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Ecuador's Oil Region: Developing Community Legal Resources in a National Security Zone

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ECUADOR'S OIL REGION: DEVELOPING COMMUNITY LEGAL RESOURCES IN A NATIONAL SECURITY ZONE

Malcolm J. Rogge*

I. INTRODUCTION

Ecuador is still in a process of transition to democracy, following the end of the military dictatorship which held power from 1972 until 1979. Today, the political and legal institutions which define the country as a democracy are often fragile.[1] This fragility is nowhere more obvious than in the Ecuadorian *Oriente* region, where the expansion of oil development is facilitated by broadly applied national security laws, and where the military maintains a highly visible presence. The global oil industry is a notoriously aggressive one, carrying very high environmental risks; the Ecuadorian experience does little to belie that overall reputation. Incidents such as the Exxon Valdez spill off the coast of Alaska, and the brutal human rights violations in Nigeria linked to oil development in that country, are dramatic examples of the adverse environmental and social costs of the industrialized world's dependence on oil as a primary energy source. Reports of the many adverse social and environmental impacts of oil development in the Ecuadorian Amazon region—the region known to Ecuadorians as the *Oriente*—are prolific.[2] In this paper, I discuss the

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[1] Ecuador's domestic political situation made news around the world in February of 1997 when recently elected President Abdala Bucaram was impeached by the National Congress for being mentally unfit to govern. The process used to rid him from office was constitutionally questionable, even if it was carried out with extensive popular support.

[2] See the following reports and papers: Herrera, D. *Petroleo, deterioro ambiental y salud: El Caso de los Quichuas de San Carlos-Eucador in* LA CUENCA AMAZONICA DE CARA AL NUEVO SIGLO

challenges of developing community legal resources in the context of the economic, social and political exclusion of indigenous and campesino populations in Ecuador's oil region. I discuss the legal constraints facing affected local communities, and I identify legal tools that may be used in response to those constraints.

I ask the question of what is the role for the community legal educator in the *Oriente*, and I consider how that role may be carried out in practice. I conclude that the "viability" of legal capacity-building in the region depends largely on finding meaningful legal tools in Ecuadorian and international law and that, to be effective, community legal educators must work in collaboration with local organizations towards the broad dissemination of those tools. It is hoped that by outlining the legal and institutional challenges which local citizens and activists in the producing areas are facing, this paper will be a positive contribution to the larger debate about the cost and benefits of oil development to Ecuador as a whole.

II. HISTORY AND CONTEXT

Though sparsely populated relative to other parts of Ecuador, and still covered by a large area of pristine rainforest, the *Oriente* region is rich in history, culture, and politics. It covers roughly one-third of Ecuador's territory, running eastward from the base of the central highlands to the borders of Colombia and Peru. It is home to over 180,000 indigenous people from eight different nationalities; and to approximately 200,000 mestizo and indigenous colonists from other parts of the country.[3] The region has a very long history of interaction,

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(FLACSO, Quito, 1997); FRIENDS OF THE EARTH, CRUDE OPERATOR (1994); Judith Kimerling, *Rights, Responsibilities, and Realities: Environmental Protection Law in Ecuador's Amazon Oil Fields*, 2 SW. J.L. & TRADE AM. 293 (1995); JUDITH KIMERLING, AMAZON CRUDE (1991); Judith Kimerling, *The Environmental Audit of Texaco's Amazon Oil Fields: Environmental Justice or Business as Usual?* 7 HARV. HUM. RTS. J. (1994); CENTRE FOR ECONOMIC AND SOCIAL RIGHTS, RIGHTS VIOLATIONS IN THE ECUADORIAN AMAZON (1994); COORDINATING BODY OF INDIGENOUS ORGANIZATIONS OF THE AMAZON BASIN (COICA)-COALITION FOR AMAZONIAN PEOPLES AND THEIR ENVIRONMENT, OIL DEVELOPMENT IN THE WESTERN AMAZON (1995); Laura Rival, LEARNING HOW TO LIVE IN THE MAN-MADE WORLD: THE HUAORANI OF ECUADOR (1990) (unpublished paper, on file with author); CLIVE GRYLLS, ENVIRONMENTAL HOOLIGANISM IN ECUADOR, (Oslo, 1992).

[3] GRYLLS, *supra* note 2, at 7.

conflict and co-existence among indigenous peoples, catholic missionaries and Spanish and mestizo colonists. During the nineteenth century, rubber production—utilizing indigenous labor—was the dominant economic activity. In the late 1940s, Shell Oil Co. explored for oil, but no commercial wells were drilled. In the 1960s, U.S.-based Texaco Inc. partnered with the Ecuadorian government in the hopes of locating commercial reserves. Texaco drilled exploratory wells in 1964 and began construction on the first three commercial well-sites in 1967.

In 1972, the military dictatorship took power in Ecuador, and for seven years, military rule by decree governed the rapidly expanding oil development in the *Oriente*. During this period, environmental controls were virtually non-existent in law. In August of 1972, commercial production began at "*Lago Agrio numero uno*," the site which would eventually become the town of *Lago Agrio* (officially called *Nuevo Loja*). The town of *Lago Agrio* has since grown to become the most important oil industry service centre of the region. With the opening of major roads into the region, and the subsequent arrival of campesino settlers from other parts of the country, the indigenous populations were very quickly dispersed or displaced to other parts of the *Oriente*. For over twenty years, Texaco Inc. and its partner (the state-owned *Petroecuador*) utilized substandard waste-disposal technology, resulting in extensive hydrocarbon contamination in rivers, lakes, aquifers and soils throughout the oil-producing region.

Oil development in the *Oriente* has brought mixed blessings for all Ecuadorians. Since the boom began in 1972, the industry has been pivotal to the economy as exports have generated billions of dollars in revenue for the State and for transnational oil companies. Though figures vary considerably from year to year, about half of the national revenue is derived from oil sales. While impressive earnings during the 1970s financed industrial and social development in urban areas, Ecuador's external debt soared. As an oil exporting nation and a member of OPEC, it became easier for Ecuador to borrow money. By 1982, the boom period had already come to an end. In the late 1990s, the debt "hangover" that started in the early 1980s persists to the

detriment of the country as a whole, especially for marginalized regions which saw very little benefit from oil development even during the best years.[4] The continued expansion of oil development in the late 1990s takes place in the context of increasing poverty and widening economic inequality throughout the country, worsening environmental conditions linked to poverty and environmentally damaging export industries, and the deteriorating fiscal health of the country as a whole. A constellation of factors, including the dominance of short-term interests in government decision-making, declining revenues, and the imposition of fiscal austerity measures, has led to dramatic reductions in government spending on health and education to unworkable levels.[5] Meanwhile, the debt load continues to increase as the country borrows more money to expand production (to make up for lower prices, and to maintain the dilapidated infrastructure).

The popular perception in the urban areas is that the social and economic benefits of the oil-centered economy have more than offset the negative impacts. While there is no doubt that oil revenues have brought a tangible degree of economic prosperity to urban areas, it is equally evident that the citizens of the oil-producing *Oriente* region remain, by far, the poorest and most neglected social class in the country.[6] Equally evident is the social upheaval and cultural dispersion for indigenous peoples that has come as a direct result of oil development.

Over the last decade, activists have been very successful in bringing media and political attention to the legacy of environmental degradation left by the oil companies. The long-term costs of

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[4] See: Carlos Larrea, The Mirage of Oil Development: Oil, Employment, and Poverty in Ecuador (1972-1990), (1992) (unpublished Ph. D dissertation, York University (Toronto)).

[5] Adjustment policies were implemented beginning in the early 1980s. Public spending on education declined from 5.1% to 2.7% of GDP from 1982 to 1993; public spending on health declined from 2.2% to 0.7% of GDP during the same period. See: Carlos Larrea and Liisa L. North, *Ecuador: Adjustment Policy Impacts on Truncated Development and Democratisation*, 18 THIRD WORLD QUARTERLY 913 (1997).

[6] Data showing the extreme poverty of the *Oriente* in comparison to the rest of Ecuador are available from World Bank sources. See: CARLOS LARREA ET AL., LA GEOGRAPHÍA DE LA POBREZA EN EL ECUADOR (1996).

environmental degradation that are linked to the export economy are being felt widely, not only in the oil producing region, but also in shrimp-farming zones along the coast, and in agricultural regions. At the same time, the price of oil continues to fall, and as a result, the overall fiscal situation continues to worsen. In this context, economists, politicians and activists are beginning to consider seriously what a non-oil-centered economy for Ecuador might look like.

III. POPULAR LEGAL EDUCATION IN THE *ORIENTE*: A COLLABORATIVE EFFORT

A. Methodology

This paper is a direct result of participatory action research carried out in Ecuador by the author during active involvement in the development of workshops in the *Oriente* in collaboration with human rights and environmental organizations. A set of research questions (below) guided the author's inquiry. The author worked as a member of a project team formed by the Quito office of the Center for Economic and Social Rights (CESR). This team developed a set of written community legal capacity-building modules for dissemination in the *Oriente*. CESR is a nascent New York-based rights organization that has been working on oil issues in Ecuador since 1993.[7] CESR supports local organizations by providing assistance in legal and policy analysis, by producing and disseminating didactic materials and by facilitating workshops on human rights, law, legal processes and legal constraints, as they affect local communities. At the same time, CESR works at the level of influencing government policy and the activities of lawmakers in Ecuador and abroad. CESR works in collaboration with Ecuadorian environmental and community organizations, including *Frente de Defensa de la Amazonía* (*Frente*) and *La Red de Monitoreo Ambiental de la Amazonía* (*La Red*). The

[7] The Center for Economic and Social Rights is based in New York and manages human rights projects in Ecuador and the Middle East. Since 1997, CESR has an office in Quito which focuses mainly on the social impact of oil development in the *Oriente*, operating both at the grassroots and government policy levels.

Frente was formed, in part, by members of the plaintiffs' committee in the *Maria Aguinda* lawsuit (discussed below). The main goal of the *Frente* is to draw attention to the widespread environmental degradation occurring in the *Oriente*, and to put pressure on government and the private sector to halt the adverse environmental impacts of oil development. *La Red* operates in conjunction with the *Frente* and with other locally-based environmental, social, agricultural, political and human rights organizations. The purpose of *La Red* is to provide ongoing capacity-building for environmental monitoring and activism, organizational skills, communications, and on the development of self-sufficient legal resources.

B. Research Questions

The following questions guided the author's inquiry throughout the research period:

i) What is the viability of the legal option[8] for indigenous people and settlers whose knowledge of law and legal processes will be very limited even after participating in legal capacity-building activities, and where institutional support for legal actions is very limited?

ii) What are the potential unintended consequences of legal capacity-building in a frontier context?

iii) Does a basic knowledge of legal issues and concepts empower communities, or does such knowledge instill a sense of futility for people with very few economic and organizational resources?

iv) Even when legal services are requested by community organizations, can legal capacity-building organizations make effective interventions when oil companies are so able to

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[8] The wide range of formal and informal "legal options" had not been specified at the outset of the research period.

provide poor communities with concrete short-term benefits in exchange for unimpeded access?

v) What are the challenges for organizations involved in legal capacity-building, in terms of understanding the idiosyncratic social/political context of resource-development activity in specific locales?

vi) How do the political and economic factors affecting the country as a whole impact upon a local community's ability to influence local, regional and national policy and planning, even when legal tools are employed?

vii) What are the concrete goals of providing legal services in the context described above, and how can the achievement of those goals be recognized and measured?

C. What is Legal Capacity-building?

Legal capacity-building (*capacitación*) in the *Oriente* region is a process that involves jointly the efforts and experiences of affected citizens, local organizations, activists and technical experts towards equalizing the power/knowledge imbalance that exists between local communities affected by oil development and the government and transnational oil corporations. Community legal capacity-building activities are intended to contribute to the development of skills for everyone involved in those activities, including the facilitators and the "legal experts."[9] All of the participating groups collaborate to find the best tools and strategies for influencing the decisions and practices of oil companies, the government and other oil-related stakeholders.[10]

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[9] In *Developing Legal Resources for Participatory Organizations of the Rural Poor*, Clarence Dias and James Paul emphasize the importance of promoting self-reliance through the transfer of legal knowledge. They define "legal resources" as the "functional knowledge and skills which enable people, working collectively and with other groups, to understand law and use it effectively". See Clarence J. Dias and James C.N. Paul, *Developing Legal Resources for Participatory Organizations of the Rural Poor*, 1985 Third World Legal Stud. 20 - 30.

[10] This definition of "capacity-building" is adapted from Malcolm J. Rogge, *How to Make Them Hear: Challenging Transnational Oil Interests in Ecuador's Amazon Region*, 16 REFUGE: CANADA'S PERIODICAL ON REFUGEES n.3 (1997).

The development of community legal resources in the context of social and environmental activism in the *Oriente* is just one facet of a much larger effort by local citizens to educate themselves and to develop skills toward the betterment of conditions in that part of the country.

In the work of the *Frente*, *La Red*, CESR, and other organizations, several objectives underlie the design, content and implementation of legal capacity-building activities: i) the promotion of all aspects of human rights (civil, political, social, economic and cultural) in the *Oriente*; ii) the promotion of environmental protection, environmental remediation and the use of greener environmental technology and processes in areas where oil development is underway or probably inevitable; iii) the promotion of fair and informed negotiations between local communities (and their representatives) and oil companies; iv) the promotion of self-determination of indigenous communities in accordance with contemporary international norms of the right of self-determination; and in some cases, support for local organizations in their efforts to halt or put limits on oil development in specific areas.

IV. IDENTIFYING LEGAL CONSTRAINTS

One obvious condition upon which the viability of legal capacity-building activities depends is the actual existence of protections in law and the existence of a practical means with which to disseminate information about those tools. Unfortunately, the reality is that, very often, effective legal protections are extremely difficult to access. In a political culture that tends so heavily towards the exclusion of marginalized populations, it is very difficult to promote favorable interpretations of conflicting civil laws for the benefit of those groups. The challenge for popular legal educators and the groups they work with is to promote a better match between the fundamental precepts of Ecuador's constitution, human rights principles and the laws related to resource development, especially oil. Probably the most critical role of the popular legal educator is to do the "homework" that is required to find creative and feasible legal protections and policy alternatives that local organizations can put to immediate use and promote over the long term. In this section, I outline what I believe are some of the

most frequently encountered legal problems faced by local populations in the *Oriente*. In the following section, I describe the legal tools that are available for local communities, and discuss their limitations.

A. Fickle Land-Titles

Since the early 1970s, the government has promoted aggressively the settlement of the *Oriente* region as part of several attempts at agrarian reform. Large-scale colonization of the region began with the opening of oil roads into the rainforest areas and the establishment of oil industry service centres. Mestizo and indigenous settlers migrated from densely populated areas in the *Sierra* and *Costa* regions. In 1978, the military government decreed the *Ley de Colonización de la Region Amazonica* to facilitate the agrarian reform process in the Amazon region. Under this law, the *Instituto Ecuatoriano de Reforma Agraria y Colonización (IERAC)*[11] granted legal title to arriving colonists. In response to increasing pressure from national and Amazonian indigenous organizations in the late 1980s and early 1990s, the government granted ancestral title (*Asentamiento Tradicional*) to many of the indigenous groups of the *Oriente* region. The land titles granted to indigenous groups and colonists are now administrated by the *Institución Nacional de Desarrollo Agrario* (*INDA*).

The land titles provide a tangible degree of security, but they also contain an unusual provision which prohibits landowners from "impeding or obstructing" oil and mining activities that are carried out by the government or by authorized companies.[12] Local representatives and activists report that oil company community-relations officers frequently refer to this clause in their discussions with landowners. Needless to say, the mere mention of this clause has a very strong psychological impact on local landowners. In many cases, landowners are convinced that refusing to allow an oil company

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[11] *IERAC* is the Ecuadorian Institute of Agrarian Reform and Colonization.

[12] The land titles granted by IERAC state: "...Los adjudicatores no podrán impedir o dificultar los trabajos de exploración y/o explotación minera e hidrocarburífera que debe realizar el Gobierno Nacional y/o personas naturales o jurídicas legalmente autorizadas."

to enter their land will result in some form of official intervention (military or civilian). The constitutional validity of the prohibition has been questioned by activists and lawyers; unfortunately, no formal challenge has been brought to the *Tribunal de Garantias Constitutionales* (TGC).[13] In February 1998, then Subsecretary of the Environment of the Ministry of Energy and Mines, Manual Muñoz, stated that in his opinion, the clause "has no legal meaning" and exists only as "psychological intimidation."[14] The authoritarian tone of the clause is rather at odds with the democratic and liberal principles espoused in the Constitution of the Republic of Ecuador.[15] The Constitutionality of this clause is even more suspect now that Ecuador has signed the ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries.[16] That Convention contains numerous, albeit qualified, guarantees of self-determination of indigenous peoples with respect to lands and resources.[17]

The existence of these clauses creates a serious dilemma for legal educators. As stated above, they are frequently used by oil company community-relations officers to pressure local groups into granting the right of way. Community legal educators must be able to discuss the meaning of these clauses in workshops and must point out the contradictions that flow from them. However, merely stating that the clauses are probably unconstitutional will not provide solace to community leaders who want to know their rights in concrete terms. Legal educators must stress the importance of legal reform and the importance of gathering momentum towards challenging the unconstitutional laws and regulations in the courts and through the

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[13] For a discussion about the constitutionality of the clauses, see: Judith Kimerling, (1995) *supra* note 2, at 358; see also JUDITH KIMERLING, *DERECHO DEL TAMBOR* 61 (1996).

[14] Interview with Manuel Muñoz, in his capacity as *Subsecretaría de Medio Ambiente* of the Ministry of Energy and Mines, February 19, 1998, Quito.

[15] On property rights in Ecuador's civil law system, see: *CODIGO CIVIL, Título* I-XV (Ecuador).

[16] ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries, July 27, 1989, 4 C.N.L.R.. Adopted by the General Conference of the International Labour Organization, Geneva, June 27, 1989; in force, Sept. 5, 1991.

[17] *Id.* Art. 15 (1) states: "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specifically safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources" . See also: Art. 15 (2). In theory, conventions signed and ratified by Ecuador are automatically incorporated into Ecuadorian law; however, in practice, little use is made of the international conventions in domestic courts.

political process. Facilitators should discuss the ambiguity of this clause, and should consider its validity in light of the Constitution, human rights precepts and international conventions such as the ILO Convention No. 169. The role of the community legal educator is to "demystify" the clauses, to show how laws frequently undermine in direct ways the interests of groups who are economically and politically the weakest. With that knowledge, it is up to local organizations and their political representatives to determine a political strategy toward legal reform and positive institutional change.[18]

B. Expropriation of Private Lands and Indigenous Territory for Oil Development

Under Ecuador's *Ley de Hidrocarburos* (Hydrocarbon Law) and the *Codigo Civil* (Civil Code), the government is permitted to expropriate land for oil development as a public utility.[19] Oil company community-relations officers frequently use the threat of expropriation to coerce small landowners and indigenous groups into giving up land without adequate compensation. It is difficult to emphasize how much confusion exists about the expropriation process among local populations. This confusion likely arises from the ad hoc and irregular nature by which expropriations are carried out by the government, and because so few landowners have the economic means to retain a lawyer or other assistance in the course of these transactions. Instability of government institutions also leads to inconsistent application of law and policy in matters of expropriation. Furthermore, the law is remarkably vague on the point of expropriation and on the rights of landowners to fairness and to adequate compensation.

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[18] The Confederation of Indigenous Nationalities of the Ecuadorian Amazon (*CONFENAIE*) cited this clause in a petition to the Inter-American Commission on Human Rights, on behalf of the Huaorani Nation. They argued that because of the vagueness of the prohibition of "impeding or obstructing", the Ecuadorian land titles do not adequately protect indigenous territories. See: *Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana* (*CONFENAIE*), Petition to the Inter-American Commission on Human Rights, *The Huaorani People* v. *Ecuador*, (1990).

[19] *LEY DE HIDROCARBUROS*, art. 91 (Ecuador).

Under Art. 1 of the *Ley de Hidrocarburos*, sub-surface oil reserves are the exclusive property of the State. In theory, a landowner's permission is required before the State oil company or its agents can enter private property (including legally recognized ancestral indigenous territory). Experience shows that it is virtually impossible for a landowner, over the long term, to refuse entry for oil development. It is not uncommon for landowners to find that an oil company has entered private land without seeking prior permission. If a landowner refuses to grant the government or company permission to enter the property, or demands greater compensation, the government or company may begin the expropriation process. In the case of a private company, the company must petition the Minister of Energy and Mines to expropriate for public utility. The company must present its work plans for the land and must show that the land is indispensable for the company's operations. The Minister may inspect the land, but is not required to do so. The Minister determines the indemnity to be paid, and after this amount is deposited with the Ministry the company has the right of way. In case of a dispute over the amount of compensation, the landowner must begin a civil action. Given the very limited financial resources of indigenous and campesino groups in the *Oriente*, launching a civil action is hardly a realistic option; moreover, the civil law courts are so backlogged that such actions take years to resolve.[20]

As citizens become better informed, it will become more difficult for the government to expropriate lands without providing adequate compensation or without considering alternatives. With the increasingly vocal indigenous polity, government expropriation of indigenous territories for oil development is a more risky maneuver today than in previous decades, politically speaking. Indigenous peoples are more represented in government than ever before, and in the *Oriente*, indigenous representatives are much better informed of the social, economic and environmental issues tied to oil development than in previous decades. This is all due to the media and capacity-building successes of Ecuadorian indigenous, human rights and

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[20] On this point, see: JUDITH KIMERLING (1996), *supra* note 13.

environmental organizations. That being said, however, in the context of the current fiscal crisis, Ecuador is under tremendous pressure to maintain and increase oil production. It is very likely that political efforts to halt oil development in indigenous ancestral territories would be met with serious rebuke from those urban politicians who are not sympathetic to indigenous claims.

Local populations need to be aware of the possibility that their lands may be directly expropriated and they need to develop a strategy that anticipates moves towards expropriation. In support of such actions, community legal educators must investigate the past history of expropriations to determine the vagaries of the processes involved, and they must communicate the results of those investigations to local organizations.

C. Inadequate Indemnity/Compensation

Article 90 of the *Ley de Hidrocarburos* requires the State oil company and other oil companies to compensate landowners for the use and occupation of their land.[21] Like the expropriation law, the indemnity law is extremely vague and has led to a great deal of confusion about what rights local people have when negotiating settlements with oil companies. The law states that oil companies must compensate property owners for damage to land, crops, structures and other property. The amount of the settlement must be determined by both parties. In the case of disagreements, the Minister of Energy and Mines may appoint a mediator. Typically, local landowners are unaware of their rights to negotiate a settlement or to have a mediator appointed; as one might expect, most negotiations are carried out in an ad hoc fashion and the landowner is not compensated fairly. Open discussions about the vagueness of the indemnity law should open the way for more profound debate about the serious need

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[21] The indemnity law is extremely vague. Art. 90 of the Ley de Hidrocarburos states: "Las indemnizaciones que se deben pagar por los perjucios ocasionados en terrenos, cultivos, edificios y otros bienes, con motivo de la exploración o el desarrollo de la explotación petrolera, o de cualquier otra fase de las industrias de hidrocarburos, serán fijadas por peritos designados por las partes. En caso de desacuerdo, el Ministerio del Ramo nomrará un dirimente." See: LEY DE HIDROCARBUROS, art. 90 (Ecuador).

for legal and policy reform. To improve the delivery of compensation and to make the system operate more fairly, local groups might work together to promote the mediation option, or lobby for the establishment of an independent board to hear claims for compensation in a specific region.

D. Broad National Security Concerns

Oil development is a national security concern in Ecuador. The commander of the armed forces has a permanent seat on a five-member commission which oversees oil development in the country and the military maintains a heavy presence throughout the *Oriente* region. Military involvement in the coordination of oil development is not at all surprising, since guerillas in Columbia and Peru frequently target oil operations.[22] The major oil centers of the northern *Oriente* are very close to the Colombian border, where guerillas are active.[23] In addition to that security concern, the longstanding border conflict between Peru and Ecuador is yet to be resolved, despite serious diplomatic efforts in 1998. The area under dispute is believed to be rich in oil, and concession areas touching the areas under dispute have been granted by both countries.

Much more than in other parts of the country, the relationship between civilians and the military in the *Oriente* region is very akin to a government and citizen relationship. The military provides vital services to rural populations. In more remote areas, the well-being of rural populations depends, in part, on the availability of military assistance in medical transport, the maintenance of roads, bridges, airstrips and communication infrastructure. Mandatory military service for young men, and the proximity of military bases to small communities also means that family and personal relationships among

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[22] In 1996, British Petroleum entered into an agreement with Colombia's Ministry of Defence to create a special battalion of 500 soldiers and 150 officers to protect BP's operations. The deal was worth 60 million US dollars. See: *Oil Fuels Colombia Killing Machine*, GUARDIAN WEEKLY, Oct. 27, 1996; see also, *Oil Companies Buy an Army to Tame Colombia's Rebels*, THE NEW YORK TIMES INTERNATIONAL, Aug. 22, 1996.

[23] Lago Agrio, the main oil industry service center in the Ecuadorian Amazon region is less that 30km from the Colombian border.

locally-based military personnel are pervasive. Unfortunately, the ambiguity of the role of the military vis-a-vis oil development has led to much confusion about the relationship between the citizens, the government, the oil companies and the military; this confusion frequently emerges in discussions in workshops. Local organizations often observe that the military tends to support the immediate interests of the oil companies and not the rights of local citizens. This ambiguity has created a climate of uncertainty and real anxiety among local leaders and organizations about their legal rights and of the advisability of insisting on legal rights.

With greater successes in awareness-raising among campesino populations and indigenous groups, local people are beginning to demand more respect for their legal rights to compensation and environmental protection. As a consequence, violations of civil rights are on the increase.[24] It is extremely important that facilitators be aware of the role of the military in the region and of the importance of being diplomatic whenever addressing issues that concern the military or the National Security Law.

The challenges of organizing for social change and the promotion of human rights in a region so heavily militarized are so vast that a separate paper would be required to do justice to that topic. Local organizations frequently question the degree of freedom they have to express their opinions, demand their rights, or to demonstrate in a non-violent way. One approach to addressing the uncertainty of the role of the armed forces is to examine concretely the provisions of the Ecuadorian Constitution and the National Security Law as they relate to human rights. Further study is needed to determine the role in law and in practice of the armed forces in relation to oil development in the *Oriente*, and to determine in concrete terms how the rights of residents are affected by the national security zone classification of the region. Local organizations need more certainty regarding the application of

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[24] In 1997, and in the first five months of 1998 when this research was undertaken, several activist individuals and groups had been detained and charged with offences, including treason. Lawyers' groups and human rights organizations collaborated with activist groups in rural and urban areas to put public pressure on the government to release the detainees, and to drop pending charges against individuals.

the National Security law in the oil-producing regions, and of the precise role of the military in protecting and facilitating oil development. Such certainty may be promoted through the organization of meetings and conferences that involve government and military officials. Open forums, with the participation of government, the military, legal experts and the media, may help to clarify the role of the military and the rights of local citizens in the face of oil development. While it may seem unlikely that all these parties could be brought to the table for debate, efforts to open this dialogue are very much needed.

V. IDENTIFYING LEGAL PROTECTIONS AND LEGAL RESOURCES

In response to the legal constraints described above, a number of legal tools should be considered. Finding meaningful legal tools cannot be the outcome of pure legal research alone; the community legal educator must also work directly with local organizations to determine the existing strengths and capacities of those organizations and to determine what kinds of legal tools will complement and empower them. Dias and Paul argue that the task of the legal specialist is "to work with people to learn through shared efforts how law might be used by and for the community to achieve shared goals."[25] The range of functional legal tools that contribute to legal self-reliance are those which local organizations can implement themselves, without the direct assistance of a lawyer. Such tools are almost always persuasive, political and administrative. It is highly unlikely that local organizations will benefit from detailed knowledge of formal civil procedure; however, participatory organizations can make immediate use of knowledge of their constitutional rights, the environmental regulations and of the responsibilities of government authorities. General knowledge of the existence of civil, criminal and other procedures will also be useful for local representatives and associations.

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[25] Dias and Paul, *supra* note 9, at 32.

A. The Constitution of the Republic of Ecuador

As in many other civil law countries, international human rights law and other international conventions ratified by Ecuador are automatically incorporated into the constitution.[26] The Constitution of the Republic of Ecuador[27] reiterates many of the rights found in international human rights conventions and declarations. Knowledge of these rights, and of the role of the Ecuadorian government in guaranteeing them, can be used by popular organizations in two concrete ways. First, the knowledge of universal human rights motivates people and stimulates debate about the rational demands of citizens.[28] Second, constitutional rights can be used by popular organizations in their correspondence and communications with government officials, oil company staff and with supporting organizations (in preparing policy statements, funding proposals, etc.).

The Constitution of the Republic of Ecuador contains numerous provisions that can be used by local organizations in their correspondence with government and company officials. Most notably, it guarantees the right to live in an environment free of contamination [Art. 19(2)]. The role of the Ecuadorian government to promote human rights is recognized in the following provisions:

- *Es función primordial del Estado fortalecer la unidad nacional, asegurar la vigencia de los derechos fundamentales del hombre, promover el progreso económico, social y cultural de sus habitantes.* [Art. 2]

- *El más alto deber del Estado consiste en respetar y hacer respetar los derechos humanos que garantiza esta Constitución.* [Art. 19]

- *El Estado garantiza a todos los individuos, hombres o mujeres el goce de los derechos civiles, políticos, económicos, sociales y*

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[26] Jurisprudence relating to the incorporation of the international conventions into national laws is very sparse or non-existent in most of Latin America, and the situation in Ecuador is no different.

[27] CONSTITUCION DE LA REPUBLICA DEL ECUADOR (Ecuador)

[28] Henry Shue defines basic rights as rational moral demands. See: HENRY SHUE, BASIC RIGHTS (1980).

culturales enunciados en las declaraciones, pactos, convenios y más instrumentos internacionales vigentes. [Art. 20]

The Constitution also guarantees numerous specific rights, including: the protection of indigenous languages and pluri-culturalism [Art. 1]; the right to a standard of living that ensures adequate health, nutrition, clothing, shelter, medical assistance and necessary social services [Art. 22 (15)]; the inviolability of life and personal integrity, and the freedom and security of the person [Art. 22]; the inviolability of the home [Art. 22 (8)]; freedom of opinion, expression, and thought [Art. 22 (4)]; the right to petition government authorities and to receive a response within a reasonable period [Art. 22 (11)]; and the right to freedom of association [Art. 22 (14)].

B. International Human Rights

The Constitution of the Republic of Ecuador recognizes the rights contained in international human rights instruments signed and ratified by Ecuador. Both first and second-generation international human rights are highly relevant to the work of participatory organizations in the *Oriente*. Civil and political rights are important in the support of the right of local organizations to exist and to engage in political activities aimed at the improvement of their social, economic and environmental conditions. Knowledge about social and economic rights is useful in helping communities to articulate their demands for State action and for State responses to environmental degradation in the *Oriente*.

In *Legal Dissemination in Rural Areas* Keith Emrich observes that, in the context of legal activism, the "emerging consensus about a proper focus for legal services is based on ideas about general human rights."[29] The Ecuador experience shows that human rights are indeed vitally important legal tools for social activism; but, if governments are not swayed by the moral force of human rights discourse, human rights law offers very little in terms of *direct* protection for

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[29] Keith R. Emrich,, Legal Dissemination in Rural Areas: the International Perspective, 1985 THIRD WORLD LEGAL STUD. 43.

marginalized groups. The ethical expectation created by human rights is that no laws—including those governing the extraction and development of natural resources—should violate human dignity. Towards that aim, states around the world have adopted constitutions that reiterate fundamental rights. But in all countries, the formation of specific national laws very frequently does not support human rights norms. For instance, the natural resources laws in Ecuador, as in many other countries, directly serve the interests of the wealthy and the transnational investors and tend to undermine the basic rights of marginalized groups, especially indigenous peoples.

How should the popular legal educator broach these obvious shortcomings of human rights law in workshops with marginalized groups? How much reliance should local populations place on the elusive protections of international human rights? The approach that has been adopted by popular organizations in Ecuador is to stress the use of human rights law as a political tool. The main point is that international human rights norms are intended to constrain the State from violating human dignity, and all citizens have a role in ensuring that the State complies with these norms. Appealing to human rights and human dignity is always relevant – and of critical importance. But, marginalized groups will almost certainly be disappointed that the direct protections of international human rights are very weak, at best. The "toothless" nature of human rights law presents a dilemma for the popular legal educator: human rights are of critical importance; and yet, when the citizen asks what are the concrete ways in which human rights provide protection, the frank answers will lead to frustration and may potentially be dis-empowering to rural groups. To empower, facilitators must go far beyond discussions of general human rights, and must provide concrete information about the benefits and *real constraints to local populations* that are created by the law. By learning how national laws conflict with human rights and the Constitution, the citizen is empowered to identify areas where legal reform, and hence political pressure, is required. Thus, by stressing the shortcomings of laws and legal processes vis-a-vis Ecuador's own constitutional standards, the concept of *legal reform* and long term

social and political change becomes a practical focus for local activists.

The everyday use of human rights and constitutional rights was discussed in a workshop delivered in the *Oriente* town of Shushufindi by members of the legal capacity-building team of CESR (in collaboration with other local organizations). At this workshop, members of *La Red* (the environmental monitoring network) participated in a series of activities designed to develop self-reliance in communicating political demands about legal rights to government authorities. In the first part of the workshop, participants learned about international human rights and international environmental law. The discussion focussed on how specific provisions of these instruments support the activities of *La Red.* During the second part of the workshop, participants studied specific sections of the Constitution with the aim of finding provisions which reflected international human rights norms, and which supported the activities of local popular organizations. The participants worked in small groups. They were asked to consider an actual "situation" from their own experience where environmental rights were violated and to decide on a strategy of how address the problem. Each group wrote a letter using specific constitutional rights and international human rights norms in the text of the letter to support their demands. The small groups reconvened in a plenary session and presented their situation and strategy. Participants then commented on each letter presented and discussed which other provisions of the Constitution or in international law could have also been used to address the situation. Workshop participants were very positive about the workshop and requested that future workshops involve similar "hands-on" activities. It should be stressed that this particular workshop activity was part of a larger series of on going capacity-building activities organized by *La Red*, and that the participants had been attending workshops every two months for over a year. Clearly, in circumstances where participants had less experience, such "hands-on" activities should be modified.

The expression of constitutional rights or international human rights in written communications to public officials is a highly political

exercise. Workshop activities such as the one described above are a function of the role of the popular legal educator to help develop skills needed to take on an active role in the political life of the country. The act of writing letters to government officials to demand a public response to such incidents as oil spills, improper waste disposal, or unfettered deforestation is not what many lawyers would consider a "legal" exercise; however, such activities take on new "legal" meaning when carried out by marginalized groups to demand that public officials live up to their legal responsibilities. In many cases, it is very likely that public officials are unaware of the constitutional provisions that workshop participants are learning to use in their communications with government officials. Thus, legal capacity-building becomes a process in which activists from marginalized groups become legal educators for public officials!

C. The Constitutional Role of Armed Forces

The constitutional role of the Armed Forces is very broad, but aimed at social well-being of the country as a whole. Its role is: to strengthen national unity, to ensure the protection of fundamental human rights and to promote economic, social and cultural progress of all the citizens of Ecuador.[30] The legal "resource" in this case is the knowledge that the military, like all the institutions of the state of Ecuador, must act according to law and must respect and promote fundamental human rights. As previously mentioned, there exists a need for a more public debate about how to balance the role of the military in protecting the oil economy from threats, with their role in the protection of human rights of Ecuadorian citizens.

D. Land Titles

Despite their flaws, the land titles are an important legal tool in disputes over access to and use of land and in environmental concerns. The Constitution of the Republic of Ecuador guarantees the inviolability of the home [Art. 22 (8)], and guarantees the right to

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[30] LEY DE SEGURIDAD NACIONAL, preambulo (Ecuador)

property [Art. 63]. The Civil Code protects property rights, and governs the conditions for expropriation by the State for the "public utility." The Constitution expressly bans the confiscation of land by the State [Art. 62]. Oil companies are required to obtain permission to enter private land, and are required by Art 90 of the *Ley de Hidrocarburos* to indemnify landowners for damages.

E. Compensation and the Indemnity Law

Art 90 of the *Ley de Hidrocarburos* requires oil companies to indemnify landowners for all damages that occur. In the case of expropriation, the Constitution requires that the government "fairly" compensate the landowner [Art 62]. Landowners need to be aware that they must insist on their right to fair compensation. Compensation is a right, not a favor of the oil companies.

F. Right to Participation and Information

Ecuador is a democracy and its Constitution supports the right of citizens to organize and to participate in the political life of the country. The right to participation in environmental decision-making is recognized in Agenda 21,[31] in Principle 10 of the Rio Declaration on Environment and Development,[32] and in the ILO Convention No. 169 on the Rights of Indigenous Peoples. Art. 28 of the Constitution of the Republic of Ecuador, *Habeas Data*, guarantees the right to obtain information from pubic entities to determine the use of those documents. Only those documents that are of national security importance are immune from *habeas data.*[33] This provision of the Constitution may be special importance in obtaining the environmental impact studies and other documents prepared by oil companies and submitted to the Subsecretary of the Environment of the Ministry of Energy and Mines. Current practice is for the Subsecretary of the Environment to authorize requests for these documents; without

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[31] Agenda 21: Earth's Action Plan, U.N. Doc. A/CONF.151/26 (1992).

[32] Rio Declaration on Environment and Development, 31 I.L.M. 874 (1992).

[33] Note that because oil development is a national security concern, many documents relating to oil development may be immune from *habeas data*.

authorization, the documents are not released to the public. However, it is unclear, from a legal point of view, why these documents are not made readily available to the public. On the other hand it is obvious that the Subsecretary of the Environment has very limited resources for improving opportunities for public participation.

G. Environmental Regulations under the Hydrocarbon Law

The Environmental Regulations for Hydrocarbon Activities do not include formal provisions for public participation; however, there are various procedures that local organizations should be aware of, and should be encouraged to intervene in. Such procedures include: the environmental impact assessment process required for each phase of oil activity, the environmental audit requirements; the environmental management plans and the environmental inspection provisions. In addition, it is important to consider the legal responsibilities of the Subsecretary of the Environment under the Minister of Energy and Mines.

The environmental impact assessments are prepared by the operating company for approval by the Subsecretary of the Environment, following the criteria set out in the regulations. These documents contain maps and detailed descriptions of the operations that will take place within a given time period. For example, the exact location of an exploration well and the access roads will be identified on maps. Copies of completed environmental impact assessments can be obtained directly from the Subsecretary of the Environment. These assessments can be used in workshops as a focus for discussion, as the documents outline the company's specific work-plans. As a workshop activity, participants can analyze relevant parts of the assessments, and can prepare written responses for the government and for the company–even if no formal comment period exists in the Environmental Regulations. The environmental impact assessment also must include an environmental management plan. This plan describes the measures that the company will take to ensure compliance with the environmental standards stated in the regulations. Local organizations can use the plans as a tool for the continuous monitoring of oil operations.

The Ministry of Energy and Mines must carry out an environmental audit of all hydrocarbon activities at least every two years (Art. 57 of the Regulations). It is the responsibility of the Subsecretary of the Environment to ensure that hydrocarbon activities do not have a negative impact on the social and economic organization of communities located in the area of operations (Art. 31 (s)(t), *Ley de Hidrocarburos*). The Environmental Regulation also contains specific requirements for the environmental management for each phase of hydrocarbon activity: seismic testing, exploratory drilling, production, transport and commercialization. Specific provisions exist to protect local communities from pollution and environmental impacts that are often incidental to oil development, such as deforestation and hunting by oil company employees. A summary of the important provisions of the Environmental Regulations can be reproduced and interpreted in capacity-building workshops.

The environmental impact assessment requirements and mandatory management plans are a positive step towards improved environmental performance in oil development, but in practice, the studies lack depth and rigor. The Subsecretary of the Environment simply does not have the resources to review these assessments in any detail. Typically, for instance, the social impact assessment is no more than a short paragraph asserting that the activity will bring jobs to the community. If the Ecuadorian government does not have the financial resources to conduct the appropriate environmental review, citizen activists must develop their own capacities to do that work and must demand that policy and fiscal reforms take place so that the government can comply with its legal responsibilities.

H. Participatory and Representative Organizations

Participatory and representative organizations are included here as examples of legal resources because political organizations and association are permitted by the laws of Ecuador. The Constitution guarantees the right to association and to free and open meetings for peaceful purposes [Art. 22(14)]. It is empowering for groups to know that participatory organizations, such as *La Red* , *Comité de Derechos*

Humanos de Lago Agrio, and the *Frente* are legal entities, whose existence is supported by the constitution.

VI. APPROACHES TO THE DISSEMINATION OF LEGAL RESOURCES IN THE *ORIENTE*

A. Pedagogy

The object of popular legal education is the promotion of legal self-reliance; thus, the educator's role is to take steps toward becoming dispensable. The legal educator must have very strong communication skills and must be able to work with large groups of people, frequently under trying circumstances. Creativity is essential, as is an ability to communicate concepts about laws and rights in ways that are relevant to all the participants. Dias and Paul state that the "first step in developing legal resources may be directed towards bringing relevant information to communities in a form readily comprehensible to them."[34] The job of "bringing relevant information to communities" in the *Oriente* is a major undertaking, both logistically and in terms of making that information readily understandable. Experience living and working with marginalized groups is a prerequisite to effective popular legal education.[35] Legal educators must be able to see law from the perspective of the people they are working with--law as distant, elusive, and intimidating.

Workshop participants usually have a wide range of backgrounds and different levels of interest in legal issues affecting them–this is the nature of grassroots legal activism. In virtually all cases, a general introduction to the purpose of law and to the relationships between the citizen, the State, the law and human rights concepts is essential. A talented team of facilitators made up of local activists and technical resource-people can uncover these themes in a highly participatory manner, drawing on people's immediate experiences.

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[34] Dias and Paul, *supra* note 9, at 32.

[35] In Ecuador, oil company community relations teams often include professional anthropologists.

Education for legal self-reliance is a long-term exercise; each workshop, or educational experience should be viewed as a building block towards longer-term goals. The advantage of long-term planning for capacity-building is that issues can be introduced cumulatively, over a period of several months, and that participants can become directly involved in workshop design and implementation. Individual capacity-building workshops should be organized and implemented as part of a larger strategy and should be planned so as to take place over a specific geographic or cultural region, over a specific period of time.

Dias and Paul argue that "efforts to understand the needs of particular communities and groups for legal resources should be combined with efforts to help meet such needs."[36] Almost invariably, the needs of *Oriente* residents are political in nature–local organizations need to learn precisely how to put pressure on municipal, regional and national authorities to live up to their legal responsibilities. The political nature of the popular legal educator is very apparent in workshops that involve participants from indigenous associations or the leaders of indigenous "centros."[37] Legal educators should be knowledgeable about indigenous politics and of the specific legal issues facing indigenous peoples seeking self-determination.

In a workshop held by the CESR, in collaboration with one of the progressive missions, ninety Shuar representatives traveled to a fly-in community. The aim of the two-day workshop was to prepare community leaders for the imminent arrival of the ARCO petroleum company to the region. Topics of the workshop included, *inter alia*, the history of oil development in Ecuador, the social and environmental impacts of oil development, the Hydrocarbon Law and the Environmental Regulations, human rights, specific rights in Ecuadorian law, and processes for fair negotiations. In addition, the facilitators discussed the recently-affirmed ILO Convention No. 169 and how it applied to oil development in indigenous territories.

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[36] Dias and Paul, *supra* note 9, at 34.

[37] A "*centro*" is a small community with a representative association, e.g. Centro San Pablo is a small Secoya community of about 200 people.

B. Popular Legal Education verses Legal Representation

How does one distinguish between providing popular legal education services and providing legal representation? In what circumstances, if any, should the legal educator also provide representation? The provision of technical legal guidance to large groups of people in a semi-public setting is totally distinct from representing indigenous or campesino organizations in negotiations or legal proceedings. As already suggested, the aim of popular legal education is to develop the legal self-reliance of local organizations, in contrast to legal representation, which often creates a reliance on external legal professionals. Legal education should complement the work that participatory organizations are already undertaking; it should not replace their work. In some circumstances, a local organization, such as an indigenous association, may choose to seek further legal assistance and may even retain a lawyer. The use of lawyers is essential in cases where individuals have been deprived of their liberty (through arrest and detention) or in cases of personal injury. In such cases, communities should seek the legal services of lawyers working for human rights organizations, development organizations, the progressive missions, or indigenous representative organizations.

Apart from the military presence already discussed in this paper, the government of Ecuador has a very limited presence in many of the remote areas where oil operations are underway. Community associations often look to the oil companies to provide much-needed social services, such as potable water, school buildings, health programs and emergency transportation. In some cases, the legally constituted indigenous or campesino organizations (cooperative-associations owning land) will choose to negotiate directly with an oil company. In these situations, the role of the popular legal educator may change considerably--from the provider of background information and advice about useful legal tools to a role more akin to a negotiator. It is important to consider this change in role in the overall context of the popular legal education activities of the capacity-building organization. Since capacity-building organizations work with many different communities with different, and perhaps

conflicting needs, it may be important for the organization to maintain the image of neutrality. All things considered, a serious dilemma exists for the legal capacity-building organization when so often local communities have very little choice of who they can draw upon for legal representation. It is hoped that over the long term, the promotion of legal self-reliance across a larger geographic area should influence the availability of legal services for local organizations.

C. Poverty and Economic Coercion

The extreme poverty and economic inequality in the *Oriente* creates ripe conditions for economic coercion by the government, the oil companies and even from within communities. Endemic corruption is an issue that the legal educator cannot ignore. How does the legal educator talk about the law as a positive tool when local populations are very aware of the extent of corruption and open violation of the law in local and regional affairs?

The mere facts of poverty and pervasive corruption, are huge constraints against the full participation of citizens in development and environmental decision-making. Economic coercion is a very simple process--the provision of the most basic public infrastructure or public services is, de facto, contingent on tacit local support of oil development. "Economic coercion" is used to pressure local organizations to "keep quiet" about the negative impacts of oil development; it contributes to the inertia that keeps poor people poor. One or two workshops with community leaders will not have an impact outside of a larger process of popular consciousness-raising. Dias and Paul observe that "lacking knowledge of law and access to bodies which administer law, the rural poor obviously lack the power to shape the development of law–lack the power to affect the policies and rules governing development programs."[38] Part of the job of "empowerment" is to help rural people overcome the inertia that comes from conditions of poverty.

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[38] Clarence Dias and James C.N. Paul, *Educating for Alternative Development: Sharing Knowledge about the Law*, 1985 THIRD WORLD LEGAL STUD. 65.

It is normal for oil company community-relations officers to deliberately take advantage of the pervasive corruption, the widespread poverty and the lack of organizational and technical resources of local organizations. These officials frequently use the complexity of the law to create confusion. Concepts such as "transparency" in negotiation, and the "win-win" bargain are rarely encountered. One frequently has the impression that the oil companies' community-relations officers make sport out of how little they need to spend to win over a poor community. Given the widespread indigence in the region, many communities are willing to grant permission to an oil company to enter land in exchange for very basic, short term material needs, such as medicine chests, chain-saws, radios, flashlights, tin-roofing, metal canoes, etc.. In many cases, these "gifts" of the company are given to influential people in the community, who use them for their own personal economic gain, thereby creating economic divisions and rivalries within the community itself. Sadly, the use of such "divide and conquer" strategies by oil companies and their contractors is not rare in regions like the *Oriente*; it is, in fact, business as usual.

D. Limited Resources and the Importance of Coordination within the Social Movement

Popular legal education in the *Oriente* is a collaborative effort--no single NGO is capable alone of developing and implementing a legal capacity-building program in that part of the country. Local participatory organizations typically have very limited resources for "mobilization." An important component of the legal capacity-building activities of organizations such as the CESR is the coordination of logistics. CESR works with organizations such as the progressive Catholic Missions to coordinate travel, accommodations and food for workshop participants.[39] Organizers must find a physical location suitable for a two or three-day workshop, and the location must be relatively accessible for the expected participants. In some

[39] The Catholic *Misfon Capuchin* and the *Misfon Saleisana* work directly with CESR and the *Frente de Defensa de la Amazonfa* to coordinate workshop activities in different parts of the *Oriente*.

cases, it is necessary that the cost of transportation for the participants is covered by the NGOs involved and in virtually all cases, food and lodging must be provided. Though it may seem obvious to some, logistical factors such as electric light for workshops at night must also be considered. A two-day workshop requires a great deal of logistics planning and preparation of the content and methodology. Generally, such workshops are a major event for the participants. The overall pedagogy should take into account several factors: the limited time available, that, frequently, only men will leave their communities, and the fact that many of the participants will have traveled a great distance to come to the workshop and will be anxious to return to their communities as soon as possible. Under such circumstances, it is important to encourage participants to organize further meetings in their own communities to disseminate the information obtained and shared during the workshops.

Experience in the *Oriente* shows that community legal education activities should be organized in conjunction with stable social organizations. In the *Oriente*, those organizations include campesino associations and cooperatives, indigenous representative organizations, the progressive Missions, environmental organizations, women's organizations, community committees, educational institutions, development organizations, local human rights committees, international NGOs working in the region and media/cultural organizations (including local radio stations).

VII. CONCLUSIONS

A. A Changing Political Climate

If at one time the local response to oil development activity could have been characterized as disparate and accommodating, that no longer holds true. Encouraged by the increasingly vocal indigenous representative organizations, and partly motivated by the widespread publicity surrounding the *Maria Aguinda* transnational lawsuit (discussed below), many people in the *Oriente* want to know how law and policy can be used to defend their rights and interests. In direct response to worsening conditions, a growing social movement linking

rural and urban citizens is putting pressure on the government, the State oil company and the transnationals to clean up their act. Most importantly, an increasing number Ecuadorian citizens, both of the rural poor and of the urban classes, are demanding that the oil companies cleanup areas that have already been contaminated. However, despite growing public awareness, the government has taken few effective measures to address the environmental degradation and related social and economic problems. Chronic fiscal and political chaos are partly to blame for the government's inaction. The government has been highly constrained by massive debt-service obligations. Just as much at play are: a lack of political will, ingrained patterns of social exclusion of the poor and indigenous populations by urban elites and the protection of personal and corporate interests.

Meanwhile, the growing activist movement has evolved from focussing almost exclusively on oil contamination to encompassing a much larger range of social, political, environmental and economic concerns. Within this movement, many activists believe that the dissemination of legal resources in the *Oriente* region is essential for achieving long-term policy change and improvements in social and environmental conditions in the region. Indigenous representatives, grassroots organizations and activists have identified capacity-building on human rights, Ecuadorian constitutional rights, environmental law, indigenous rights and legal processes, as critical components of their consciousness-raising activities. As a result of the successes of these organizations, residents throughout the *Oriente* have become increasingly more aware of the real environmental risks of oil development and of the many potentially adverse social consequences.

In addition to grassroots activities directed at the Ecuadorian government, a ground-breaking legal suit brought by Ecuadorians in U.S. courts has helped to draw national and international attention to the environmental catastrophe in the *Oriente*. In 1993, a group of indigenous and campesino plaintiffs brought a class-action suit against Texaco Inc. in the Southern District Court of New York. Aguinda v. Texaco Inc. (945 F. Supp. 625 (S.D.N.Y. 1996)), the Ecuadorian

plaintiffs allege gross negligence on the part of Texaco Inc. in the planning and implementation of environmental controls in the *Oriente*. The plaintiffs are seeking civil damages for a class of 13,000 residents, including compensatory damages, punitive damages and equitable relief for personal and property damages resulting from twenty years of recklessly planned oil operations. This case is of special importance from a legal standpoint, because it involves foreign plaintiffs bringing a suit against a U.S.-based company in U.S. courts. The case has served as a powerful catalyst for awareness-raising among the local population. It has also attracted a great deal of attention from the middle and upper classes in urban areas. The case has also been of great interest to environmental and human rights organizations in North America and Europe and to industry officials, high-powered lawyers and transnational business.

Does a knowledge of legal constraints actually empower marginalized groups? The answer is a qualified "yes." Working with local communities to identify legal constraints and legal tools is an extremely delicate exercise, since, in fact, much of the law is overtly opposed to the interests of local people. Ecuador's Hydrocarbon Law operates as a de facto constitution for the *Oriente* region. Several of its provisions tend to undermine basic civil rights to property and security of the person. This is no accident, oil development is a national security concern. The law is heavily biased against local participation and indigenous self-determination. There are no provisions in the Hydrocarbon Law or the environmental regulations for public comment. The land titles which have been granted to settlers and indigenous peoples expressly prohibit owners from "impeding or obstructing" all oil development, even that which takes place on private and ancestral lands. The people of the *Oriente* are, in effect, second class citizens, whose rights frequently are trumped by the oil developers. Once an oil corporation has secured a lease for an exploration block, the legal rights of that company to develop anywhere in the block (usually about 200,000 hectares in size) are virtually immune to challenge--at least through the means available to the campesino settler or to the indigenous representative organization.

Within this context of institutional and legal bias, how can legal knowledge have an empowering effect on poor, rural communities?

As a starting point, the legal activist must be aware of the very real political and legal challenges facing local organizations in their struggle for improving basic conditions. Legal educators should be aware of how the law works to exclude local people from decision making; but, at the same time, they must help to create the methods and strategies for making a lasting impact on law and policy. The overall growth in legal awareness among local populations is multi-faceted; different groups seek legal resources for different reasons. Some hope that law can be used to protect their land and water from contamination; others hope to improve their economic situation by extracting settlements from the oil companies and the government for the sale or expropriation of land. The knowledge that environmental laws, constitutional laws and human rights exist to protect citizens, provides motivation to local organizations, as they feel they have better bargaining leverage in "negotiations" with the oil companies. As citizens become more aware of their legal rights, they negotiate more confidently. Rather than beg for charity relief from a position of subservience, they demand protection from, and compensation for, damages as a legal right. In some cases, community leaders feel that through direct negotiation with oil companies they can get the "best of both worlds"--the immediate benefits of compensation and the long-term benefits of environmental protection. Many of the affected communities seek out legal knowledge to enhance their capacity to "get a good deal" from the oil company. The popular legal educator should be familiar with technical aspects of the most obvious legal problems facing local populations; his or her role is to de-code the technical law and to make it accessible to local groups. Local groups are then able to develop more fulsome strategies for promoting positive social and environmental change. To conclude on a positive note, it is a testament to a real transition to democracy and respect for constitutional rights in Ecuador that community legal education activities in the *Oriente* are allowed to take place to the extent that they do. Despite real attempts to suppress their work, activists have had much success in organizing local groups and in bringing

widespread media and political attention to the environmental and social tragedy in the *Oriente*.

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