Parallel Report

before the UN Committee on
Economic, Social and Cultural Rights

The Right to Adequate Food in Ecuador

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promotes the fundamental human right to food. This human right is enshrined in the International Covenant on Economic, Social and Cultural Rights of the United Nations.
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FIAN informs victims about their right to feed themselves and alerts the general public about violations of this right.
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Preface

FIAN, the non-governmental human rights organization for the right to food presents the following parallel report to the UN Committee for Economic, Social and Cultural Rights regarding the UN Periodical Report of the State of Ecuador (UN Doc. E/1990/6/Add.36). Amongst all the issues concerning the economic, social and cultural rights, FIANS's report concentrates on the human right to adequate food.

Since 1969, Ecuador has been one of the state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of the Covenant recognizes the right of everyone to an adequate standard of living for himself and his family. The right to an adequate standard of living includes the right to adequate food, the right to be free from hunger, and the right to the progressive improvement of living conditions. The state parties to the Covenant commit themselves to adopting appropriate measures for the fulfilment of this right. According to Article 11, the right to adequate food is derived from the following three obligations of the state parties:

a) The obligation to respect the existing access to food requires that the states do not adopt any type of measure which could result in hindrance of such access.

b) The obligation to protect the right requires that the state parties adopt measures to ensure that third parties do not deny people's access to adequate food by e.g. developing and implementing particular national legislation.

c) The obligation to realize the right to food means that the state has to ensure the population's access to and utilization of the resources and means providing them with adequate food. This is normally achieved through administrative measures and the creation of a legal framework. Furthermore, the states are obliged to realize this right when an individual person or a group of people is unable to enjoy the right to adequate food by their own resources..

In addition, Article 2 of the Covenant refers to two principles for the fulfilment of the ESCR:

a) The principle of "the maximum resources available to the State" demands that the governments cooperate on a national as well as on an international level and invest all their resources and means available to realize the right to food.

b) The principle of "progressively" implies the states' obligation to show significant progress in the realization of the ESCR.

Finally, General Comment No. 12 on the right to adequate food refers to the extraterritorial obligations of the state parties of the ICESCR as to their direct responsibility for human rights violations in other countries and regarding their functioning as members of international organizations, and to the responsibilities of the international organizations themselves regarding the human right to food.

1. Introduction

1.1 Geography

The Republic of Ecuador, with a surface of 255,970 km², is one of the smallest countries in South American. It is situated on the Pacific coast and borders Colombia to the north and Peru to the south.

Ecuador is divided into 22 provinces, located in the following four regions:

- The coastal region, consisting of tropical rain forest, tropical savannah, dry forest, beaches and mangrove swamps
- The mountain region, or interandine region, which is part of the Andes mountain chain
- The eastern region, covered by Amazonian tropical rain forest
- The insular region, or Galapagos islands

The various environmental conditions produce an impressive diversity of natural ecosystems, and Ecuador is considered to be one of the countries with the most biological diversity per surface unit.

1.2 Politics

In August 1979, Ecuador returned to a democratic regime. The political party system is characterized by a multi-party system for the first round of the presidential election, and a two-party system for the second round, where the losing parties are forced to form an alliance with the winning parties.

The second half of the nineties was characterized by social and political conflict, and from 1996 to 2000, Ecuador was governed by ten different presidents. The first of the three main conflicts occurred in 1995, when Vice-President Alberto Dahik fled the country after being accused of corruption. The second was the national strike in 1997 which demanded the dismissal of president Abdalá Bucaram due to mental incapacity. The third conflict took place in 2000, with the military rebellion of the indigenous population overthrowing President Jamil Mahaud for the corrupt handling of the banking crisis of 1999, which led to the dollarization of Ecuador's economy.

The military rebellion of the indigenous population was the origins of the party of the current president and ex-soldier Luio Gutiérrez, the Sociedad Patriótica 21 de Enero. Even though at the beginning of his presidency Gutiérrez counted with the support of the Confederación de Nacionalidades Indígenas (CONAIE, the Confederation of Indigenous Nationalities of Ecuador) and the Movimiento Popular Democrático (MPD, the People's Democratic Movement), in its first year, the government was confronted with constant criticism and strikes organized by the president's former allies. The conflict with the MPD and Pachakutik, the political arm of the CONAIE, was caused by the government's austere economic polices, the agreement with the IMF and the political closeness to the Partido Social Cristiano (PSC, the Social Christian Party). Other causes for the loss of support in the population was the nepotism characterizing the president's government and an alleged financing of his electoral campaign with money from drugs trafficking.

1.3 Economy

Ecuador's economy is historically based on the export of primary products such as bananas, coffee, cocoa, and oil. In the seventies, Ecuador experienced an oil boom, which provided the country with better access to international financial markets. The fall of oil prices and the reduction of loans for underdeveloped countries due to the foreign debt crisis of the eighties marked a drastic interruption of the economic prosperity of the oil era.

Even though exports increased during the first half of the nineties, they were still concentrated on a few primary products, i.e. those products where Ecuador enjoyed a comparative natural advantage and which involved hardly any value adding processing. Dependency on monoculture agriculture meant the destruction of natural forests and other natural systems due to the expansion of the agricultural and oil exploiting areas, the creation of shrimp pools and consumption of timber.

Even though Ecuador has great potential for agricultural production for domestic consumption, two thirds of the Ecuadorian population suffer hunger and undernourishment. Only a third of the cultivable land in Ecuador is used for the cultivation of products included in the basket of goods[1].

In 1999, Ecuador suffered a banking crisis as a result of the liberalization of the financial system and of the government's monetary policy in favour of the bankers[2]. One of the measures adopted to save the bankrupt banks was the freezing of the bank deposits of a large sector or the population, which resulted in a reduction of these deposits to a fifth of their initial value when they were returned one year later[3].

At the beginning of 2000, the government of the former president Jamil Mahuad decided to adopt dollarization as a political strategy to stay in power. Gustavo Noboa, who came into power after the fall of Mahuad, continued to implement this economic measure. In 2000, increased inflation and a drop in real wages led to increased poverty.

Four years into the dollarization of the economy, Ecuador is still far from achieving macroeconomic stability. At 6.1%, inflation is showing a tendency to fall but is still very high compared to the rate in other South American countries and three times higher than inflation in the United States. Loss of competitiveness of national products, the deterioration of the labour market, and a high total foreign debt[4], which concentrates a very high percentage of the general state budget, have increased in the years of dollarization and have led to the deterioration of living conditions for the majority of the Ecuadorian population.

Dollarization has also reaffirmed Ecuador's role as an exporter of primary products, in particular oil. Recently, this has been the county's main source of foreign exchange, followed by money transfers of emigrants who left the country after the banking crisis. Dependency on oil has led to a "petrodollarization" of the economy. To obtain foreign exchange, which is needed to maintain this monetary system, there is uncontrolled encouragement of exploration and exploitation in areas with natural resources, which contributes to increased social conflict in Ecuador.

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[1] See: *Ecuador Su Realidad*. 2003. Page 170.

[2] The crisis was reflected in a reduction of GDP by 45%, a reduction of the per capita income by one half from $1,600 in 1998 to $865 in 2000 (according to the IMF) or to $1,051 (according to the Banco Central del Ecuador), in a devaluation of 200%, inflation of 60%, and a drop of real wages by 40%. See: Frente Social. *Agenda de Desarrollo Humano*. 2003.

[3] Frente Social. *Agenda de Desarrollo Humano*. 2003.

[4] The debt increased from 13,564 million dollars in 2000 to nearly 16,600 million in 2003. See: *Análisis de Conyuntura*. 2003.

1.4 Population

According to the census of November 2001, Ecuador has a population of 12,090,804. While in 1950 the rural population constituted 72% of the total population, the proportion decreased to 38% in 1998. This drop was caused not only by an increase of the total population but also by the rural crisis due to lack of land and employment opportunities[5].

Ecuador has a high ethnic diversity. The indigenous population consists of 12 different nationalities[6], which inhabit the mountain region and the eastern region of Ecuador and make up 22% of Ecuador's total population. The indigenous population is the most socially organized sector in the country. The Afro-descent population (blacks and mulattos) constitute 56% of Ecuador's total population, and, unlike the indigenous population, their level of organization and social leverage is very low. The indigenous and Afro-Ecuadorian population involved in agricultural production are the ethnic groups most affected by poverty[7].

The national illiteracy rate in Ecuador is 10%, and the provinces with the highest proportion of illiteracy are the regions with the highest concentration of indigenous population.

2. The Right to Adequate Food in the Ecuadorian Constitution

The main responsibility to guarantee the unrestricted fulfilment of the right to adequate food lies on the national authorities of Ecuador. It includes the obligations established in the various international covenants and agreements accepted and ratified by the government, but also the government's political will to recognize the right to an adequate standard of living, including the right to food.

Ecuador approved the Universal Declaration of Human Rights and is one of the state parties of the ICESCR. It has also accepted the 1990 Convention on the Rights of the Child, which also refers to the right to food. Finally, Ecuador also ratified the ILO Convention No.169 of the OIT, which refers to the right to property and ownership of the land traditionally inhabited by the indigenous and Afro-Ecuadorian communities.

The state parties of the ICESCR commit themselves to adopting the appropriate measures to ensure the fulfilment of the right to adequate food. In accordance with Article 2 of the ICESCR each State Party to the Covenant has to take steps "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights" recognized in the Covenant.

[5] See: *Ecuador Su realidad*. 2003. Page 122.

[6] The Constitution of 1998 recognizes the self-definition of the indigineous peoples as nationalities. The concept of plurinationality refers to the existence of various nationalities within a nation, who share the same history, language, and culture.

[7] See: Gaybor. 2003.

This commitment was renewed in 1966 by the world leaders, including Ecuador, within the context of the FAO World Food Summit Declaration and Plan of Action (CMA), where the states declared that they would do everything in their power to implement the regulations of Article 11 of the International Covenant on Economic, Social and Cultural Rights. In the Plan of Action the governments promised to devote their political will and their common and national dedication to achieve food security for everybody and to make a constant effort to eradicate hunger in all countries, with the immediate objective of reducing the number of undernourished people to half of the current level (1996) by not later than 2015[8].

As one of the state parties to the ICESCR, Ecuador has to adopt, amongst others, the necessary legislative measures to ensure the fulfilment of the right to an adequate standard of living, including the right to adequate food. The 1998 Constitution includes the following articles, which explicitly recognize and guarantee the right to adequate food:

a) In Article 23, the state guarantees the right to a standard of living that ensures health, food and nutrition, housing, clothing, medical care and the necessary social services, and in Article 42 the right to health assistance and the promotion and protection thereof, by developing food security.

b) According to article 43 it is the state's responsibility to promote culture for health and life with an emphasis on food and nutritional education for mothers and children.

c) Finally, in Article 49, the state assures and guarantees the right to integral health and nutrition for children and adolescents, and that it will adopt measures to ensure the following guarantees: priority attention for children under six years, guaranteeing nutrition, health, education and daily care.

Furthermore, the indigenous and Afro-Ecuadorian peoples have achieved the recognition of their collective rights concerning their land, constituting the base of their existence, in Article 84 of the Constitution of the Republic of Ecuador. In this article, the Ecuadorian state commits itself:

a) to preserve the imprescriptible property of the communal land, which is unalienable, non-embargable and indivisible,

b) to maintain the ancestral ownership of communal land,

c) to preserve and promote the practices of handling the biodiversity and the natural environment,

d) not to displace the indigenous and Afro-Ecuadorian peoples.

Even with sufficient national and international legislation guaranteeing the right to adequate food, the Ecuadorian government has still not achieved the fulfilment of the obligations incurred, as will be demonstrated later in this report.

[8] See FAO website

3. Realization of an Adequate Standard of Living

The social policy aimed at confronting the issue of extreme poverty in Ecuador is reduced to the granting of solidarity and poverty allowances, and to the Special Program of Food Security of Ecuador (PESAE).

At present, it is estimated that 8,600,000 people in Ecuador live in poverty, which represents 70% of the total population. Undernourishment affects 48% of the national population and 64% of the population in the cantons with a high concentration of indigenous population. 55% of all children under five years suffer undernourishment, 48.4% of them of chronic undernourishment and 4% of extreme undernourishment. 66% of the population consume less than 80% of the adequate calorie intake, and 46% under 80% of the adequate protein intake. 59% of all housing has no drinking water[9].

The cost of the basket of goods amounted to 378.34 dollars in December 2003, while the average income for a family of four and a calculated 1.5 basic wage earner was 253.17 dollars[10]. This means that at present a family cannot consume a third of the basic basket of goods, i.e. the basic minimum for their subsistence.

The present report wants to examine to what degree the Ecuadorian state is actually fulfilling its obligation to respect, protect and guarantee the enjoyment of a dignified standard of living, particularly regarding the right to food. The following documentation will identify:

a) the most vulnerable groups,
b) the most important processes which deprive the population of the access to their productive resources and of their capacity to feed themselves,
c) the state's failures regarding their obligation to ensure the population's enjoyment of the right to adequate food,
d) and what the state ought to do to improve the standard of living of the Ecuadorians.

[9] See: *Ecuador Su Realidad*. 2003. Page 292.
[10] See: IDIS. Page 27.

4. Documentation of Violations of the Human Right to Food

4.1. National Obligations of the Ecuadorian State

According to the General Comment No. 12, "the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement". "The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear."[11] The basic content of the right to adequate food implies:

a) "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture."

b) "The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights."

c) "... access to economic resources" such as land and "measures to respect and protect self-employment and work ..."[12]

As stated above, the right to adequate food, like any other human right, imposes three types of obligations on the state parties:

a) The obligation to respect human rights determines the limits of the state. The state should generally not interfere in the living conditions of its inhabitants nor in their capacity to maintain themselves. Only if national legislation hinders the fulfilment of the right to food, will it be necessary to adopt immediate measures to correct this situation.

b) The obligation to protect human rights requires the adoption of measures to guarantee that other actors than the state itself deprive the population of the access to adequate food. This implies the establishment of an appropriate legal framework, i.e. legislation and sanctions, in areas such as food security and nutrition, and also includes environmental protection and the protection of land tenure.

c) The obligations to fulfil the right implies the implementation of state measures which promote the access to economic resources. In cases of emergency, direct help will be required to ensure at least that the people affected do not suffer hunger.

Each of the state parties commits themselves to implementing the measures and legislation, as well as other state activities to fulfil their obligations incurred by the ICESR and to not violate the right to adequate food.

[11] See Report of the Special Rapporteur on the right to food. UN document E/CN.4/2001/53. Paragraph 14

[12] See General Comment No. 12 on the right to adequate food. UN document E/C.12/1999/5. Paragraphs 6, 8, and 26.

The following presentation of cases identifies some of the vulnerable groups denied access to food and economic resources. The cases reveal that the Ecuadorian state is not fulfilling its national obligations incurred by the ICESCR.

4.1.1 Case 1: Fumigation within the Plan Colombia is forcing Ecuadorian farmer and indigenous populations to abandon their land on the border with Colombia

Fumigation in the Colombian departments of the Cauca, Nariño, and Putumayo is being carried out within the framework of the Plan Colombia[13] to eradicate illegal cultivation of coca. The programme of aerial fumigation was initiated at the end of 2000 and since then more than 170,000 hectares have been fumigated. In the last three years, there have been progressive and indiscriminate fumigation of both illegal and legal crops, which affect the poorer population of this area, including the inhabitants of the province of Sucumbíos, Carchi, and Esmeralda on the border with Ecuador. At present, FORCCOFES, the Federation of Peasant Organizations on the Border Area of Sucumbíos, is collecting complaints from farmers and the indigenous population against the fumigation in the province of Sucumbíos in Ecuadorian Amazonia. It is calculated that 25,000 people are affected in this province alone, which has so far suffered the greatest impact.

The mix of herbicides used for the fumigation is Roundup Ultra. It contains glifosato, and the concentration used in Columbia is 18 to 26 higher than the concentration permitted in the United States. The US company, Monsato, who manufactures Roundup, states that this herbicide impedes the synthesis of proteins and produces phytoxicity in plants. Furthermore, the label warns of the possible damage caused by the herbicide on crops and plants which the treatment was not aimed at[14]. In 2001 it was calculated that 100% of the population of the border zone was intoxicated by the fumigation with Roundup Ultra along a strip of 5 km, and 89% along a strip of 10 km[15]. Despite the numerous complaints on the impact of the fumigation on the border area population's crops and health[16], the Colombian government has continued with the fumigation in this zone[17], arguing that glifosato is not hazardous, and has continued to spread Roundup directly around the tributaries of the Río San Miguel on the northern border with Colombia[18].

The majority of the peasant and indigenous communities inhabiting the border area with Colombia rely on the cultivation of agricultural products for their subsistence[19]. Fumigation has destroyed their corn, yucca, rice, cocoa and banana crops, and has polluted the rivers and wells used as sources of drinking water. The population has also exhibited abnormalities of the nervous system, problems with the digestive system and skin diseases. The most affected members of these communities are the children, who suffer from spots on the skin, itching, headache, nausea, fever, and stomach pain.[20]

[13] The Plan Colombia is a programme financed by the US government to end druck trafficking and eradicate the illegal cultivation of coca and poppies in Colombia.

[14] See: *Informe Técnico*. 2001.

[15] See: Maldonado, Buitrón, Granda and Gallardo. 2001.

[16] On September 11, 2002, the Quichua ommunity of San Franciso 2, in the province of Sucumbíos presented charges in the USA against Dyn Corp, a company in charge of the funigation at the border.

[17] The last fumigations where carried out from July 4 to 8, 2003. *Misión de verificación*. July 2003.

[18] See: *Mision de Verificación*. 2002.

[19] See: Maldonado, Buitrón, Granda and Gallardo. 2001.

[20] See: *Misión de Verificación*. 2003.

On January 24, 2003, constitutional protection was granted to approximately 2,600 families in the province of Sucumbía affected by the fumigation. The failing of the state in this problem forced the various state organs to adopt emergency measures to help the population affected and to avoid further fumigation at the border. On March 11 of this year, the national congress sent a resolution to the Ecuadorian government which demanded from the State of Colombia that there be no more fumigation within 10 kilometres of the border and that the Colombian state should pay compensation to the affected population for damage caused to their health and food. Due to all these demands, the Minister for Foreign Affairs formed the CCTE (Ecuadorian Commission for Science and Technology). This commission has however restricted itself to waiting for further instances of fumigation and to then examine the impacts, even though there have already been a sufficient number of investigations verifying the damage caused.

As one of the state parties of the ICESCR, Ecuador is obliged to offer immediate protection to the communities affected by the fumigation within the Plan Colombia as this is an extremely serious situation, and has resulted in a food and health crisis and a wave of internal migration in Ecuador. The fact that the Ecuadorian state allowed the Columbian state to damage the health, crops, and animals of the people in the border areas, thus forcing them to leave their land without receiving adequate compensation, and failed to respond and react rapidly and objectively, constitutes a non-fulfilment of Ecuador's commitment to protect and fulfil the access to the resources for the entire population, and is thus a clear violation of the economic, social and cultural rights, and in particular of the right to adequate food.

4.1.2 Case 2: The oil companies CGC from Argentina, Burlington Resources from the United States, and Perenco from Great Britain, are exerting pressure on the Ecuadorian government to exploit the oil in the territory of the community of Sarayaku and in the province of Pastaza.

Since 2000, approximately 1,000 indigenous inhabitants of the Quichua community of Sarayaku in the Amazon province of Pastaza have strongly opposed the conducting of seismic prospecting in the territory which they have property rights to. The use of the territory of the community of Sarayaku for purposes of oil exploitation will destroy the economic resources of this indigenous community and will as a consequence impede access to the group's sources of food. This will cause hunger and undernourishment.

In 1996, the Ecuadorian government and CGC, an Argentinean oil company, signed up to an oil exploitation contract in "Bloc 23" of the province of Pestaza, involving a total of 200,000 hectares, 135,000 of which are within the territory of the community of Sarayaku. In 1999, the oil company Chevron, which in 2001 merged with Texaco to form ChevronTexaco, became a partner of CGC. At the beginning of February 2003, CGC revealed that ChevronTexaco had sold their holding in July 2001 to the US oil company Burlington Resources Inc. According to a press release, Burlington Resources for their part rented out half of their holding to the European company Perenco.

In November 2002, CSG/Burlington arrived in the Sarayaku territory and started seismic prospecting, setting off explosives charges day and night in part of Bloc 23.

In January 2003, abuses were committed against the Sarayaku people. Military troops attacked the Tiutihualli Camp, set up by moderate elements of the Sarayaku to defend themselves against the permanent harassment by the oil company. After this incident, the community's struggle was backed by the CIDH, the Inter-American Commission on Human Rights, which in May demanded the Ecuadorian government take precautionary measures in this conflict, to ensure the lives and physical integrity of the

community members and to suspend all oil exploitation activities until the oil company reached an agreement with the community.

Contrary to the demands made by the CIDH, the Ecuadorian government started to militarize the Sarayaku territory with the objective of guaranteeing the safety of the CGC workers, to allow them to continue with the seismic exploration. The lack of will of the Ecuadorian government to resolve the problem of the community of Sarayaku became even clearer when the government refused to intervene after the physical and verbal aggression of December 2003 against more than 120 inhabitants of Sarayaku on their way to the city of Puyo where they wanted to take part in a peaceful demonstration march for the defence of the collective right of the Sarayaku people and against oil exploitation in their ancestral territory. Furthermore, the passiveness shown when unknown aggressors attacked the Sarayaku president, Marlon Santi, the day before his journey to attend a meeting in Washington called by the CIDH on March 3 of this year, and the non-attendance of Dr José María Borja, the General Procurer of the State, at this meeting is further proof of the State's failure to fulfil its obligations, even those obligations towards organs of international justice.

Currently, this community is demanding the Ecuadorian state declare the Sarayaku territory a zone of tourist development through an executive decree in order to stop the destruction of natural resources, which are the community's only source of subsistence. Oil exploitation in the Sarayaku territory constitutes a threat to the traditional production systems and methods, such as fishing and hunting, and thus represents a threat to the community's right to food. At present, the situation is becoming increasingly tense as this February the Minister of Energy and Mining declared the resumption of seismic exploration in Bloc 23,

The climate of violence created by the militarization of the conflict by the government in the ancestral territory of Sarayaku to force the continuation of oil exploitation, the non-fulfilment of the precautionary measures dictated by the Inter-American Commission on Human Rights (CIDH), the indifference towards violent acts against the community of Sarayaku and the failing to implement an executive decree declaring the Sarayaku territory a tourist area are a clear non-fulfilment of Ecuador's obligation as state party to the International Covenant and Economic, Social and Cultural Rights (ICESR) to respect and protect the human right to food of all its inhabitants.

4.1.3 Case 3: The Ecuadorian government has not solved the problem of the loss of the mangroves, which provides the source of food for the coastal communities, and still permits the destruction of the remaining forests of this ecosystem for natural resources.

The source of food and the main source of income for the majority of the families living on the outer edges of the mangrove forest were historically based on the collecting, hunting, fishing and marketing of mangrove resources. Since the 1970's, these activities have slowly decreased due to the indiscriminate felling of the mangroves for the construction of shrimp pools. Women are the sector of the population most affected by the destruction of these ecosystems as 40-80% of their income is accounted for from collecting mangrove products.[21]

Shrimp farming was promoted by various governments and the Word Bank, and has reaped large earnings at the cost of illegal occupation of public land[22]. In this time, the shrimp pools have destroyed more than 70% of the surface covered by mangrove forests and have polluted the sources of drinking water for the local population through the disposal of pesticides and the toxic heavy metals contained in

[21] See: Greenpeace 2003. Pages 25-27.

[22] 72% of the shrimp pools are illegal.

these pesticides, and are thus jeopardizing the food security of the poor population of the coastal areas. One example is the extremely high mortality rate of molluscs and crustaceans reported in the mangrove estuary of Muisne-Cojimies. In other areas some shrimp farming companies have even barred the local communities from access to community land.

The recent reduction of mangrove felling has been achieved by the communal organization of the affected peoples, and caused by the fact that the shrimp industry could not maintain the high rate of mangrove felling of the past, by shrimp diseases such as the white spot, the result of mismanagement in the shrimp industry, and by the overuse and abuse of chemicals in the shrimp pools.

There is however an attempt to reactivate the shrimp industry to reachieve a high level of exports. This project counts with the financial support of the government and multilateral agencies such as the World Bank and the BID (Inter-American Development Bank), and is backed by the Trole II Act (Ley para la Promoción the las Inversiones y la Participación Cuidadana, the Law for the Promotion of Investment and Civil Participation), which promotes investment in the mangrove forests. The plans constitute a threat to the remaining mangrove areas in Ecuador, only about 140,000 of the original total of 380,000 hectares. The project has led to an increase of mangrove felling in the ecological reserve of Cayapas Mataje in the north of the province of Esmeraldas, and in the mangrove reserve of Churute in the province of Guayas as the industry needs new virgin areas and clean forests to continue its shrimp farming activities.

Despite the legislative advances achieved due to the pressure exerted by the mangrove communities over the last few years, the Ecuadorian government has still not completely solved the problem of the loss of the resources threatening the coastal communities. Since June 2001, the mangrove user communities, with the support of the National Coordinator in Defence of the Mangrove (C-Codem), have been promoting the Mangrove Preservation Act (Ley de Conservación del Ecosistema del Manglar). This act was proposed to create one legal body which collects all the legislation concerning the national mangrove resources, which at present is scattered around innumerable laws and official documents with judicial power, and which paradoxically have led to increased impunity within the shrimp industry.

The act proposes reforestation projects in destroyed areas, and the continuation and extension of concessions to the communities regarding the mangroves, investigations into the capacity of the mangrove forests and a moratorium on shrimp farming, etc. At present, 400 ancestral mangrove users from all over the Ecuadorian coast are fighting for the approval of this act in the National Congress. The Ecuadorian government's support in the next months will be crucial for the implementation of this act.

Regarding the importance of the mangroves for the development of the local communities as a source of food security, work, and socio-cultural cohesion, the Ecuadorian government is not fulfilling its obligation to protect the right to food, as it allows the shrimp industry to continue their destruction of the remaining mangrove forests in the mangrove reserves of Cayapas Mataje in the north of the province of Esmeraldas and the reserve of Churute in the province of Guayas. The Ecuadorian government is also failing to guarantee the human right to food by not utilizing the maximum of their available resources to solve the problem of the loss of the resources of this population group of approximately 1,200,000, whose ancestors used the resources of the mangrove ecosystem and whose access to traditional sources of food has been destroyed without any form of compensation.

4.1.4 Case 4: The Ecuadorian government violates the right to adequate food of the workers in the banana industry by not ensuring compliance with the minimum subsistence wage and not promoting a free trade union system for these workers. *By FENACLE/ BanaFair.*

The right to adequate food of the rural peoples in the provinces of El Oro, Guayas and Los Ríos is threatened and violated by the activities of various national and multinational concerns in the banana industry and the passive attitude of the government regarding the supervision of these activities. As a consequence, thousands of workers receive extremely low wages, are dismissed for being members of a trade union, or are fully disabled and unable to work due to the immense use of pesticides in the banana industry.

For a long time now, Ecuador has been the world's number one banana exporter. The banana industry comprises approximately 6,000 producers and over 360,000 employees, who work in the plantations of the coastal provinces in the south of Ecuador. While the big banana producers normally earn immense profits, the vast majority of the workers still work without receiving a fair wage, in hazardous environmental conditions and receive no social benefits. Less than 1% of the workforce is organized in a trade union. The situation of the emigrant workers from Peru is even worse as they receive only half the salary of an Ecuadorian worker.

The hacienda Los Alamos, situated on kilometre 64 on the road between Puerta Inca and Naranja, sells its bananas under the trademark "Bonita Banana" and is owned by Alvaro Noboa Pontón, ex-Republic of Ecuador presidential candidate. On February 25, 2002, about 1,200 workers decided to form an organization to act against the physical and economic injustice, repression, and abuse their employers were making them suffer. FENACLE, the Federation of Small Farmers and Indigenous People of Ecuador, advised the workers and immediately presented a series of petitions to the work authorities. The authorities however informed the company, which reacted by dismissing 123 workers, who were the main leaders and supporters of the action.

In May 2002, the workers decided to go on strike to demand payment for overtime, payment of contributions into the social security system, permanent contracts, housing and food. The strike only lasted eight days because on May 16, at 2 a.m., the banana company with about 300 armed men stormed Los Alamos, attacked the workers, their families and children, forcing them to leave the company and stole their belongings. Mauro Romero, aged 33, suffered an injury to this right leg and was left bleeding for approximately two hours without receiving medical care as the aggressors threatened anybody who tried to help. His leg had to be amputated the same day, and Romero is disabled and cannot work again. Even though the perpetrators were arrested, the mayor of the town achieved their release.

Still today, Nobia persecutes the trade union members in his company. In October 2003, he dismissed 333 workers for signing up to trade unions and claiming their legal rights. FENACLE keeps pressurizing the government to implement regulations which promote trade union membership of the workers and guarantees dignified employment and a minimum wage. In Los Alamos there are 25 "terciarizadoras fantasmas", a term recognized even by the work authorities. It refers to the phantom contracting companies used in Ecuador since the flexibilization of the labour market to reduce the social benefits the workers are legally entitled to, such as contributions to the social security system, bonuses and others. In this system, the workers rotate jobs ever six month without knowing which employer they are working for.

Currently, the minimum subsistence wage of a worker who works eight hours is set by law at $131 per month. In reality though the workers in the banana industry earn wages between $80 and $140 a month

and work 10 to 12 hours per day. This implies that the wage earned by the workers in the banana industry is not sufficient to cover the cost of the basket of goods, which currently amounts to $370 per month. It is not even high enough to cover the cost of the basket of poverty, amounting to $260. According to investigations carried out by Human Rights Watch (2002), two well-known companies in the banana sector, Dole and Noboa, also contract minors. The organization discovered that Ecuadorian children work in the plantations from the age of eight and under dangerous conditions such as exposure to toxic chemical substances, handling plastic treated with insecticides, working with fungicides and pesticide bombs for fumigation, using sharp tools and having no access to drinking water and sanitary installations.

Violence in the banana plantations is increasing due the flexibilization of the labour market and the current Ecuadorian labour code, which both restrict the workers' fundamental rights by limiting the right to organize, the right to collective employment agreements, and the freedom to strike.

The example of the banana industry shows clearly that the Ecuadorian state is not only violating labour rights, but also the human right to food of the workers in the banana industry by allowing the banana industry not to comply with the minimum subsistence wage stipulated by law. The fact that the minimum subsistence wage does not allow for an adequate standard of living for workers and their families constitutes another violation of the ICESCR. This means that the government is not respecting and guaranteeing the food security of the workers in the banana industry.

Finally, the Ecuadorian state is also violating ILO Conventions 87 (freedom of association) and 98 (collective bargaining), which were ratified by Ecuador. The Republic of Ecuador is also violating Article 8 of the ICESCR, which confirms the freedom of association as a fundamental human right.

4.2. Obligations and Responsibilities of International Organizations and the Private Sector

According to the ICESCR, the Ecuadorian government is obliged to guarantee the right to adequate food for the entire population without any discrimination against a particular social group. General Comment No. 12 on the right to adequate food (E/C.12/1999/5) implies the Ecuadorian state's obligation to ensure that the activities of the private sector or the agreements with international organizations do not impede the population's access to adequate food. The General Comment also refers to the external and international obligations of the state parties to the ICESCR, which commit the states to ensure that no natural or legal person from their country nor projects financed by the international organizations of which the states are members commit violations of human right in a determined country. The General Comment also refers to the direct obligation of international organizations to respect, protect and guarantee the human right to food in a country.

In the following there is first a presentation of the case of the construction of the new heavy crude oil pipeline (OCP) by foreign oil companies and mainly financed by the German West LB bank. The case shows that the lack of government measures to prevent pollution of the rivers and small streams, which in most cases are the only source of drinking water for the poor living along this oil pipeline, represents a violation of the Ecuadorian State’s obligation to protect the right to access to water sources free of chemical pollutants, an obligation imposed on the State of Ecuador by General Comment No. 15 on the right to water (E/C.12/2002/11). The case is also a clear example to demonstrate that, in accordance with General Comment No. 12, the governments of Canada, Spain, Argentina, the USA, Italy, and Germany, who all form part of the consortium, are not protecting the right to adequate food of the population affected by the OCP project because these states do not regulate or supervise the activities of their companies in Ecuador.

The second case shows that the living conditions of the Ecuadorians, in particular of the most vulnerable social groups are deteriorating due to the Structural Adjustment Programmes (PAE) and their complement, the monetary system of dollarization, and due to the implementation of laws to speed up structural adjustment in Ecuador. The Ecuadorian government is thus violating Article 11 of the ICESCR, which refers to the right to an adequate standard of living, the right to be free from hunger, and the right to the progressive improvement of living conditions. The presentation of the case also emphasize the responsibilities of international organizations, such as the International Monetary Fund (IMF), the World Bank (WB), and the World Trade Organization (WTO), in accordance with General Comment No. 12 and regarding the deterioration of the living conditions of the Ecuadorians.

4.2.1 Case 1: Impact of the construction of the heavy crude oil pipeline (OCP) on water *By Nathalie Weemaels*

The OCP pipeline is 503 kilometres long and transports crude oil from Ecuadorian Amazonia across the Andes to the Pacific coast. The pipeline runs through protected areas, tropical rainforests, mountain forests, plateaus and dry tropical forests, as well as through agricultural and urban areas. The pipeline's construction was widely condemned by Ecuadorian environmentalists and farmers, and was carried out in an authoritative style and with the use of violence. In fact, during the two years of the OCP construction, 73 people were arbitrarily arrested for peacefully resisting the construction of the oil pipeline [23].

The construction of the OCP resulted in many negative effects on the environment, and in particular on the water resources. These were due to negligence on the part of the constructor, the Argentinean company Techint, due to the poor quality of the work, and the lack of economic resources to mitigate the negative impact on the environment, in particular on the property of the peasants living in poverty. This is unacceptable considering that the costs of the project amounted to 1,400 million dollars.

- ***Impact on the land crossed by the OCP***

The careless construction of the access roads and the right of way (DDV) for the OCP resulted in the blocking and pollution of innumerable springs and streams. An investigation on 47 kilometres of the DDV for the OCP conducted in May 2002 revealed the blocking and pollution of 157 streams and springs. Alone the analysis of the 28 kilometres in the province of Sucumbos reported the blocking or pollution (and subsequent rendering of at least 139 springs and streams unusable, which means an average negative effect on water sources every 200 metres.

The blocking produced temporary or permanent flooding in various hectares of pasture or areas of cultivation, and led to the pollution of wells and the death of livestock caused by poisoning or other factors. Even when the flooding is only temporary, the flooded pasture is covered in fungus, which renders the area unsuitable for grazing or even detrimental to the health of the livestock. Furthermore, the creation of still water is an ideal ground for the reproduction of insect vectors of tropical diseases, such as malaria.

The lack of remedial measures for the heaps of removed soil and vegetation led to the disappearance or blocking of springs and the pollution of wells, springs, streams, and rivers, which often constitute the only source of drinking water for the local families. When confronted with this situation, many families were forced to search for other water sources of inferior quality or had to carry on using the contaminated water sources.

[23] See: Weemaels 2003.

There have been numerous effects resulting from water contamination or the loss of springs on livestock. In many cases, farmers had to sell their livestock because they could not water the animals. This represented an economic loss for the families concerned. In fish-farming, the soil pollution of the water resulted in the mass death of fish and the loss of fishtanks. In most cases, the farmers received no compensation for their losses, which are not considered in the agreement signed with the OCP constructor.

- ***Impact on the municipal drinking water system***

The construction of the OCP and in particular the water pipes crossing the right of way of the pipeline caused damage to these water pipes in towns, such as El Chaco and El Reventaor, and left many families without water over several days.

In the case of El Reventador, where the construction of the OCP left 10 families and the 80 boarders of the local school without water over a period of two weeks, the company promised to provide the population with piped water. This water turned out to be yellow and polluted and it provoked irritation on the skin of those who bathed in it. In order to avoid such effects, the inhabitants of El Reventador have gone back to bathing in the river.

On April 8, 2003, the transport of the heavy machinery for the OCP across the SOTE oil pipeline provoked the spillage of more than 22,000 barrels of crude oil into the Laguna de Papallacta. This lagoon provided the capital Quito with drinking water. 11 months after this incident, neither the rivers affected by the spillage, nor the lagoon have been correctly remediated and it is to be assumed that the city of Quito will have to manage for many years without this water, which was originally of supreme quality. At present, the Laguna de Papallata is surrounded by two oil pipelines, with a total transport capacity of 850,000 barrels of crude per day. There are however no adequate and efficient contingency plans which could help to prevent the repetition of a similar disaster.

- ***River pollution through spillage***

During the construction of the OCP, there were at least three incidents of spillage in the OCP pump stations Amazonas, Cayagama and Páramo. The subsequent cleaning and remediation work was insufficient and left traces of pollution in the rivers involved.

On March 1, 2003, there was an oil spillage in the Amazonas Pump Station of the OCP, situated by the Lago Agria. The spillage of 60 barrels of crude oil into the lake was caused by negligence of the workers and polluted the Teteye, a stream flowing through the town areas of El Cisne, Sindicato de Chóferes and Los Ceibos. On March 6, there were still oil stains on the stream, even though the cleaning work had already been concluded.

On June 19, 2003, the explosion of an exchange tank in the Cayagama Pump Station provoked an oil spillage which polluted the Rio Dué and the valley of the Río Dashinu.

On August 20, 2002, there was an oil spillage in the Páramos Pump Station of the OCP, which polluted the Río Quijos. In this case there has been no remediation of the river, and on October 5 there were still oil stains on the river banks.

- ***Conclusion***

The OCP consortium's negligence and lack of concern for the water, nature and the population is worrying, particular regarding the drinking water supply for cities and towns such as Quito and Mindo. Furthermore, the underground construction of the entire OCP contributed to increase this anxiety, as there is no possibility of an independent monitoring system for future spillage and such an incident would pollute the streams and rivers without being noticed. It is most likely that in the case of a small oil spillage, the company will carry out no repair works to stop the leakage as this would involve complicated processes and costs above the value of the oil lost.

The main financier of the OCP was the German WestLB bank, and the heavy crude pipeline started to operate in January of 2004. However, it conducts less than 180,000 barrels per day, a third of its transport capacity. In order to fill the pipeline and make the investment more profitable, new areas of virgin tropical forest and more indigenous territories will have to accept the rules of the oil companies, and will thus have to accept destruction and death in exchange for worthless presents and unfulfilled promises.

4.2.2 Case 2: Structural adjustment and dollarization

The drop of oil prices and the reduction of loans for underdeveloped countries due to the foreign debt crisis of the eighties, interrupted the era of Ecuador's economic prosperity and revealed the immense discrepancy in the distribution of wealth, the problems in the productive system, general corruption, and other characteristics of the system which had so far remained hidden[24]. All these structural problems have been increased by the various Structural Adjustment Programmes (the Ecuadorian PAE), implemented since the eighties.

Since 1982, Ecuador has continuously negotiated its foreign debt with its international creditors, and is progressively incorporating the recommendations and conditions of the International Monetary Fund (IMF) and the World Bank[25] within the Structural Adjustment Programmes to be able to obtain new loans or to renegotiate the old debt. According to a study on the economic and social impact of the structural adjustment policy in Ecuador ("Evaluación de los impactos económicos y sociales de las políticas de ajuste estructural en el Ecuador 1982-1999") backed by the World Bank, this policy has produced an even more extreme income concentration and has aggravated poverty for the majority of the population[26].

One of the main objectives of the more than a dozen Letters of Intention signed with the IMF was to guarantee the servicing of the foreign debt. With this instrument, the IMF exerts pressure on the government to assign a high share of the state budget to the repayment of the foreign debt. The total foreign debt increased from 13,564 million dollars in 2000, to nearly 16,600 million dollars in 2003[27], while the corresponding state budget allocation for the repayment of the debt grew from 18% in 1980 to around 55% in 2000, even reaching 70% in 1997. Currently, the weight of the service of the public debt in the state budget amounts to 40%[28]. Parallel to this, assignations for social purposes, such as education, health and agricultural development were cut to nearly 50% of the state budget in 1980 and to 17% in 2003, a development which has led to deteriorating living conditions for Ecuadorians.

[24] See: Acosta 2000. Page 141.
[25] See: Acosta 2000.
[26] See: Salgado 2002.
[27] See: ILDIS 2003. Page 71.
[28] See: ILDIS 2003. Page 71.

- ***The Agricultural Development Act (Ley de Desarrollo Agrario)***

Within the process of liberalization of trade within the Structural Adjustment Programmes (the Ecuadorian PAE), the country has ben almost fully open to the world market since joining the WTO in 1996 when the majority of Ecuador's trade restrictions were eliminated. With this step, Ecuador has consolidated its role as an exporting country of primary products, i.e. raw materials requiring little technological know-how and value-adding processing. The measure was accompanied by a relative deterioration in manufacturing industry, causing high unemployment rates, and by a reduction of state support for the manufacturing of products for domestic demand. Effectively, the assignations of the state budget for the agricultural sector decreased from 4% in 2000 to 2% in 2003. These tend to be permanently reduced and to be mainly directed at the agroindustrial export sector, a development which constitutes a risk for the country's food sovereignty.

The Agricultural Development Act of 1994 (Ley de Desarrollo Agrarion)[29], established a new legal framework, promoting free trade of land, increased production of agroexports, and land sales by small to medium-sized farmers. The Act has increased penalization for unlawful occupation of land, the eviction of peasants and members of agrarian communities from their land and plundering without respecting ancestral properties, property titles, and the collective rights of the indigenous and peasant communities.

In Ecuador, 1.2% of landowners control 66% of the total arable land, while 90% of small farmers own plots of land smaller than 10 hectares, which are mainly situated on steep slopes and hills and are difficult to cultivate.[30] In recent years, there has been an increase in agricultural production in cultivated areas of more than 2.500 hectares, and at the same time an accelerated process of fragmentation of small properties of less than 1 hectare. The following example shows how the Agricultural Act, which is still in force, has promoted the concentration of ownership of big land properties in the hands of a few people.

- ***The case of the members of the agrarian community of the Península de Santa Elena***

The Península de Sana Elena is today deforested and semi-desert due to the excessive exploitation of its resources carried out from the sixties and which set off the migration of the major part of the peninsula's population to big cities, mainly to the city of Guayaquil. Of the more than one million people who formerly inhabited the peninsula, only 265,000 people remain, and mainly live off tourism and the shrimp industry[31].

Apart from being an area particularly vulnerable to natural phenomena and not having an adequate infrastructure, the main restriction preventing an increase in agricultural production for small farmers is the shortage of water[32]. This is also the reason why in the eighties the Ecuadorian government initiated an irrigation project, where the water was pumped from two stations to a system of primary channels and reservoirs. This project required investment in the secondary irrigation system, i.e. pumps, pipes, and/or secondary channels, drip irrigation systems, etc.

Apart from the large obstacles for the small producers to obtain loans, needed to invest in the mentioned secondary systems from the financial system, the project also had a negative effect in that the communities sold 91% of their land with irrigation potential to large producers and land speculators, and achieved very low prices[33]. Before the beginning of the project, all agricultural land was organized

[29] See: FENOCIN 2001.

[30] See: *Ecuador: Su realidad*. Page 165.

[31] See: Castillo and Beilock. In: Ecuador Debate N° 60.

[32] See: Alvarez 1999.

[33] Most of the prices paid for irrigatable land lay between $40 and $400 per hectare (Castillo, 2003b).

under the system of communal property[34], and each community member was guaranteed the right to utilize the plots of land.

Encouraged by the reduction and restriction of state loans for small farmers within the project of promoting the agroindustrial export sector, there has in effect been a new wave of concentration of the land of the indigenous and peasant communities in the hands of a few landowners. The structural adjustment policy pursued with the Agricultural Development Act, gives preference to the agroindustrial export sector and has reduced preferential loans for small producers, as well as the number of state programmes and projects for integral rural development. This development is forcing the small producers to leave their economic resources and represents a risk for their food security.

- ***Dollarization and foreign investment***

Another component of the Structural Adjustment Programmes (the Ecuadorian PAE) is the liberalization of capital in the banana industry. Ecuador flexibilized and liberalized its financial system in 1992, when the government ended the controls and regulations for loans granted by the Central Bank (Banco Central). This allowed many bankers to abuse the situation and to increase the risk incurred in their bank transactions. Together with governmental corruption, this situation provoked a banking crisis, resulting in high depreciation of the national currency and its subsequent replacement by the dollar in January 2000.

Dollarization in Ecuador has led to further deterioration of the relative competitiveness of national goods and services, due to the ability of other countries to depreciate their national currencies. The reduction of inflation in the last four years of dollarization has been brought about by the influx of cheaper foreign goods into the Ecuadorian market. Non-importable goods, generally services provided within the country, such as renting, water, gas and electricity provision, education, transport and health have had higher levels of inflation.[35] This not only makes the cost of living more expensive but also increases the cost of materials used in the production of national goods.

In 2000, the Trole I Act (Ley para la Transformación Económica del Ecuador, the Law for the Economic Transformation of Ecuador) and the Trole II Act (Ley para la Promoción the las Inversiones y la Participación Cuidadana, the Law for the Promotion of Investment and Civil Participation), were introduced to promote structural adjustment. This enabled Ecuador to receive an IMF loan of 304 million dollars[36]. The Trole Acts recognize dollarization, promote direct foreign investment and the privatization of public companies and other components of the Structural Adjustment Programmes (the Ecuadorian PAE). The regulations reflect the orientation of the country's policy towards stronger promotion of exports, but also include the possibility to invest in natural resources such as mangroves, beaches, forests or protected areas, and to privatize public companies such as the telecommunications company, the electricity company or the oil companies.

For the shrimp industry, the Acts allows the expansion of the industry into virgin mangrove areas, the consolidation of ownership of unlawfully occupied land and the intensification of shrimp farming. This last measure is also backed by the World Bank (WF), which in 2002 started to finance a shrimp farming company called El Rosario S.A. with a loan of 12 million dollars for the expansion of the company's installations in the province of Esmeralda, in the northeast of Ecuador[37]. The area concerned lies within the reserve of Cayapa Mataje, which has the highest mangroves in the world and is part of the national system of protected areas in Ecuador. Even though the World Bank stopped financing this project in 2001, there have been recent reports of mangrove felling in this ecological reserve. As mentioned

[34] See: Castillo and Beilock. In: Ecuador Debate N° 60.

[35] See: *Análisis de coyuntura económica*. 2003. Page 24.

[36] See: Greenpeace 2002. Page 24.

[37] See: Greenpeace 2002. Page 29.

before, the shrimp industry has destroyed the food sources of over 1,200,000 ancestral users of the mangrove areas[38].

For the oil sector, the Acts annulled the right of the Ecuadorian Ministry of the Environment to ensure that oil companies' activities do not destroy the basis of subsistence for the Ecuadorian population, and transferred this authority to the National Hydrocarbon Directorate (Dirección Nacional de Hidrocarburos). This freed the way for the oil companies to push further the frontier of oil exploitation into protected areas and unexplored indigenous territory. The control rights of the communities affected by the exploration and exploitation of oil have also been annulled, and the Acts concentrate the decision-making powers on the President and the Energy Minister. In other words, the Acts do not accept the results of consultations with the affected population if they contradict the government's oil exploitation plans in the territory concerned.

The main source of finance for the dollarized system is income from oil exports. The following case shows that strong dependency of the dollarized economy on the foreign currency earned from oil exports has set off a new boom of oil exploration and exploitation in the Amazon forests, endangering the food sources of the indigenous communities in these areas[39].

- ***Oil exploitation in the Cuyabeno faunistic reserve***

The Cuyabeno faunistic reserve in the province of Sucumbíos is considered extremely important due to the immense biodiversity in the province and because it is a sustainable source of resources for the ecotourism sector. It is also part of the land ancestrally inhabited by the indigenous nationalities Siona Secoya and Cofán. In 1999, 435,500 of the total 603,380 hectares of this reserve were declared an intangible zone. The part of the reserve which did not achieve this level of protected area has the same characteristics of biodiversity and ecological fragility.

From 1972 to 1991, the oil companies extracted oil in the south-eastern zone of the Cuyabeno reserve, and caused irreparable environmental damage, such as deforestation, river, soil, and land pollution, and the loss of biodiversity. This had severe social repercussions on the indigenous and mestizo population of the zone. The Canadian oil company Alberta Energy has recently received a government concession for oil exploitation in a zone of 17,000 hectares belonging to the Cuyabeno reserve.

Even though the Minister for the Environment did not authorize oil exploration in the reserve, the Minster of Energy and Mining gave authorization and the company moved into the Cuyabeno reserve last March to start seismic prospection activities, representing the first step in oil exploitation.

The visiting committee for the Cuyabeno reserve observed last February that there is far less fauna compared to the fauna in the adjoining reserve, which has not been exposed to seismic prospection. The shortage of fauna is due to the strong noise caused by detonations and the presence of people, two factors which drive the animals from their natural habitat.

The example shows that the oil companies are protected by the Trole Acts I and II, and are threatening to destroy protected areas, which ancestrally belong to the indigenous and Afro-Ecuadorian communities or the peasant and fishing communities. In the case of Cuyabeno, the destruction of the forest and driving away of the animals hunted by the Siona, Secoya and Cofán peoples, which are currently considered ethnic majorities, constitutes a violation of the Ecuadorian State's obligation to

[38] See the cases on the manroves presented in this report.

[39] See also the case of the Sarayaku community and of the construction of the new heavy crude oil pipeline (OCP) and the negative effects on the water, presented in this report.

respect and protect the access to natural resources, which is the source of nourishment and subsistence of the indigenous population concerned.

- ***Flexibilization of the labour market and discrimination against women***

As mentioned above, dollarization has led to the deterioration of the relative competitiveness of Ecuadorian exports in an environment where the neighbouring economies are still able to depreciate their national currencies. This has had direct repercussions on the labour market as the situation is forcing Ecuadorian companies to drastically reduce their production costs, and the resulting measures have led to increased unemployment and/or the reduction of the workers' salaries. Dollarization has thus increased the rate of unemployment, which even without this was showing a tendency to increase during the last few years of the Structural Adjustment Programmes (the Ecuadorian PAE) [40].

The reforms introduced with the Trole II Act were also aimed at a flexibilization of the labour market, and included new forms of contracts and employment, such as hourly contracts and the establishment of employment agencies and contracting companies[41]. This allows the possibility for employers to employ personnel for an indefinite period without incurring any other obligations than paying the agreed wage and without having to pay extras, such as payments for untimely dismissal. The reforms have led to a further deterioration of the situation in the Ecuadorian labour market, expressed in the non-fulfilment of the right to the minimum subsistence wage and the fact that some sectors do not pay any remuneration at all.

The flexibilization of the labour market has led to an increase in discrimination against women. Women have generally been the population sector most affected by unemployment. The unemployment rate for women increased from 9.1% in 1990 to 19.6% n 1999, while unemployment amongst men grew from 4.3% in 1990 to 10.8% in 1999[42].

This discrimination is also reflected in the different salary levels. According to the 1999 National Institute of Statistics and Censuses report (INEC 1999), the average income of women in rural and urban areas is 66% of the income received by men. Among women, the percentage of economically active population (PEA) which does not receive any remuneration is twice as high as the PEA of men in this situation: 34% for women compared to 17% for men. These figures reflect the particularly difficult situation for women in the labour market[43].

- ***Conclusion***

The present report confirms that the social and economic gap in Ecuador has increased during the recent years of Structural Adjustment Programmes (PAE), and that the dollarization system has contributed to a further deterioration of the situation. Instead of implementing measures to counteract the negative effects of the PAE, the Ecuadorian government's legislation has led to increased poverty amongst the population. Regarding the obligation referred to in General Comment No. 12 on the right to

[40] Unemployment was an average of 7.8% during the first half of the nineties, an average of 10% between 1996 and 1998, 14.4% in 1999, the year of the crisis, and an average of 11.7% in 2003 (the highest level of unemployment (excluding the year of the crisis) considering that in 2003 thousands of emigrants left Ecuador to look for work). See: A*nálisis de coyuntura económica*. 2003.
[41] See case 4 of this report.
[42] See: Vásconez 2002.
[43] See: Vásconez 2002.

adequate food (E/C.12/2002/11), the international organizations such as the IMF, the WB and the WTO, and their member states are not fulfilling their obligation to respect, protect and guarantee the realization of the ESCR in Ecuador.

5. General Conclusions

The cases illustrated in the present report show that the Ecuadorian state is not fulfilling the three obligations to respect, protect and realize the human right to food, and is not fulfilling the ICESCR principles of a progressive improvement of the standard of living of the population and the utilization of all means available to achieve this objective. The Ecuadorian state is also not fulfilling the responsibilities established in the Ecuadorian Constitution concerning the right to food. The following summary lists the violations of the right to food committed by the Ecuadorian state.

Firstly, the Ecuadorian state is not fulfilling its obligation to respect the right of the Quichua community of Sarayaku to have access to their food sources by the government's militarization of the community's ancestral territory in order to support the oil exploitation projects of foreign companies in the area concerned and by the government's non-fulfilment of the precautionary measures dictated by the CIDH, the Inter-American Commission on Human Rights, to protect the lives and physical integrity of the community members and to suspend all oil exploitation activates until an agreement with the community has been reached.

Second, the Ecuadorian state is not fulfilling its obligation to protect the right to food by:

- Allowing the Colombian state to damage the health, crops and animals of the population living on the border with Colombia by aerial fumigation and thus forcing the inhabitants to abandon their land without receiving adequate compensation,

- acting indifferently towards the violent acts of the oil companies and their staff against the Sarayaku community,

- not impeding the shrimp industry's destruction of the remaining virgin mangrove forests, which constitute the food source for the population of the Ecuadorian coast,

- not ensuring compliance with the minimum subsistence wage established by law, and by allowing difficult employment conditions which affect people's health and their capacity to live from their work in the banana industry.

Third, the Ecuadorian state is not fulfilling its obligation to guarantee the right to food by failing to implement an executive decree which declares the Sarayaku territory a zone of tourist development and ending the destruction of the territory's natural resources, and by failing to take quick and objective action to end the food and health crisis of the communities at the border affected by the fumigation within the Plan Columbia.

The present report also makes clear that some foreign governments are not fulfilling their external obligations incurred as state parties to the ICESCR(E/C.12/2002/11) when carrying out certain projects or political measures in Ecuador. The example chosen also shows that foreign governments, in this particular case the governments of Canada, Spain, Argentina, the United States, Italy and Germany, whose companies form part of the consortium, are not protecting the right to adequate food of the affected

population in accordance with the General Observation No. 12 on the right to adequate food (E/C.12/2002/11) by failing to regulate and supervise the activities of their companies in Ecuador.

The fumigations of the Plan Columbia, financed by the United States to eradicate illegal cultivation of coca, affects the poor population on the border with Ecuador and clearly shows that next to the failure of the Ecuadorian government stated above, the governments of Colombia and the USA[44] are not fulfilling their external obligations regarding the implementation of the ECESR, described in General Comment No. 12 on the right to adequate food.

The present report confirms that the Structural Adjustement Programmes (the Ecuadorian PAE), the system of dollarization and the Trole Acts, implemented to accelerate structural adjustment in Ecuador, are leading to increased social inequality, poverty and unemployment, and also demonstrates that the presented violoations of the ESCR are linked to the structural adjustment policy in Ecuador.

The loans granted by the IMF are linked to the repayment of the foreign debt and an economic orientation towards the agroindustrial export sector, which tends to concentrate on export of monocultures such as shrimps, bananas and oil. This is the reason why the assignations of the state budget for social expenses has been continuously reduced. The assignations of the state budget for the agricultural sector are being reduced and are mainly directed at the agroindustrial export sectors. The fact that Ecuador is almost fully open to the world market after joining the WTO involves a further reduction of state support for products for domestic consumption. This effect of the Structural Adaptation Programmes was intensified by the Agricultural Development Act (Ley de Desarrollo Agrario) and has forced small farmers to leave their economic resources, jeopardizing their food security. The Trole I Act (the Law for the Economic Transformation of Ecuador) and the Trole II Act (the Law for the Promotion of Investment and Civil Participation) enabled Ecuador to receive an IMF loan and included the possibility to invest in natural resources by promoting exploration and exploitation measures in mangrove areas, on beaches, in forests or protected areas and ancestral territories, and to invest in the food sources of indigenous and black communities and the poor peasant communities in Ecuador.

The system of dollarization has not only increased the cost of essential products for the population, such as rent, water, gas, electricity, transport and health, but has also led to higher production costs for the Ecuadorian companies. As a consequence, there has been a further increase in the unemployment rate, which even without this was showing a tendency to increase during the last few years of the Structural Adjustment Programmes, and has rendered the situation in the Ecuadorian labour market even more difficult. This is reflected in the non-fulfilment of the right to the minimum subsistence wage and in the discrimination against women in the labour market. Furthermore, the strong dependency on foreign currency earned from oil exports has set off a new boom of oil exploration and exploitation in the Amazon forests, which endangers the food sources of the indigenous communities in these areas.

Poverty and need have increased in all these years of structural adjustment, but particularly after the banking crisis as a result of corruption and the liberalization of the financial and capital system implemented by the Structurel Adjustment Programmes (PAE). The entire period is marked by a strong development towards the concentration of income and wealth: the top 10% of the population receive nearly 45% of national income, while the bottom 10% of the population receive only 0.6%.

At present, it is estimated that 8,600,000 people in Ecuador live in poverty, which represents 70% of the total population. Undernourishment affects 48% of the national population and 64% of the population in the cantons with a high concentration of indigenous population. 55% of all children under five years suffer undernourishment, 48.4% of them are chronically undernourished and 4% suffer from extreme

[44] Even though the USA has not ratified the ICESCR, their approval of the Covenant commits the US government to not hindering the implementation of the ESCR in the United States and other countries.

undernourishment. 66% of the population consume less than 80% of the adequate calorie intake, and 46% under 80% of the adequate protein intake. 59% of all housing has no drinking water[45], and at present, the average family cannot consume a third of the basic basket of goods, i.e. the basic minimum for their subsistence.

The report comes to the final conclusion that the Ecuadorian state is violating the right to an adequate standard of living, including the right to adequate food, the right to be free from hunger, and the right to the progressive improvement of living conditions, and that these violations affect the majority of the Ecuadorian population. It is however important to point out that the Ecuadorian state's non-fulfilment of the ESCR is not only due to the lack of will on behalf of the state, but is also caused by the fact that the PAE (Structura Adjustment Programmes) keep reducing the government's capacity to act and and that the state can therefore not implement autonomous political measures to ensure the progressive realization of the right to food and utilization of the maximum resources available to the State. International organizations such as the IMF, the WB and the WTO, and their member states are also failing to fulfil their obligation to respect, protect and gurantee the realization of the ESCR in Ecuador, and are thus directly and indirectly responsible for the violations of the Ecuadorian's right to an adequate standard of living, including the right to adequate food.

6. Recommendations

With view to the cases of violation of the human right to food presented in this report, and regarding the demands of each of the affected groups, we recommend that the Ecuadorian state take the following measures to guarantee the access of the different vulnerable groups to their economic resources.

a) Granting immediate protection for the communities affected by the fumigation within the Plan Colombia as this is an extremely serious situation, and has resulted in a food and health crisis and a wave of internal migration in Ecuador. Taking the necessary measures to prevent and impede new fumigations affecting the Ecuadorian areas along the border with Colombia. Activating the diplomatic mechanisms to achive the establishment of a 10 kilometre wide area in the Colombian territory along the border with Ecuador, which marks the line behind which there should be no fumigations on Columbian territory, and to ensure that the Colombian state pays compensation for the damage caused to the Ecuadorian citizens affected by the fumigation.

b) Declaring the Sarayaku territory an area of tourist development through an executive decree in order to stop the destruction of natural resources, which are the community's only source of subsistence, and to respect traditional production methods. Fulfilling the precautionary measures dictated ty the CIDH, the Inter-American Commission on Human Rights, to protect the lives and physical integrity of the community members and to suspend all oil exploitation activites until an agreeement with the community has been reached. Participating actively in the meetings of this inernational organ and demilitarizing the Sarayku territory in order to avoid violent clashes.

c) Solving the problem of the loss of the mangrove ecosystem in the ancestral territory along the Ecuadorian coast by approving and implementing the Mangrove Preservation Act (Ley de Conservación del Ecosistema del Manglar) which includes reforestation progrrammes in the destroyed areas, the extension of concessions to the communities regarding the mangroves, investigations into the capacity of the mangrove forests and a moratorium on shrimp farming and the expansion of the shrimp industy

[45] See: *Ecuador: Su Realidad*. 2003. Page 292.

within the ecological reserve of Cayapas Mataje in the north of the province of Esmeraldas, and in the mangrove reserve of Churute in the province of Guayas.

d) Ensuring compliance with the minimum subsistence wage established by law in the banana industry and supervising the working conditions, partiularly the conditions for children working in the banana industry, abolition of phantom contracting companies ("terciarizadoras"), and ensuring the freedom of association for all workers.

e) Paying compensation to the people affected by the contamination of their sources of drinking water due to the construction of the OCP pipeline, and supervising the activities of the oil consortium.

7. Questions to the State of Ecuador

7. 1 Questions on National Obligations

1. What protective measures is the government offering to the communities affected by the fumigation within the Plan Columbia? Which diplomatic mechanisms is the government using to achieve the establishment of a 10 kilometre area in the Colombian territory along the border with Ecuador, which marks the line behind which there should be no fumigations on Columbian territory, and to ensure that the Colombian state pays compensation for the damage caused to the Ecuadorian citizens affected by the fumigation?

2. How is the government guaranteeing the right to the natural resources of the ancestral territory of the community of Sarayaku? What is the government doing to fulfill the precautionary measures dictated by the Inter-American Commission on Human Rights (CIDH)?

3. How is the govenment going to resolve the problem of the loss of the natural resources of the ancestral users of the mangrove areas?

4. Which control and supervision mechanisms is the government going to adopt in order to ensure compliance with the minimum subsistence wage, to improve working conditions and to guarantee the right to free association for the workers in the banana industry?

7.2 Questions Referring to Agreements with International Organizations and the Private Sector

1. How is the government going to compensate people affected by the pollution of their sources of drinking water during the construction of the OCP? Which control measures is the government going to implement to supervise the activities of this oil consortium?

2. How is the government going to guarantee the right to natural and economic resources of the peasant and indigineous people suffering poverty and affected by oil exploitation and exploration within their ancestral territory?

3. What measures of wage adjustment are planned to ensure that the workers enjoy an adequate standard of living?

4. How is the government going to ensure that future agreements with international organs and the private sector do not have any negative repercussions on the standard of living for the Ecuadorians? How is the governement going to ensure that foreign governments and international organizations are held responsible for the implementation of the CESCR?

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