering indigenous areas.
35. Touribe, of the Cofan village of Durano [sic]. All Things Considered, National Public Radio Broadcast, Sept. 3, 1991, at 16 (Transcript), quoted in, Note, "Debt, Oil, and Indigenous Peoples: The Effect of United States Development Policies in Ecuador's Amazon Basin," 5 HARV. H.R. JN'L 174, 177 n. 31.
36. See, E. Martínez, supra note 30; J. Kimerling, "Dislocation, Evangelization, and Contamination: Amazon Crude and the Huaorani People," in Working Paper No. 215, Ethnic Conflict and Governance in Comparative Perspective, (Latin American Program, Woodrow Wilson Center ed. 1995) at 70, 76 n.18 (citing interview with Luis Carrera, President of the Environmental Advisory Commission to the President of the Republic, Quito (Jan. 26, 1994)).
37. N. Whitten, "Amazonia Today at the Base of the Andes, An Ethnic Interface in Ecological, Social, and Ideological Perspectives," in Cultural Transformations and Ethnicity in Modern Ecuador (N. Whitten ed. 1981) 121, 134-35.
38. Id.
39. Article 72, Forestry and Natural Areas and Wildlife Law (providing that all land within such areas must either be expropriated or revert back to the State). Huaorani and Quichua communities situated in the Yasuni National Park are reportedly struggling with the fact that some of their traditional lands were included within the boundaries of the Park, thereby depriving them of any right of access or control.
40. One such Interinstitutional Commission, established in 1980, played a critical role in promoting the delimitation of indigenous territory. See, Informe para la delimitación de territorios nativos Siona, Secoya, Cofan y Huaorani (Quito, 1983)(portion submitted within annex 3 to petition of June 1, 1990 filed on behalf of Huaorani people). For example, it carried out studies which indicated that territory legalized as the Huaorani Protectorate/Reserve in 1983 was insufficient to meet their cultural survival needs, and excluded a number of bands. The Interinstitutional Commission also recommended that measures be taken to ensure the Siona and Secoya additional control over their remaining lands.
41. In at least one instance, it was reported to the Commission that completion of the demarcation of territory had been delayed. More specifically, it was reported that, while the demarcation of most of the land accorded to the Huaorani in 1990 had proceeded smoothly, the ONHAE team cutting the demarcation line realized that if it were cut according to plan, the Huaorani community of Cacataro would either be excluded from the titled lands, or would have to leave their homes, hunting grounds and forest gardens. Accordingly, they cut the line to include that community, and ONHAE has since manifested its desire to legalize this change in the line to protect those living in Cacataro. The Commission delegation was informed that this change would imply an extension in the grant of 25 kilometers.
42. See, "Voz de la CONFENIAE," No. 12, Abril-Mayo-Junio 1994, at 7.
43. Id.
44. Observers speculate that the Tagaeri are determined to remain in isolation, as evidenced by the spearing to death of two missionaries, Monseñor Labaca and Sister Arano, who entered the area they are known to inhabit in 1987 in an attempt to contact them.
45. Some of these are recounted in J. Kimerling, supra n. 34, at 91-94.
46. "Human Rights and the Environment: Final Report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur," E/CN.4/Sub.2/1994/9, 6 July 1994, para. 77.
47. CONFENIAE, "La Nacionalidad Huaorani y la Defensa de su Territorio" 1989, p. 3, (filed as annex 3 to the petition filed on behalf of the Huaorani on June 1, 1990).
48. R. Stavenhagen, supra n. 20, at 11.

49. Grupo de Trabajo sobre Poblaciones Indígenas, información recibida por los gobiernos, E/CN.4/Sub.2/AC.4/1994/2, 9 de junio de 1994 (información recibida por el Gobierno de Ecuador 14 de abril de 1994 en respuesta al proyecto de declaración sobre los derechos de los pueblos indígenas contenido en el informe E/CN.4/Sub. 2/1993/29).