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November 3, 1993

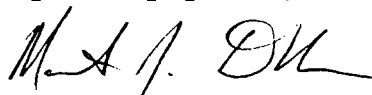
Ms. Amy Christensen
White House Office for
Environmental Protection
Old Executive Building
Room 360
Washington, D.C. 20501

Re: Texaco/Ecuador Litigation

Dear Ms. Christensen:

Per your request, enclosed please find a copy of the
complaint which my office filed today in New York.

Very truly yours,



Martin J. D'Urso

MJD:jmb
enclosure

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Attorneys for Plaintiffs
and the Class

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARIA AGUINDA, CARLOS GREFA,	:	CIVIL ACTION NO.
individually and as guardians for	:	
GESICA GREFA;	:	
CATARINA AGUINDA; MERCEDES GREFA;	:	CLASS ACTION
LIDIA AGUINDA;	:	
PATRICIO CHIMBO,	:	
individually and as guardian for	:	JURY TRIAL DEMANDED
his minor children;	:	
ELIAS PIYAGUAJE, individually	:	
and as guardian for	:	
LOLA PIYAGUAJE, EDISON PIYAGUAJE,	:	
PAULINA PIYAGUAJE, JIMENA PIYAGUAJE:	:	
and ELIAS PIYAGUAJE;	:	
DELFIN PAYAGUAJO, individually	:	
and as guardian for his minor	:	
children;	:	
JAVIER PIYAGUAJE;	:	
HOMER CONDE, individually and as	:	
guardian for his minor children;	:	

SANTO GUILLERMO RAMIREZ, :
 individually and as guardian for :
 DANILO RAMIREZ; :
 JUANA TANGUILA, individually and :
 as guardian for her minor children; :
 [Additional Plaintiffs Listed in :
 Exhibits "B", "C" and "D" hereto :
 and incorporated herein by :
 reference], :
 individually and on behalf of all :
 others similarly situated, :
 :
 Plaintiffs, :
 :
 v. :
 :
 TEXACO INC. :
 2000 West Chester Avenue :
 White Plains, New York 10650, :
 :
 Defendant. :
 :

COMPLAINT

Plaintiffs, Maria Aguinda, Carlos Grefa, Catarina
 Aguinda, Gesica Grefa, Mercedes Grefa, Lidia Aguinda, Patricio
 Chimbo, Elias Piyaguaje, Lola Piyaguaje, Edison Piyaguaje,
 Paulina Piyaguaje, Jimena Piyaguaje, Elias Piyaguaje, Delfin
 Payaguajo, Javier Piyaguaje, Homer Conde, Santo Guillermo
 Ramirez, Danilo Ramirez, Juana Tanguila, individually and
 pursuant to Rule 23 of the Federal Rules of Civil Procedure on
 behalf of a class of all others similarly situated, bring this
 action to remedy the negligent, reckless, intentional and
 outrageous acts and omissions of defendant Texaco Inc. in
 connection with its oil exploration and drilling operations which
 have caused plaintiffs and the class to suffer property damage,

personal injuries, increased risks of cancer and other diseases, and has resulted in the degradation and destruction of the environment in which plaintiffs and their families live. In support thereof, plaintiffs aver as follows:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under and pursuant to 28 U.S.C. § 1332(a)(2), § 1331 and § 1350. Plaintiffs are citizens of Ecuador. Defendant is a citizen of the states of New York and Delaware. The matter in controversy for each plaintiff and for each member of the class, exclusive of interest and costs, exceeds the sum or value of \$50,000.

2. Venue is proper in this district under and pursuant to 28 U.S.C. § 1391(a) and § 1391(b). Defendant has its principal place of business in this judicial district, and continuously and systematically transacts business in this district. A substantial part of the tortious acts and omissions giving rise to this Complaint took place in this judicial district. The policies, procedures and decisions relating to oil exploration and drilling in Ecuador were set and made in New York.

II.

NATURE OF THE ACTION AND
SUMMARY OF CLAIMS

3. This is a class action brought on behalf of citizens and residents of the Amazon region of Ecuador known as

the "Oriente" against Texaco Inc. ("Texaco"). Plaintiffs and the class seek compensatory and punitive damages, and equitable relief, to remedy the pollution and contamination of the plaintiffs' environment and the personal injuries and property damage caused thereby.

4. In 1964, Texaco acquired rights to explore and drill for oil in the Oriente. From approximately 1972 through 1992, Texaco drilled more than 400 oil wells in the region and extracted approximately 220,000 barrels of oil per day.

5. As more fully set forth in the "Factual Background" and "Claims for Relief" sections of this Complaint, Texaco did not use reasonable industry standards of oil extraction in the Oriente, or comply with accepted American, local or international standards of environmental safety and protection. Rather, purely for its own economic gain, Texaco deliberately ignored reasonable and safe practices and treated the pristine Amazon rain forests of the Oriente and its people as a toxic waste dump.

6. Texaco failed to pump unprocessable crude oil and toxic residues back into the wells as is the reasonable and prudent industry practice. Instead, Texaco disposed of these toxic substances by dumping them in open pits, into the streams, rivers and wetlands, burning them in open pits without any temperature or air pollution controls, and spreading oil on the roads. Texaco designed and constructed oil pipelines without

adequate safety features resulting in spills of millions of gallons of crude oil.

7. Texaco's practices of disposing of untreated crude and waste by-products into the environment has contaminated the drinking water, rivers, streams, ground water and air with dangerously high levels of such known toxins as benzene, toluene, xylene, mercury, lead and hydrocarbons, among others. Texaco's acts and omissions have resulted in the discharge of oil into the plaintiffs' environment at a rate in excess of 3,000 gallons per day for 20 years. Many times more oil has been spilled in the Oriente than was spilled in the Exxon Valdez disaster in Alaska.

8. Plaintiffs and the class they seek to represent have suffered severe personal injuries and are at an increased risk of suffering other diseases, including cancers. Their sources of potable water have been contaminated, their properties polluted, their livestock killed or made ill, and their very existence as a people jeopardized.

9. Plaintiffs seek damages under common law theories of negligence (Count I), public and private nuisance (Count II and Count III), strict liability (Count IV), medical monitoring (Count V), trespass (Count VI), and civil conspiracy (Count VII). Plaintiffs seek damages under the Alien Tort Victims Act, 28 U.S.C. § 1350 (Count VIII). Plaintiffs also seek equitable relief (Count IX).

10. Plaintiffs and the class have no means to redress these wrongs other than through this action in this Honorable

Court. Texaco's activities in Ecuador were at all relevant times designed, controlled, conceived and directed by defendant Texaco Inc. through its operations in the United States. Texaco no longer does business in Ecuador.

III.

THE PARTIES

A. Plaintiffs

11. Plaintiffs are citizens and residents of the nation of Ecuador who live in the geographic area adversely affected by defendant Texaco's oil drilling and exploration activities. This region is depicted on the map attached hereto as Exhibit "A" and incorporated herein by reference. Some of the plaintiffs are indigenous to this region. Others have immigrated from other parts of Ecuador, all as more fully set forth below. All plaintiffs have been exposed to toxic substances as a direct result of defendant's tortious conduct and have or will suffer property damage, personal injuries, and increased risks of disease including cancer.

12. Plaintiff, Maria Aguinda, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She is married with children and suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the

rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil.

Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

13. Plaintiff, Carlos Grefa, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. He is married with children and suffers from illnesses directly related to oil contamination. He is also at an increased risk of developing cancer. The only water available to him for drinking is water that he collects from the rain as all the rivers, springs and wetlands in the vicinity of his home have been contaminated with toxic crude oil. Furthermore, he is constantly subjected to chemical poisoning as he must wash his feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, he is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging his respiratory system. He is a Quichua Indian.

14. Plaintiffs, Carlos Grefa and Maria Aguinda also sue as guardians of their minor child Gesica Grefa. Gesica Grefa, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

15. Plaintiff, Catarina Aguinda, is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired

from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

16. Plaintiff, Mercedes Grefa is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

17. Plaintiff, Lidia Aguinda is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156.

She suffers from illnesses including body growths directly related to oil contamination. She is also at an increased risk of developing cancer. The only water available to her for drinking is water that she collects from the rain as all the rivers, springs and wetlands in the vicinity of her home have been contaminated with toxic crude oil. Furthermore, she is constantly subjected to chemical poisoning as she must wash her feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she is subjected to inhalation of heavy levels of dust particles covered with oil that are damaging her respiratory system. She is a Quichua Indian.

18. Plaintiff, Patricio Chimbo is a resident of the rural area located on the main road south of Coca, Ecuador, in the immediate vicinity of a road marking denoting kilometer 156. He sues on his own behalf and as guardian of his minor children. He and his family suffer from illnesses including body growths directly related to oil contamination. They are at an increased risk of developing cancer. The only water available to him and his children for drinking is water that he collects from the rain as all the rivers, springs and wetlands in the vicinity of his home have been contaminated with toxic crude oil. He owns a farm from which he derived his living. In the past few years all his animals have died from drinking the water of the contaminated

streams and he has been forced to stop raising cows, goats and chickens. Furthermore, he is constantly subjected to chemical poisoning as he and his wife and his children must wash their feet regularly with gasoline to remove oil contamination acquired from walking on the crude oil contaminated roads. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, he and his family are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory system. He, his wife and his family are Quichua Indians.

19. Plaintiffs named above and other plaintiffs named in Exhibit "B" are all similarly situated and all are bringing this Complaint on their behalf and the behalf of all other Quichua Indians similarly situated as well as members of other indigenous communities similarly situated, all residing in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England, and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are Quichua and Cofan Indians similarly situated to the plaintiffs are listed in alphabetical order in Exhibit "B" which is incorporated into this Complaint as if set forth fully herein.

20. Plaintiff, Elias Piyaguaje, is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the vicinity of the Aguarico River and the town of Shusufundi. He sues on his own behalf and as guardian for his minor children, Lola who is eighteen years old; Edison, who is fifteen years old; Paulina, who is ten years old; Jimena who is seven years old and Elias who is five months old. Plaintiff Piyaguaje and his family suffer from illnesses caused by oil contamination of their air, ground and water sources. Defendant has contaminated the river from which he and his family derived their sustenance to a degree that has practically eliminated fish from his diet and the diet of his wife and children. All the waters previously used by him and his family for drinking and bathing are contaminated with crude oil and they are forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. They are also at an increased risk of developing cancer. He and his family can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. He and his family's way of life has been dramatically changed due to the oil contamination including their culture, their diet and other ancient traditions. He and his family are Sekoya Indians.

21. Plaintiff, Delfin Payaguajo, is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the vicinity of the Aguarico River and the town of Shusufundi. He sues on his own behalf and as guardian for his minor children. He and his family suffer from illnesses caused by oil contamination of their water sources. Defendant has contaminated the river from which he and his family derived their sustenance to a degree that has practically eliminated fish from his diet and the diet of his family. All the waters previously used by him and his family for drinking and bathing are contaminated with oil crude and they are forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. They are also at an increased risk of developing cancer. He and his family can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. He and his family's way of life has been dramatically changed due to the oil contamination including their culture, their diet and other ancient traditions. He and his family are Sekoya Indians.

22. Plaintiff, Javier Piyaguaje is a resident of San Pablo de Aguarico in the Province of Sucumbios, in Ecuador Amazonian lands. His land is located in the rain forest in the

vicinity of the Aguarico River and the town of Shusufundi. He suffers from illnesses caused by oil contamination of his water sources. Defendant has contaminated the river from which he derived his sustenance to a degree that has practically eliminated fish from his diet. All the waters previously used by him for drinking and bathing are contaminated with crude oil and he is forced to drink and bathe only in rain water collected in barrels. Even this rain water, however, has been determined to be contaminated with Polycyclic Aromatic Hydrocarbons a carcinogenic by-product of oil contamination. He is also at an increased risk of developing cancer. He can no longer swim in the rivers, as is the Sekoya's ancient tradition, to cool from the tropical heat during the day or to warm from the coolness of the Amazon nights at sun rise, due to the high levels of oil contamination of the river waters. His way of life has been dramatically changed due to the oil contamination including his culture, his diet and other ancient traditions. He is a Sekoya Indian.

23. Plaintiffs named above and other plaintiffs named in Exhibit "C" are all similarly situated and all are bringing this Complaint on their own behalf and on behalf of all other Sekoya Indians similarly situated as well as members of other indigenous communities similarly situated, all residing in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the

Meridian located at 77.5 degrees West of Greenwich England, and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are Sekoya Indians similarly situated to the plaintiffs are listed in alphabetical order in Exhibit "C", which is incorporated into this Complaint as if set forth fully herein.

24. Plaintiff, Homer Conde is a thirty year old resident of land located adjacent to the road South of Coca, Ecuador, near a marking denoting kilometer 128. Homer Conde moved to this land in 1984 with his family. He is bringing this law suit on his behalf and as guardian of his minor children. In 1986, defendant opened an oil well near his home and the lake behind his home which is on his property became contaminated. Conde and his family suffer from illnesses related to drinking and bathing in water contaminated with crude oil. They are also at an increased risk of developing cancer. Defendant has since 1986 ruined all sources of water in the vicinity of plaintiff's home. His cows have suffered spontaneous abortions after drinking the contaminated water of the streams. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, he and his children are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory systems. He is an immigrant to this region of the Amazon.

25. Plaintiff, Santo Guillermo Ramirez is a resident of land located adjacent to the road south of Coca, Ecuador, near

a marking denoting kilometer 143. He brings this law suit on his behalf and as guardian of his minor child. His child, Danilo, suffers from body growths directly attributable to the water contamination of the region with oil crude. Santo Guillermo Ramirez also suffers from illnesses related to the contamination of the water of the region with crude oil. All the fish in the stream that passes through his property have died from the oil contamination. They are also at an increased risk of developing cancer. Whenever it rains, the oil that is constantly being discarded by spreading the same on the roads washes on the land owned by Ramirez and his family making it impossible for Danilo, Santo Guillermo or other inhabitants of the region not to be exposed and contaminated daily with toxic crude oil. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, they are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging his respiratory system. Ramirez and his family are immigrants to this region of the Amazon.

26. Plaintiff Juana Tanguila is a resident of the Pimampiro Community located near La Joya de los Sachas, in Sucumbios, Ecuador. Juana moved to Pimampiro twenty years ago with her family. Her husband died five years ago and she is the head of a household composed of herself and her children. She and her children suffer from many illnesses related to the contamination of the river near their home with crude oil including but not limited to: growths on their bodies, fevers,

migraine headaches, and corporal pains. They are also at an increased risk of developing cancer. In addition, her married daughter, Fabiola, who resides with her, suffered a spontaneous abortion after bathing in the river on a day when the oil contamination was particularly heavy. She and her family are limited to drinking rain water that is collected in barrels during the rainy season. During the dry season they are forced to drink the water from the heavily contaminated river. The river water contains high levels of Polycyclic Aromatic Hydrocarbons at levels capable of causing cancers in those who drink the water. She and her family have also attempted to draw water from a small well on the ground to avoid the oil contamination and have reason to believe that the water from this shallow well is also contaminated from the oil spread on the roads and the contamination of the ground water caused by oil spilling from the oil lagoons created by defendant to dispose of unmarketable and toxic crude. During the summer months when there is very little rain, due to the constant spreading of crude oil on the roads, she and her family are subjected to inhalation of heavy levels of dust particles covered with oil that are damaging their respiratory systems. She and her family are immigrants to this region of the Amazon.

27. Plaintiffs named above and other plaintiffs named in Exhibit "D" are all similarly situated and all are bringing this Complaint on their behalf and the behalf of all other immigrants to this region of the Amazon who are similarly

situated. All plaintiffs named above and those named in Exhibit "D" as well as all other plaintiff members of the class reside in the region of Ecuador that comprises the area surrounded on the North by the Ecuadorian frontier with Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England, and on the East by the 76th Meridian West by Greenwich England. For the convenience of the Court and parties, the plaintiffs named in this Complaint who are immigrants to the region are listed in alphabetical order in Exhibit "D" which is incorporated into this Complaint as if set forth fully herein.

B. Defendant

28. Defendant, Texaco Inc. is a Delaware Corporation, with its principal place of business at 2000 West Chester Avenue, White Plains, New York 10650. Texaco is a vertically integrated enterprise engaged in the exploration, extraction, production, transportation, refining, distributing and marketing of oil, natural gas and petroleum products worldwide. Texaco operated oil exploration, drilling and crude transportation activities in the Oriente region of Ecuador, which activities were directed, designed, controlled and conceived by defendant in the United States.

IV.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action individually, and pursuant to Rule 23(a) and 23 (b)(3), on behalf of the following class:

All individuals who at any time from 1972 to the present reside in the region of Ecuador comprised by the area bounded on the North by Colombia, on the South by the Parallel at 1.5 degrees south of the Equator, on the West by the Meridian located at 77.5 degrees West of Greenwich England and on the East by the 76th Meridian West of Greenwich England.

30. The class is so numerous that joinder of all members is impracticable. Plaintiffs believe there are at least 30,000 members of the class.

31. There are questions of law and fact common to the class.

32. Plaintiffs' claims are typical of the claims of the class. Plaintiffs seek redress for the same conduct which has affected all class members and press legal claims which are the same for all class members.

33. Plaintiffs will fairly and adequately represent the class. Plaintiffs do not have any conflicts of interest with the members of the class and they have retained counsel who are experienced in complex litigation, including class actions, who will vigorously prosecute this action.

34. Common questions of law and fact predominate over any individual issues. Such common questions include, but are not limited to, the following:

- a) the policies, procedures and guidelines used by defendant in exploring and drilling for oil;
- b) the policies, procedures and guidelines used by defendant in handling and disposing of crude oil and waste by-products of oil exploring and drilling;
- c) the technological suitability of defendant's exploration and drilling practices;
- d) whether defendant's exploration, drilling and disposal practices were negligent;
- e) whether defendant's exploration, drilling and disposal practices constitute intentional malfeasance;
- f) the policies, procedures and guidelines used by defendant in transporting oil;
- g) whether defendant's conduct in transporting oil was negligent;
- h) whether defendant's design, construction and maintenance of oil pipelines in the Oriente was negligent;
- i) whether defendant's design, construction and maintenance of oil pipelines in the Oriente constituted intentional malfeasance;
- j) whether the region defined in the class definition has been contaminated with crude oil as a result of defendant's activities and the extent of such contamination;
- k) whether the region defined in the class definition has been contaminated with by-products, wastes,

chemicals and other toxins as a result of defendant's activities, and the extent of such contamination;

l) whether the pollutants which defendant has discharged into the environment are toxic;

m) whether defendant's conduct constitutes a nuisance;

n) whether the class should receive medical monitoring;

o) whether defendant is liable for compensatory damages and the measure of such damages;

p) whether the defendant's conduct was wanton and outrageous;

q) whether defendant is liable for punitive damages and the amount of such damages, and

r) whether the class is entitled to equitable relief.

35. A class action is the superior method for adjudication of this controversy. In the absence of a class action, the courts will be unnecessarily burdened with multiple, duplicative individual actions. Moreover, if a class is not certified, many meritorious claims will go unredressed as the individual class members are not able to prosecute complex litigation against a large, multi-national corporation.

V.

FACTUAL BACKGROUND

36. The region of Ecuador in which plaintiffs and the class reside contains some of the most ecologically diverse tropical rain forests in the world. This region, known as the Oriente, lies in the Eastern half of Ecuador, on the downward slope of the Andes Mountains.

37. The Oriente rain forests lie at the head waters of the Amazon river system, and are vital to the flood control of the entire river. The rain forests regulate the climate not only of the Oriente region, but indeed, contribute to climate conditions throughout the world. It is well accepted that destruction of the tropical rain forests contributes to global warming, a major environmental problem with potentially disastrous effects for the entire planet.

38. Approximately eight groups of indigenous people live in the Oriente. These people have lived for centuries in the rain forests and depend on them for their livelihoods and their very existence. While of general concern to everyone, Texaco's destruction of the rain forests already has caused physical injury to plaintiffs and the class and continues to threaten their health, way of life, and very survival as a people.

39. In or about 1964, defendant Texaco began oil exploration and drilling activities in the Oriente region of Ecuador. Texaco's activities as described herein have devastated

the rain forests of the Oriente and the health of the people who live there.

40. Texaco's activities led to the discovery of many oil fields. Eventually, these fields would, according to Texaco, produce at their peak 220,000 barrels of crude oil per day, from over 400 wells.

41. In 1972, Texaco completed construction of a 500 kilometer oil pipeline which it designed. Texaco also designed and constructed numerous subsidiary pipelines. These pipelines have had repeated ruptures, leaks and discharges of oil causing damage to the plaintiffs and the class.

42. Texaco directly operated oil facilities in Ecuador up to July, 1990. From July 1990 through 1992, Texaco remained involved in the operation of these facilities.

43. Texaco's acts and omissions have inflicted damage on the people and environment of the Oriente of outrageous proportions. In conducting its oil exploration, drilling and transportation activities, Texaco failed to exercise due care, failed to abide by industry standards, failed to follow accepted international rules and standards, and failed to follow its own stated guidelines which it contends were used in Ecuador. Instead, Texaco acted with callous disregard for the health, well being and safety of plaintiffs and the class. For example:

(a) Texaco's exploratory drilling practices generate waste products which contain toxic substances. Rather than contain these wastes, or dispose of them in environmentally

sound ways, these wastes were discharged into open pits. The pits would overflow, allowing these toxins to discharge into streams, rivers and groundwater from which plaintiffs and the class obtain drinking water and food;

(b) Texaco also burned off the waste oil products in the open pits or lagoons without sound or prudent temperature or air pollution controls. As the result, the air plaintiffs and the class breath is contaminated with toxic particles;

(c) Defendant has also placed these wastes in crude "landfills," without proper linings or capping. As a result, the toxins leak and are discharged from these "landfills";

(d) The problems identified in subparagraphs (a) - (c) above in connection with exploratory drilling were repeated and exacerbated with production drilling. Large quantities of toxic wastes are generated and discharged, untreated, into the open pits, burned off in an unsafe manner, or "landfilled";

(e) In addition to the waste products, crude oil itself is highly toxic. Through the negligent, reckless and intentional practices of defendant, crude oil has been repeatedly spilled and discharged in the Oriente. Streams and rivers in the region are black with untreated, discharged crude oil. Aquatic life in the streams has been destroyed;

(f) Defendant intentionally disposed of oil on the roads in the Oriente. Plaintiffs and the class have their

bodies and vehicles covered with this oil and are constantly exposed to dust covered with the oil;

(g) The major pipeline designed, constructed, maintained and operated by Texaco has repeatedly ruptured and leaked. The Ecuadorian government estimates that 16.8 million gallons of oil have spilled from the pipeline. That is approximately 6 million gallons more than was spilled in the Exxon Valdez oil spill. The pipeline was negligently designed and constructed by defendant with an inadequate number of shut-off valves, so that when a rupture occurs, oil will flow unchecked for days. Various secondary pipelines were also constructed without due care in light of the unique topography of the land resulting in the discharge of oil into the environment;

(h) The defendant failed to have equipment for cleaning up oil spills available. Accordingly, no effort was made by defendant to clean up spills from the pipelines;

(i) The defendant never warned plaintiffs and the class of the dangers of exposure to oil and the by-products of oil drilling.

44. The defiling of the Oriente has had grave consequences for plaintiffs and the class. The waste products discharged in open pits typically contain such toxins as arsenic, lead, mercury, benzene, naphthalene and other hydrocarbons. These substances are toxic to animals and humans and are known or suspected carcinogens.

45. These heavy metals, hydrocarbons and other substances bioaccumulate in the environment and in the food chain.

46. Plaintiffs and the class continuously ingest these substances through dermal contact, breathing the polluted air, drinking polluted water and eating fish and other foods contaminated with these substances.

47. Oil discharge is so prevalent that the dirt roads in the region are covered with oil. Texaco also intentionally dumped oil on the dirt roadways. In the dry season, oil laden dust "storms" further expose the class to these poisons. The plaintiffs and the class members frequently become covered with oil, particularly on their feet and are forced to apply gasoline to their bodies as a solvent to remove the oil. Similarly, vehicles become heavily coated with oily dust so that they can only be cleaned with gasoline.

48. The streams, rivers, lakes and aquifers of the Oriente have become so contaminated with oil and oil by-products that the water is unsuitable for drinking. Testing of the water has revealed the presence of hydrocarbons and other carcinogens at levels many times higher than EPA's recommended safety levels.

49. Recently, testing of rain water has revealed that even the rain water contains dangerous levels of toxic substances attributable to oil exploration and production. As a result, plaintiffs and the class have no source of safe water for drinking, cooking or bathing.

50. Plaintiffs and the class members have been exposed to toxic substances from at least the early 1970's or the length of their lives, whichever is shorter. Plaintiffs have suffered physical injuries, including rashes, skin irritations, cancers, emotional distress and other ailments as a direct result of this exposure.

51. Plaintiffs and the class are at a significantly increased risk of developing cancer as a result of their exposure to these toxins.

52. The acts and omissions described herein were committed by defendant maliciously, intentionally, and with a flagrant disregard for the rights of plaintiffs and the class, and with actual awareness on the part of the defendant that the acts and omissions would, in reasonable probability, result in great bodily harm to plaintiffs.

VI.

CLAIMS FOR RELIEF

Count I

Negligence

53. Plaintiffs incorporate by reference paragraphs 1 through 52 of this Complaint as fully as if set forth herein.

54. Defendant owed a duty to plaintiff and the class to exercise reasonable care in conducting its oil exploration, oil drilling, pipeline construction and other activities in connection with the extraction of oil from the Oriente.

55. Defendant breached its duty of care by engaging in the negligent activity set forth above and by otherwise failing to employ safe, prudent and technologically current techniques to prevent the discharge of oil and other by-products into the environment.

56. The defendant was negligent in one, some and/or all of the following respects:

(a) In using oil drilling technology inadequate for the tropical region of the Amazon;

(b) In failing to develop proper technology to prevent the contamination of the pristine and fragile Amazon environment with crude oil and its by-products;

(c) In failing to exercise due care in the exploration and extraction of oil;

(d) In failing to exercise due care in the design and construction of oil pipelines;

(e) In failing to prevent spills, discharges and leaks of oil and its by-products;

(f) In failing to warn the inhabitants of the region of the toxicity of crude oil and its by-products;

(g) In failing to adequately warn the immigrants to the region and the indigenous inhabitants in their respective languages of the toxicity of oil and its by-products;

(h) In failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce safe

methods of disposal of unprocessable crude oil and its by-products;

(i) In failing to reveal to the inhabitants of the region tests conducted by defendant on the toxicity of the products released by defendant into the environment;

(j) In failing to test all chemical products released into the environment for adverse health effects, or to cause said products to be tested;

(k) In concealing from plaintiffs information concerning the effects of such products in humans and animals;

(l) In failing to adequately monitor the health of plaintiffs exposed to toxic crude oil or its by-products.

57. Defendant's breach of duty was wanton, outrageous, reckless and intentional. Defendant made the decision for its own economic gain to dump unprocessed oil into the environment, and thereby to expose plaintiffs and the class to toxic crude oil, and to benzene, toluene, arsenic, lead, mercury, hydrocarbons and other toxins, knowing that such substances were toxic to humans.

58. As a direct and proximate result of defendant's breaches of duty, plaintiffs and the class have suffered injuries to their persons and property. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count II

Public Nuisance

59. Plaintiffs incorporate by reference paragraphs 1 through 58 of this Complaint as fully as if set forth herein.

60. Defendant's conduct and the resulting contamination of the Oriente environment has created a public nuisance which endangers and will continue for many years to endanger the safety, health and comfort of a large number of persons.

61. Plaintiffs and class members have suffered special and peculiar harm of a kind different from that suffered by others, in that their health already has been injured, their properties already have been damaged and their sources of clean water and food already have been curtailed.

62. Though it may be liable irrespective of fault, defendant's conduct was unreasonable, wanton, outrageous, reckless and intentional, and plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count III

Private Nuisance

63. Plaintiffs incorporate by reference paragraphs 1 through 62 of this Complaint as fully as if set forth herein.

64. Defendant's conduct has caused nontrespassory (as well as trespassory) invasions of plaintiffs' and class members' private use and enjoyment of their land.

65. Defendant's conduct has been unreasonable in that it has caused severe annoyance, harm, inconvenience and damage to plaintiffs' and class members' enjoyment of their private properties.

66. Though it may be liable irrespective of fault, defendant's conduct was unreasonable, wanton, outrageous, reckless and intentional, and plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count IV

Strict Liability

67. Plaintiffs incorporate by reference paragraphs 1 through 66 of this Complaint as fully as if set forth herein.

68. The technology used by defendant for extraction of crude oil from the Oriente was designed, created and used by defendant to maximize its profits. This technology was defective and unreasonably dangerous in the following respects:

(a) The technology lead to the contamination of the waters of the region with toxic crude oil and its by-products without providing adequate warning to plaintiffs and the class in their own languages, of the health hazards associated with the exposure to crude oil and its by-products resulting from defendant's defective and unreasonably dangerous technology.

(b) The technology was defectively designed and unreasonably dangerous in that at all times alternative technology existed for extraction of oil without discarding toxic

crude oil and its by-products into the environment, and without creating unreasonable health hazards to plaintiffs and the class.

(c) Defendant was in the business of extracting and selling oil, and defendant by use of unreasonably dangerous technology contaminated the environment, and this contamination is the direct cause of the damages sustained by plaintiffs and the class.

(d) Plaintiffs and the class were unaware of the dangerous propensities of crude oil and its by-products which rendered them unsafe if spilled and discarded into the environment. Plaintiffs and the class were exposed to crude oil and its by-products in manners that were reasonably anticipated by defendant. Defendant intentionally exposed plaintiffs and the class to crude oil and its by-products by deliberately discarding oil and its by-products into the environment.

69. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count V

Medical Monitoring

70. Plaintiffs incorporate by reference paragraphs 1 through 69 of this Complaint as fully as if set forth herein.

71. As a result of defendant's negligent and reckless conduct, plaintiffs and the class have been significantly exposed to known hazardous substances.

72. As a result of such exposure, plaintiffs and the class are at an increased risk of contracting latent diseases, including cancers.

73. Early detection and treatment of these diseases is medically necessary and advisable.

74. Plaintiffs and the class are entitled to recover the costs of a medical monitoring program, and to recover punitive damages in amounts to be ascertained at trial.

Count VI

Trespass

75. Plaintiffs incorporate by reference paragraphs 1 through 74 of this Complaint as fully as if set forth herein.

76. Defendant's intentional and reckless acts and omissions have resulted in the discharge of oil and other pollutants onto the real property of the plaintiffs and the class.

77. Such acts and omissions constitute a trespass upon the properties of plaintiffs and the class.

78. Plaintiffs and the class are entitled to recover compensatory and punitive damages as a result of defendant's trespass in amounts to be ascertained at trial.

Count VII

Civil Conspiracy

79. Plaintiffs incorporate by reference paragraphs 1 through 78 of this Complaint as fully as if set forth herein.

80. Defendant and its subsidiaries, affiliates and others knowingly agreed, contrived, combined, confederated, and conspired among themselves to cause plaintiffs injury, illness and disease by exposing plaintiffs to harmful crude oil. Defendant and its co-conspirators committed the above described wrongs by intentionally dumping, spilling and discharging crude oil and other toxins into the environment and by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with exposure to crude oil and its by-products.

81. In furtherance of said conspiracy, defendant performed the following overt acts, among others, and in addition to the acts and omissions described in Counts I through V which are incorporated herein by reference:

(a) For many years defendant, individually, jointly, and in conspiracy with others, has possessed medical and scientific data, literature, and test reports which clearly indicated that Amazon crude oil and its by-products were unreasonably dangerous, hazardous, deleterious, carcinogenic, and potentially deadly;

(b) Despite the medical and scientific data, literature, and test reports by and available to defendant, defendant jointly and in conspiracy with others, fraudulently, willfully and maliciously:

(i) withheld, concealed and suppressed said medical and scientific data, literature, and test reports

regarding the health risks associated with Amazon crude oil and its by-products, from plaintiffs;

(ii) caused to be released, published and disseminated literature containing information and statements regarding the risks of exposures of plaintiffs to Amazon crude oil and its by products which defendant knew were incorrect, incomplete, outdated, and mislead;

(iii) by the false and fraudulent misrepresentations, omissions, and concealments set forth above, defendant intended to induce plaintiffs to rely upon said false and fraudulent misrepresentations, omissions, and concealments and to continue to expose them to the dangers inherent in exposure by plaintiffs to crude oil and its by-products.

82. Plaintiffs and the class reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by defendant regarding the lack of health risks to humans of oil extraction activities as well as the lack of risk of contaminating the environment with toxic and harmful products. Plaintiffs and the class have suffered personal injuries and property damages as a result of the tortious conduct which defendant committed in conspiracy with others.

83. As a direct and proximate result of defendant's conspiratorial acts, plaintiffs have suffered damages. Plaintiffs and the class are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Count VIII

Violation of 28 U.S.C. § 1350

84. Plaintiffs incorporate by reference paragraphs 1 through 83 of this Complaint as fully as if set forth herein.

85. Defendant's acts and omissions of intentionally and tortiously discharging crude oil and other toxins into the environment; in damaging the pristine rain forests of the Oriente; in destroying the streams, rivers, waterways and aquifers, and in threatening the survival of the indigenous people of the Oriente violate the law of nations, international law, worldwide industry standards and practices, as well as the laws of the United States.

86. Defendant's conduct in violation of the law of nations has caused plaintiffs and the class damages in amounts to be ascertained at trial.

Count IX

Equitable Relief

87. Plaintiffs incorporate by reference paragraphs 1 through 86 of this Complaint as fully as if set forth herein.

88. As a result of defendant's conduct, plaintiffs' properties and environment are highly contaminated with toxic substances. Plaintiffs' drinking water supplies have been contaminated with carcinogens, rendering them unsuitable for consumption.

89. In the absence of injunctive relief, plaintiffs will suffer irreparable harm. Plaintiffs do not have an adequate remedy at law.

90. Plaintiffs are entitled to equitable relief to remedy the contamination and spoliation of their properties, water supplies and environment.

DEMAND FOR JURY TRIAL

91. Plaintiffs demand trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the Court to:

(a) determine that this case may be maintained as a class action pursuant to Rule 23 of the Fed.R.Civ.P.;

(b) enter judgment in favor of plaintiffs and the class and against defendant on all counts of the Complaint;

(c) award plaintiffs and the class compensatory and punitive damages;

(d) grant plaintiffs and the class equitable relief;

(e) award plaintiffs and the class the costs of suit,
and

(f) award plaintiffs and the class such other and further relief as the Court deems just under the circumstances.

DATED: November 3, 1993

Respectfully submitted,

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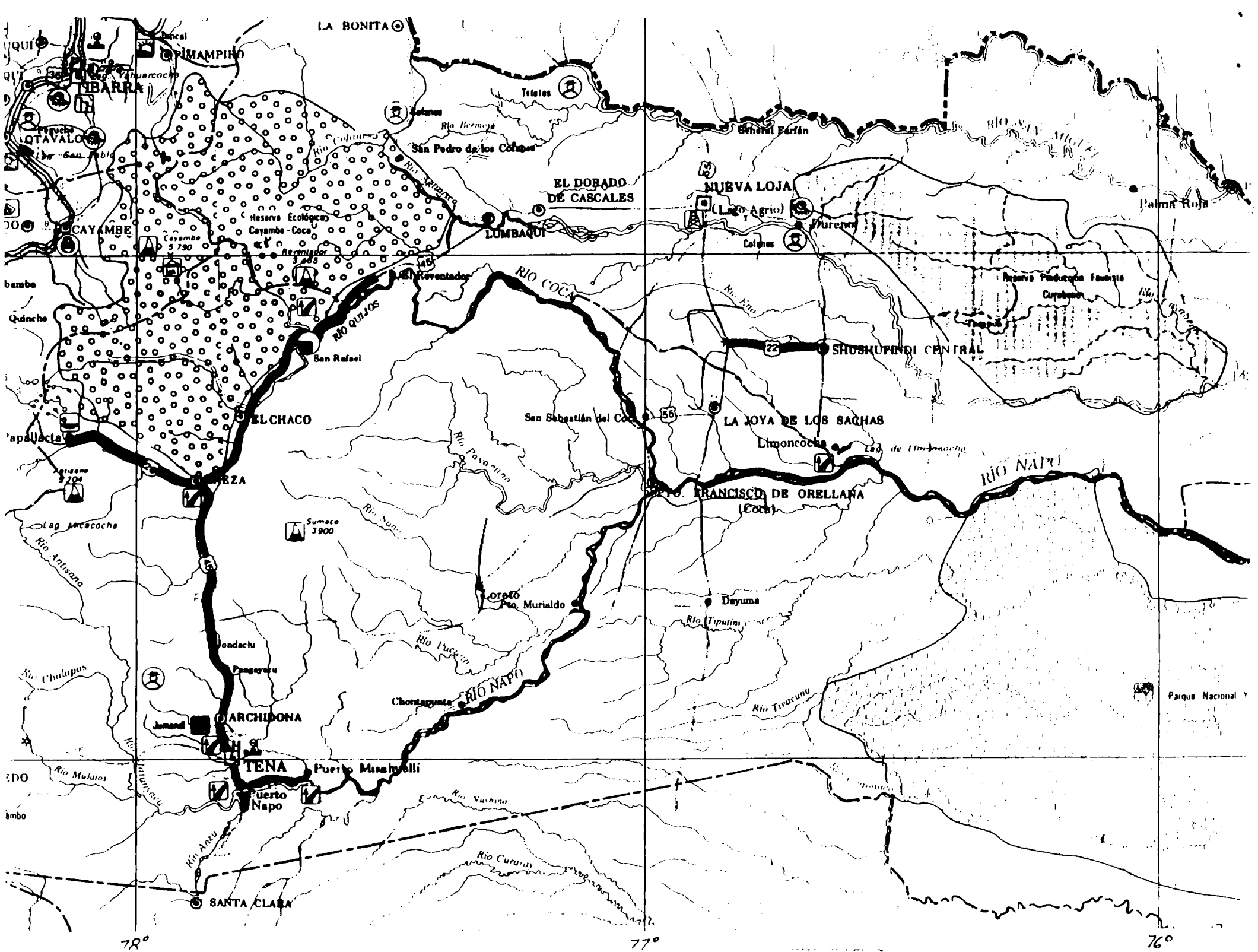
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ANDI, Gerardo

ARMAS, Luis

CHIMBO, Patricio

GREFA, Carlos

GREFA, Gesica

GREFA, Lucio

GREFA, Mercedes

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VEGAY, Jaime

VEGAY, Jose Enrique

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PAYAGUAJE, Alfredo
PAYAGUAJE, Alirio
PAYAGUAJE, Colon
PAYAGUAJE, Delfin
PAYAGUAJE, Fermin
PAYAGUAJE, Guillermo
PAYAGUAJE, Hernan
PAYAGUAJE, Luis
PAYAGUAJE, Miguel
PAYAGUAJE, Teodoro
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AMANTA, Angel
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CASTILLO-PUGACHI, Rommel
CHIMBO, Lourdes
CHIMBO-CHUGANDO, Luis
CHIMBO, Rosa
GREFA, Olga
ILLIAPA, Gregorio
ILLIAPA, Jose
IPIALES, Miguel
NOTERO, Prudencio
PATALON, Heliodoro
RAMIREZ, Danilo
RAMIREZ, Santos Guillermo
REVELO, Gabriel
RIASCOS, Lourdes
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EXHIBIT D (CONTINUED)

RIASCOS, Yolanda

RODRIGUEZ, Maria

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TANGUILA, Lucrecia

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October 29, 1993

Ms. Katherine McGinty
Director of Environmental Policy
Old Executive Office Building, Room 360
Washington, D.C. 20501

Dear Ms. McGinty,

On behalf of the Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE) we thank you for meeting with us on October 7 to discuss our petition before the Inter-American Commission of Human Rights of the Organization of American States on behalf of the Huaorani people. As requested, we are sending the main documents that Petitioner has presented to the Commission in this case.

We are pleased to let advise you that, after our meeting with the Ambassador of Ecuador at the OAS, and the Ambassador's later visit to the Inter-American Commission, the government of Ecuador has decided to extend an invitation to the Inter-American Commission to carry out an on-site investigation in Ecuador. We hope this visit can take place in early 1994.

We thank you for your interest in the case before the Inter-American Commission and in the destiny of the Huaorani people. We will keep you apprised of any further developments regarding this case or the situation in general.

Yours sincerely,

Adriana Fabra Aguilar

p.o. AFA

Karen Parker

Attorneys for Petitioner

PETITION
SUBMITTED TO THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES
BY
CONFEDERACION DE NACIONALIDADES INDIGENAS
DE LA AMAZONIA ECUATORIANA (CONFENIAE)
ON BEHALF OF
THE HUAORANI PEOPLE
AGAINST
ECUADOR
JUNE 1, 1990

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INTRODUCTION

The Confederacion de Nacionalidades Indigenas de la Amazonia Ecuatoriana (CONFENIAE) respectfully submits this petition to the Inter-American Commission on Human Rights of the Organization of American States on behalf of the Huaorani people of Ecuador. Petitioner requests that the government of Ecuador be required to stop imminent construction by Conoco Oil Company¹ of at least 90 miles of road and to halt large-scale oil exploitation operations by Conoco and other oil companies in Huaorani traditional lands in the Ecuadorian Amazon rainforest and identified in the service contract between the government of Ecuador² and Conoco as Block 16. See Annex 1. Construction of the road and the other activities will cause immediate and irreparable harm to the Huaorani people, their culture and their lands, in violation of their rights under the Declaration of the Rights and Duties of Man, the American Convention of Human Rights and customary international law.

Ecuador ratified the American Convention of Human Rights on December 8, 1977, and is therefore bound by the American Declaration of the Rights and Duties of Man, adopted by 9th

¹Conoco Oil Company is a subsidiary of E. I. DuPont de Nemours and Co., a corporation incorporated under the laws of the State of Delaware, U.S.A., with headquarters in Wilmington, Delaware. Conoco Ecuador, Ltd., is an Ecuadorian subsidiary of Conoco Oil Company, expressly formed to carry out the responsibilities as operator for oil exploration and exploitation in oil service contract area Block 16 in eastern Ecuador, the land at issue in this petition. Conoco Ecuador, Ltd., holds the Block 16 contract and acts in behalf of a consortium of oil companies in which it holds a controlling (35 percent) share.

²The government of Ecuador has authorized the acts complained of through the state-owned oil company, PetroEcuador, formerly called Corporacion Estatal Petrolera Ecuatoriana (CEPE).

International Conference of American States (1948) (hereinafter Declaration), the American Convention on Human Rights, O.A.S. T.S. 36 (1969) (hereinafter Convention), and all customary international law, as evidenced, inter alia, by documents, declarations and resolutions of the Organization of American States, the United Nations and the United Nations Educational, Scientific and Cultural Organization.

REQUEST FOR ARTICLE 29 PRECAUTIONARY MEASURES

Petitioner seeks precautionary measures to avoid irreparable damage to persons as authorized by Article 29 of the Regulations of the Inter-American Commission on Human Rights (hereinafter Regulations).

Article 29 of the Regulations provides, in pertinent part:

2. In urgent cases, when it becomes necessary to avoid irreparable damage to persons, the Commission may request that provisional measures be taken to avoid irreparable damage in cases where the denounced facts are true.

No one contests the fact that Conoco plans to begin construction of a road through Huaorani traditional lands in the immediate future.³ The road will lead to the rapid development

³Conoco made presentations to the Sierra Club Legal Defense Fund on September 20, 1989 and March 15, 1990 in San Francisco regarding the road, existing facilities, and the other facilities planned by them. More recently, Conoco made an extended presentation to representatives of CONFENIAE, the Sierra Club Legal Defense Fund and numerous other organizations in a meeting held near Coca, Ecuador, on May 15 through 17, 1990. The Sierra Club Legal Defense Fund also met with representatives of the government of Ecuador on numerous occasions in Quito and Geneva, Switzerland. Most of the factual statements made in this petition concerning Conoco's proposed oil development and road construction are based upon information that petitioner received from Conoco and/or the government of Ecuador at these meetings.
(continued...)

of oil operations in these lands and to inevitable colonization by private parties and other corporations seeking to exploit the lands made available by the road. Because such development and colonization in turn will inevitably cause irreversible damage to Huaorani traditional lands, disruption of the traditional nomadic Huaorani life pattern, inevitable loss of life due to illnesses commonly inflicted upon Indigenous forest peoples by outside contact and by impoverishment, malnutrition and disease, as has been the case in every other such intrusion in the Amazon, petitioner respectfully requests that the Commission take adequate precautionary measures. Such measures should include, at a minimum, urging the government of Ecuador to restrain Conoco from any and all activity in Block 16 or elsewhere in Huaorani traditional lands pending a final decision of the Commission in this matter.

Petitioner also requests that the Commission request the government of Ecuador to restrain other oil companies from activities that could prejudice Huaorani rights in traditional Huaorani land, the status of which was the subject of a partial land grant (Annex 2), made on April 3, 1990 by the government to representatives of the Huaorani people, ceding to the Huaorani people limited title to 612,560 hectares of their traditional lands⁴ but denying them the right to prevent petroleum or other

³(...continued)

Petitioner will provide the Commission with additional relevant materials supplied to it by the government of Ecuador and Conoco.

⁴This corresponds to about 33% of traditional Huaorani lands. See CONFENIAE, La Nacionalidad Huaorani y la Defensa de su Territorio 7 (Quito 1989, Annex 3).

operations authorized or carried out by the government.⁵

Petitioner alleges imminent violation of:

the right to life and security of the person
(Declaration, Article I; Convention, Article 4);

the right to preservation of health and of
well-being (Declaration, Article XI);

the right to humane treatment (Convention,
Article 5);

the right to the protection of the family
(Declaration, Article VI; Convention, Article
17);

the right to residence and movement
(Declaration, Article VIII; Convention,
Article 22);

the right to inviolability of home
(Declaration, Article IX; Convention, Article
11);

the right to religious freedom and worship
(Declaration, Article III; Convention,
Article 12);

the right to property (Declaration, Article

⁵The agreement provides, in pertinent part: "Los adjudicatarios no podran impedir o dificultar los trabajos de explotacion y/o exploracion minera e hidrocarburifera que realice el Gobierno Nacional y/o personas naturales o juridicas legalmente autorizadas." ["The grantees may not impair or obstruct petroleum or mining exploitation and/or exploration activities carried out by the National Government and/or legally authorized natural or juridical persons." tr. K. Parker]. The agreement also omits any mention of damages. Prior to the government's April 3, 1990 demarcation, a meeting was held in Sarayacu, Ecuador between representatives of CONFENIAE, member organizations of CONFENIAE, and the government of Ecuador. At that meeting, an agreement was signed providing for, inter alia, the establishment of a mixed commission composed of representatives of CEPE and CONFENIAE to "analyze and propose solutions to the problems relating to the petroleum operations in Indian territories," including fixing of damages due for ecological destruction. See Declaracion de Sarayacu, May 9, 1989, attached hereto as Annex 4, and annexed documents, "Plantamiento de la Organizacion de Pueblos Indigenas de Pastaza" and "CONFENIAE al Gobierno del Doctor Rodrigo Borja." The April 3, 1990 demarcation fails to address the problems posed by petroleum operations, and does not fix any damages for ecological destruction.

XXIII; Convention, Article 21); and
the right to privacy (Convention, Article
11).

REQUEST FOR ARTICLE 34.2 REMEDIES

Petitioner also requests that the Commission invoke Article 34.2 of the Regulations applicable to petitions involving states parties to the Convention. Article 34.2 provides that the Commission shall request a prompt reply in "serious or urgent cases or when it is believed that the life, personal integrity or health of a person is in imminent danger."

Petitioner alleges that the life, personal integrity and health of all Huaorani Indians residing in or passing through Block 16, in other service contract blocks within Huaorani traditional territory, and in the Huaorani reserve granted in 1983 are in imminent danger.

DESCRIPTION OF PETITIONER

The Confederacion de Nacionalidades Indigenas de la Amazonia Ecuatoriana (CONFENIAE) is an organization of representatives of all the Ecuadorian Amazon Indigenous peoples: the Huaorani, the Cofan, the Shuar, the Secoya, the Siona and the Amazonian Quichua. CONFENIAE defends the right of the Indian nations to their territories, protects the territories from ecological destruction due to exploration and exploitation of the Amazon rainforest, and defends the human rights of all Amazon Indian forest peoples. CONFENIAE has determined the protection of the Huaorani people and their lands to be of the highest priority. To that end, CONFENIAE carries out frequent seminars and meetings

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at its headquarters and in the territory of the Huaorani nation with many of the associated Huaorani family groups. Recent such events have taken place in Tonampari, Dayuno, and in the six Huaorani associations of Bomboiza, Nankais, Guadelupe, Pastaza, Yamanunka and Coca.

CONFENIAE has its main headquarters at Apartado 790, Puyo (Pastaza), Ecuador, and its international office at Avenida 6 de Diciembre 159 y Pazmino, Oficina 408, Apartado 41-80, Quito, Ecuador, telephone 543-973.

PETITIONER MEETS ARTICLE 26 REQUIREMENTS

Petitioner alleges that it complies with Article 26 of the Regulations which allows petitions on behalf of third persons by individuals or groups (including non-governmental organizations) legally recognized in a member state of the Organization of American States.

EXHAUSTION OF DOMESTIC REMEDIES

Petitioner alleges excuse from the requirements of exhaustion of domestic remedies under Regulations Article 37 because this is an urgent case governed by Regulations Article 29.

FACTS

I. THE HUAORANI INDIANS

The Huaorani Indians are one of six forest Indian peoples whose traditional territories comprise the Oriente, the Amazon area of Ecuador.

The Huaorani live in cane dwellings with two-winged roofs

reaching the ground. Their traditional dress consists of waist cords and some ear, hair and neck ornaments. Their native language is Huao, now increasingly influenced by Quichua and Spanish. It is widely acknowledged that the Huaorani are the least assimilated of the Ecuadorian Indian peoples, and are a people already severely threatened. The best current estimate of Huaorani population is approximately 1,580 individuals,⁶ with 90 percent of them residing within the 66,570 hectares (164,000 acres) of a reserve granted by the Ecuadorian government in 1983.⁷ The rest of the Huaorani population, including the Dayuno, Taagairi, Yasuni and Cononaco groups, occupy their traditional lands.⁸

Huaorani territory has been documented since the early days of foreign colonization and at no time has been terra nullius. See, e.g., Comision Interinstitucional, Informe para la delimitation de territorios nativos Siona, Secoya, Cofan y Huaorani (Quito, 1982), citing, inter alia, diaries of Jesuit missionaries of the 16th century; CONFENIAE, La Nacionalidad Huaorani y la Defensa de su Territorio 4, 5 & nn. 2-9.

⁶Pers. Comm. with Laura Rival, Anthropologist (1990). Part of the difficulty in determining the present population is the nomadic nature of Huaorani culture and the extreme hostility of the Huaorani toward outsiders. They also live in small family groups that are frequently enlarged and reduced by the separations of the teenagers from the main family houses.

⁷C. Naikiai, "The Huaorani Nation and the Defense of their Territory" in Indigenous Self-development in the Americas 141 (Int'l Work Group for Indigenous Affairs Doc. 63) (Amsterdam 1988).⁷

⁸Data according to CONFENIAE. CONFENIAE member Cristobal Naikiai indicates that some Huaorani still uncontacted by non-indigenous people have been moving away from the areas of intrusion into the frontier near Peru. C. Naikiai, supra.

The Huaorani are nomadic peoples. In Huaorani culture, every family possesses various lots (called quehuecori in the Huao language, chacras in Spanish) and migrates between them. The Huaorani complement agriculture with hunting, fishing and gathering throughout their traditional territory.⁹

One of the most dramatic confrontations between the Huaorani and outsiders involved the Summer Institute of Linguistics.¹⁰

⁹In the words of a Huaorani: "Hasta la decada del 50 todavia nos sentiamos duenos y senores de nuestro territorio tradicional, eramos un pueblo libre. Viviamos en pequenos grupos familiares y si bien entre todos estabamos entrelazados por relaciones de parentesco, preferiamos el aislamiento, pues asi, los recursos de la naturaleza (caza, pesca y frutos), combinados con la practica de la horticultura itinerante nos permitia autoabastecernos sin problemas. Aun ahora, pese a las limitaciones territoriales que tenemos, hacemos lo posible por mantener varias chacras en diferentes momentos de produccion, de manera tal, que nunca nos falta alimento; cambiamos de residencia de acuerdo como van madurando los alimentos y las posibilidades de caza y pesca. Esta tecnica agricola y como la aplicamos, no es entendida ni reconocida por la sociedad nacional, en tanto se cree que agricultura solamente es la intensiva y la dedicada al mercado, y por esta incomprension, no solo a nosotros, sino a las nacionalidades indigenas amazonicas se nos ha tildado de 'nomadas' y que vivimos en la epoca 'paleolitica'." Nacionalidad (HUAO) Huao in Las Nacionalidades Indigenas en el Ecuador (Confederacion de Organizaciones Indigenas del Ecuador (CONIAE) ed.) (Quito 1988) attached hereto as Annex 5 ["Until the 1950's we still felt like the owners and overseers of our traditional territory and we were a free people. We lived in small family groups and if we had established interwoven relationships based on kinship, we preferred the isolation, well then the natural resources (game, fish, fruit), combined with our itinerant horticulture permitted us self-sufficiency without problems. Even now, in spite of the territorial limitations that we have, we do all possible to maintain various fields in different stages of production, so that we never lack food; we change residence according to how the crops are maturing and the hunting and fishing possibilities. The agricultural technique and how we apply it is not understood or recognized by the national society, in that it is believed that agriculture is only intensive and market oriented, and because of incomprehension, not only of us but of all the Amazon Indian nations, they have labeled us 'nomads' and say we live in the 'paleolithic' age. Tr. K. Parker]

¹⁰ Earlier, oil company explorations in the 1920's and 1930's had resulted in numerous attacks on company workers by
(continued...)

That group's evangelical missionaries began operating in the area in 1952. In 1956, five missionaries were killed in a battle with the Huaorani, beginning a long period of "reduction and pacification" of the Huaorani by the Institute. See, e.g., D. Stoll, Pescadores de Hombres o Fundadores de Imperio 401-456 (F. Barclay tr.) (Lima 1985); C. Naikiai, supra, n. 7 at p. 145. The persistence of the Institute led to the Ecuadorian government's forced concentration of Huaorani families in the small so-called "protection zone," established by the Instituto de Reforma Agraria y Colonizacion in 1959, and legally designated as a reserve in 1983. CONFENIAE, supra n. 4 at pp. 5-6.

The 1983 reserve comprises only 3.3 percent of the land of the traditional Huaorani territory. Id. at 3, 7 n.17. As a result, the Huaorani who were forced into the reserve have had to abandon their traditional, ecologically-sound ways and have over-cultivated the land in order to survive. These Huaorani are currently at extreme risk because of the severe reduction in wildlife which serves as their source of protein. Laura Rival, pers. comm. (May 1990.)

The existence of the reserve also facilitated petroleum operations because so many Huaorani were removed from their traditional territory and confined to the reserve. That left few Huaorani to interfere with the development of the area for petroleum companies such as Conoco. Ibid.

The government of Ecuador has been aware of the life-

¹⁰(...continued)

Huaorani warriors, especially when Shell Oil Company established a camp-site at a strategic point in Huaorani territory. CONFENIAE, supra n. 4 at p. 5.

threatening crisis facing the Huaorani in the reserve but has failed to act in a timely manner. According to the Comision Interinstitucional in its 1983 study, the government-created reserve did not contain sufficient territory for the Huaorani to maintain their traditional way of life. The Comision Interinstitucional recommended an extension of Huaorani territory with a corresponding grant of inalienable title. Comision Interinstitucional, Informe para la deliminacion de territorios nativos Siona, Secoya, Cofan y Huaorani (Quito 1983). As a result of an agreement with the Comision Interinstitucional, the Huaorani and the government of Ecuador engaged in a process to delineate and legalize Huaorani lands which finally resulted in the April 3, 1990 land grant. Presumably, the Huaorani in the reserve are now able to resettle in the traditional lands indicated by the land grant, and some have begun doing so.

II. THE ROAD AND OIL DEVELOPMENT OPERATIONS

In conformity with provisions of the April 3, 1990 land grant, Conoco Oil Company, in coordination with the Ecuadorian government's state-owned oil corporation, PetroEcuador, is going forward with imminent plans to begin construction of a road through Huaorani traditional land in the parts now jointly delineated as Huaorani territory and Yasuni National Park. The land use, exploration and drilling rights, construction rights and extraction profits were awarded to Conoco through a service contract with the government of Ecuador (in particular, PetroEcuador) in 1985.

The government of Ecuador has been involved in oil

exploration and production in the Ecuadorian Amazon since 1967. The government, through its representatives at the United Nations European Office (Geneva), has stated that the country has a large international debt, that Ecuador is a country with widespread poverty, and that the Ecuadorian Constitution gives the government the right to exploit and develop all sub-soil resources in the country, including in the Amazon regions inhabited by traditional Indian peoples.

To facilitate development of the Amazon resources, the government has divided the Amazon Indian land into blocks. Since 1983, five rounds of bidding have resulted in service contracts between PetroEcuador (or its predecessor agency, CEPE) and large oil consortiums. Conoco Ecuador won the service contract in Block 16 -- completely located in traditional Huaorani territory and partly within the boundaries of Yasuni National Park.¹¹ Block 8 (Esso Hispanoil), Blocks 9-13 (Petrocanada)¹², Block 14 (ELF-Braspetro-YPF) and Block 17 (Braspetrol-ELF-Britoil) are partly in Huaorani traditional lands. In a sixth round of bids in early 1990, Conoco Ecuador, Ltd. made the sole bid for Block 22, immediately east of Block 16. Block 22 lies entirely within Yasuni National Park.

¹¹Until the government of Ecuador announced a new delineation of Huaorani lands on April 3, 1990, all of Block 16 was within the boundaries of Yasuni National Park. It now appears that the government has redrawn the Park boundaries to exclude the proposed road and oil development areas in Block 16.

¹²Petrocanada recently abandoned its service contract area in its blocks after building a nine km. road. Colonists had entered the area, but were supposedly removed. It is unclear who will patrol the road to ensure that colonists do not reenter now that Petrocanada is leaving. The colonists who had intruded into the area had cleared land and planted crops. Pers. Comm. with Peggy Hallward, PROBE, International (1990).

Conoco began operations in Block 16 in 1986. Between 1986 and 1988 Conoco drilled exploratory wells and discovered oil throughout Block 16, primarily in the areas of Amo, Daimi, Ginta, Bogi and Iro. Annex 1 shows the location of these areas.

In June, 1989, Conoco Ecuador, Ltd. submitted a development plan to PetroEcuador's predecessor agency, CEPE, which included construction of approximately 120 wells and oil production facilities in the Daimi and Bogi areas. The Daimi area will be the larger area, with approximately 100 wells and a central facility for electric power generation, water processing equipment, oil storage and pumping equipment, field offices, a materials warehouse, workers' living accommodations and an aircraft landing strip. The Bogi development will include approximately 20 wells and a smaller but similar central facility but without an aircraft landing strip.

Conoco has already constructed a number of facilities in Block 16. There are plans to accommodate approximately 200 permanent staff at the Daimi site, and 100 at the Bogi site.

Conoco plans to build a pipeline connecting its wells to existing pipelines in Ecuador. The road, presently planned to be a minimum of five meters wide with a fifteen meter wide right-of-way, is intended to facilitate construction of the pipeline and to allow easy transport of Conoco's oil workers, heavy equipment and supplies.

The road will connect the well-site called Daimi 1 to the Amo 1 and Amo 2 well sites, and then follow the Rio Yasuni to the Bogi 1 well. From there the road will either follow to the west to connect with the Auca Central section of the Trans-Ecuadorian

pipeline or will run north from the Bogi field to Shushufindi, crossing under the Napo River. Regardless of which route is used, at least 90 miles of road will be constructed through Huaorani traditional territory. It is expected that the Ecuadorian government will give final approval for the road at any time.

In September 1989 Conoco Ecuador presented its Environmental Management Plan for Block 16. See Annex 6. This plan reveals the severe risks to which Conoco's road and pipeline will expose the Huaorani. In addition to the likely influx of colonists via the new road, Conoco's petroleum extraction will bring problems with accumulation and disposal of 55-gallon chemical storage drums; production and disposal of hazardous waste (chemicals, descalers, biocides, fungicides, etc.); disposal of sediments from petroleum storage tanks; disposal of drilling pit muds; air emissions; oil spills from corroded storage tanks; and processing and disposal of sewage.

Conoco also plans to open the area east of Block 16, (Block 22), also traditional Huaorani land within Yasuni National Park, into new service contract areas, and to construct roads and pipelines from Block 16 into those new blocks.

III. DEVASTATING EFFECTS OF PETROLEUM AND OTHER OPERATIONS IN THE RAINFORESTS

Petroleum exploitation and development has been shown to have a universally devastating effect on Indigenous populations,

especially on those populations living in rainforest areas.¹³
The effects are well known to governments and to petroleum companies.

In one example, the Amazon forest peoples of Peru have been severely affected by the operations of the Peruvian government in conjunction with Royal Dutch Shell. Activities of Royal Dutch Shell in the Camisea region of the Peruvian Amazon in a three year period (1983-1986) resulted in the introduction of infectious diseases that "ravaged the defenseless Indian communities." Andean Commission of Jurists, 21 Andean Newsletter 5 (1988). The Nahua lost more than 10,000 persons, representing half their total population. Id. Introduction of wage labor disrupted traditional Indian ways of economic and social

¹³The Commission should be aware that Indigenous peoples of the Amazon have already been severely impacted by contact with non-Indian colonizers, and that these peoples, including the Huaorani, today are a mere remnant of once thriving populations. As anthropologist Dr. William T. Vickers states,

The native peoples of Amazonia have been experiencing contact with whites ever since Francisco Orellana's voyage through the Basin in 1541-42. Early and colonial period contact with the natives of the Amazon was characterized by enslavement and extermination occasioned by genocidal warfare and the transmission of epidemic diseases. The scope of this demographic disaster has been studied by Denevan who estimates that the population of greater Amazonia was reduced from 6.8 million at the time of contact to approximately 0.5 million in 1976. This is a decline of 92.6% over four centuries. When we discuss the current situation of Amazonian Indians, we are speaking of the survivors of this great human disaster. While the present status of these survivors is variable, most groups have reduced populations that are extremely vulnerable to development pressures. This is certainly the case of the Huaorani of eastern Ecuador, whose small size places them at risk of cultural extinction.

Declaration of William T. Vickers, Annex 7 hereto, p. 2
(citations omitted) (emphasis in original) (hereinafter Vickers Declaration).

patterns, resulting in alcoholism and prostitution. Id.

Between 1974 and 1976 in Brazil, 22 percent of the Yanomami Indians in thirteen villages along 100 kilometers of a new road in the Amazon basin died as a result of diseases spread by contact with the construction workers. S. Davis, Land Rights and Indigenous People 44 (1989). Subsequent activities of the Brazilian government and private corporations led to further decimation of the Yanomami people and extensive destruction of their traditional lands. This Commission, in its decision of March 5, 1985, found widespread human rights violations against the Yanomami arising from the construction of the road, the failure to establish protection for Yanomami lands, the government- authorized exploitation of the resources of the sub-soil, the failure to stem massive colonization into Indian lands of persons who brought in contagious disease, and the displacement of the Indians from their ancestral lands. Case 7615, Inter-Am. C.H.R. 24, OEA/Ser. L/V/11.66, doc.10 rev.1 (1985) (hereinafter Yanomami case).

In Ecuador, petroleum development in other areas of the Amazon region has led to vastly increased colonization with a devastating effect on the Indigenous populations. According to one expert, colonization in the Oriente (eastern Ecuador) increased from 74,000 in 1974 to 260,000 by 1982. J. Uquillas, "Indian Land Rights and Natural Resource Development in the Ecuadorian Amazon," in Native Peoples and Economic Development (T. Macdonald ed. 1985).

The encounter between the Cofan and Texaco Oil Company has been "cataclysmic." N. Whitten, "Amazonia Today at the Base of

the Andes: An Ethnic Interface in Ecological, Social and Ideological Perspectives" in Cultural Transformations and Ethnicity in Modern Ecuador 134 (N. Whitten ed. 1981). In describing operations practically identical to those already carried out or planned to be carried out by Conoco in Huaorani territory (airstrips, helicopters, foreign and native explorers with "tents, . . . dynamite, motors, canned food and the like" (Id.)), Whitten states that "given the devastation of the Cofan culture and territory, it is nothing short of remarkable that anything exists today of the Cofan." Id. at 135.

Similarly, road construction for oil development in the Siona-Secoya traditional lands, in theory also protected against colonization as the Cuyabeno Forest Preserve, led to colonization by over 1000 families. (See Annex 7, pp. 7-8, for a description of the Cuyabeno development.)

Such colonization following road construction is inevitable. Vickers Declaration, pp. 4-5. As Dr. Vickers states,

Whenever roads have been constructed in the Amazon they have been immediately subjected to spontaneous settlement and colonization by non-Indians. This process of colonization is rapid as people search for a piece of "unoccupied" land, and then clear it and attempt to farm it in order to claim title to it. Many of these so-called "colonists" cut the most valuable timber and then sell their "farms" and move on to make new claims (i.e., they are really illegal loggers and land speculators). Of those who are honest pioneers who intend to develop homesteads, the turnover rate is high due to the failure to develop adequate production and income to sustain their families.

Id., p. 4. Colonists, in turn, pose severe problems for Indigenous communities,

because they represent an external occupation of native territory and an immediate loss of native resources.

Such occupations are soon followed by land disputes and conflicts, exploitative labor relationships, and the introduction of alcohol and contagious diseases to Indian communities. Local authorities such as the police and military typically side with the interests of the white settlers and against those of the Indians. All of these factors contribute to native demoralization and may lead to cultural disintegration. Put simply, white colonization in Indian areas victimizes the Indians.

Ibid.

Dr. Vickers, who has some 26 years of experience working with the native peoples of Latin America, states that these results have occurred inevitably throughout the Amazon following road construction:

The negative impacts outlined above are inevitable once native lands are made accessible to outsiders by roads or other means of transportation. This is because the people who flock to the frontier are free-willed individuals who are motivated by their own self-interest. Frontiers are not noted for "law and order." Rather, they are noted for their relative lack of constraints on individual behavior (i.e., lawlessness). I know of no area in the Amazon where this observation does not hold true. Throughout the Amazon the record for official efforts to protect Indian lands and resources is a very dismal one (just as it is in the historical record of the United States). To my knowledge, no road that has been built through Indian lands in the Amazon Basin has been successfully defended against the invasions of colonists, timbermen, miners, and land speculators.

Id., p. 5 (emphasis added).

Specifically with respect to the Huaorani, Dr. Vickers states that

If the Conoco Oil Company builds its planned road through the traditional Huaorani homeland it will set the stage for a spontaneous invasion of the lands along the route. Colonists, timbermen, and land speculators will move in and stake claims along the new roadway. As these choice lots are grabbed up additional lots away from the road will be claimed. Deforestation along the route will begin almost immediately since clearing trees substantiates the claims of the colonists under Ecuadorian law (Ley de Tierras

Baldias). With time, feeder roads will spread far beyond the main road and the deforestation will continue until the primary forest is reduced to scattered patches that are incapable of regeneration.

Ibid.

The impact on the Huaorani will be devastating. According to Dr. Vickers,

The Huaorani people will be buffeted by many shocks. They will see their traditional homeland occupied by strangers, and their forests cut and their game animals killed or driven off. Their gardens will be raided by whites who are in need of food. The pigs and chickens of the Huaorani will be shot or stolen by the invaders. Some Huaorani women will be raped and some will be forced into prostitution. Some Huaorani children will be kidnapped and be carried off to work as servants in white households in various parts of Ecuador. Many Huaorani will fall ill to introduced diseases and many will die. Many will become despondent or depressed over these losses. Of the survivors, some will become alcoholics and some will live by begging for handouts from the whites. It is entirely possible that the Huaorani culture and language may disappear within two or three generations.

Ibid. (emphasis added). Dr. Vickers concludes that

While these assessments may be depressing, they are realistic. The same scenario for native peoples has been repeated countless times in South America and elsewhere in the world, and constitutes a human disaster of enormous proportions.

Ibid.

IV. INADEQUACY OF GOVERNMENT'S PLANS TO PROTECT THE HUAORANI

The first point to illustrate the inadequacy of efforts by the government of Ecuador to protect the rights of the Huaorani is the provision in the April 3, 1990 land grant that allows mineral and petroleum companies to carry out activities to extract sub-soil resources and prohibits the Huaorani from interfering with these activities.

Secondly, Conoco's Environmental Management Plan fails to provide any reasonable guarantee of protection for the Huaorani from the ravages of colonization. As described in more detail in Dr. Vickers' declaration, "no road that has been built through Indian lands in the Amazon Basin has been successfully defended against the invasions of colonists, timbermen, miners and land speculators." Vickers Declaration, p. 5. After reviewing Conoco's Environmental Management Plan, Dr. Vickers goes on to conclude that these invaders will use Conoco's road, regardless of the presence of armed guards or any of the other control measures proposed by Conoco. Id. at 7. He states, "Experience shows that even if Conoco places armed guards at control points along the new road, the efforts of these guards will ultimately be defeated by invading colonists, lumbermen, and land speculators." (Citing examples of the Texaco-Gulf base at Lago Agrio and the Cuyabeno Wildlife Reserve, both in eastern Ecuador.) Ibid.

Thus, the government of Ecuador, in allowing this petroleum development and road construction in Huaorani traditional lands, is almost certainly opening the door to rapid colonization of these lands, regardless of the "mitigation" measures proposed by the oil companies.

Also of critical importance to this petition is the fact that the April 3, 1990 land grant is authorized and administered by the Ecuadorian Instituto Ecuatoriano de Reforma Agraria y Colonization (IERAC) [Ecuadorian Agrarian Reform and Colonization Institute] and requires adherence to the Ecuadorian Ley de

Tierras Baldias [Wasteland Law].¹⁴ The land grant refers to the lands to be ceded as "baldio" [empty], in spite of the fact that the land has been the homeland of the Huaorani since time immemorial and continually occupied by them under their traditional patterns of land use and occupancy. The Ley de Tierras Baldias requires land occupants to clear the forests and show agricultural use.¹⁵

Petitioner CONFENIAE alleges that two existing roads into the area have already resulted in heavy colonization. From Coca, the Via Las Yucas goes eastward towards the Yuca oil fields controlled by Texaco-PetroEcuador. A second road, the Via Los Aucas, goes southward through the Texaco-PetroEcuador block into the corridor between Yasuni National Park and the Huaorani reserve created in 1983. By March 1988, colonization had reached five kilometers back from the Via Los Aucas on both sides. Colonizers also use the road to gain access to the rivers and move down the rivers into the forest. Some have now settled 14 kilometers from the road.

¹⁴The land grant provides, in pertinent part: "La presente adjudicacion queda expresamente sujeta al cumplimiento de las obligaciones establecidas en la Ley de Tierras Baldias y mas leyes conexas y ademas a las siguientes obligaciones cuyo incumplimiento dara lugar a la resolucio de la Adjudicacion . . ." ["The present grant is expressly subject to the fulfillment of obligations established in the Wasteland Law and other related laws and additionally to the following obligations whose unfulfillment will nullify the land grant." Tr. K. Parker] See full text (Annex 2) for the remainder of the conditions.

¹⁵The Ecuadorian Constitution promotes extension of agriculture and colonization into the Amazon. Article 51 provides, in pertinent part: "Settlement shall be organized and promoted so that the farming frontier may be extended and a well-balanced re-establishment of the population into the national territory may be obtained."

VIOLATIONS

I. THE HUAORANI'S RIGHT TO LIFE AND SECURITY OF THE PERSON

Petitioner CONFENIAE alleges that the actual and planned activities authorized by the Ecuadorian government in traditional Huaorani lands will almost certainly cause numerous violations of the right to life and security of the person and will substantially alter the life and natural development of Huaorani culture and traditional ways.

The right to life and security of the person is non-derogable (Convention, Article 27) and universally accepted as a jus cogens norm. Case 9647, Inter-Am. C.H.R. 147, 166, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1987); Gormley, The Right to Life and the Rule of Non-Derogability: Peremptory Norms of Jus Cogens, in The Right to Life in International Law 120, 122 (B. Ramcharan, ed. 1985); Parker and Neylon, Jus Cogens: Compelling the Law of Human Rights, 12 Hastings Int'l. and Comp. Law Rev. 411, 431 (1989).

The right to life has broad application beyond intentional or arbitrary deprivation of life. The norm also requires that governments take affirmative steps to protect life by assuring environmental integrity and by promoting policies to ensure basic survival of persons subject to a state's jurisdiction. Yanomami case, at 33 (Brazil's failure to take timely measures violation of, inter alia, right to life); B. Ramcharan, "The Concept and Dimension of the Right to Life" in The Right to Life in International Law, 1, 8 (B. Ramcharan, ed. 1985).

The obligation that governments take affirmative action to protect the right to life and security of the person has special

importance regarding Indian peoples. The Commission has previously adopted a resolution affirming that "special protection for Indigenous populations constitutes a sacred commitment of the states." Annual Report, Inter-Am. C.H.R. 90 (1972) (Emphasis added).

Special protection must be given to Indian cultures and lands because of their strong link to the right to life.¹⁶ Some new human rights instruments assert that ethnocide results when a group is unable to live and develop in its unique way. See, e.g. U.N.E.S.C.O. Declaration on Ethnocide and Ethnodevelopment, San Jose (1981). Because of the drastically reduced numbers of many Indigenous peoples and groups, the current international understanding looks to acts which have serious effects on the right to life, and not to the degree of intent. See, e.g. First revised text, Draft Universal Declaration on the Rights of Indigenous Peoples, Art. 5, U.N Doc. E/CN.4/Sub.2/1989/36 (Annex II) (hereinafter UDRI) (See Annex 8 to this petition).

The United Nations Study on Indigenous Populations (U.N. Doc. E/CN.4/Sub.2/1983/21/Add.3) stresses the need for urgent attention to "cases of destruction of Indigenous cultures

¹⁶The Commission has addressed the right to life of Indigenous peoples. See, e.g. Tercer Informe sobre la Situacion de los Derechos Humanos en la Republica de Guatemala, OEA/Ser.L/V/II. 67, doc. 9 (1986) at 114. In discussing The Civil Defense Patrols, the Commission found violations of Indians' rights to "... identidad, etnica y contra el desarrollo de sus tradiciones, sus idiomas, sus formas de vida, sus economias y sus culturas, derechos humanos tambien esenciales para la vida de los pueblos." Id. [violations of ethnic identity and against the development of their traditions, their language, their economies, and their culture, human rights also essential to the right to life of peoples.]

(ethnocide)."¹⁷ A subsequent United Nations report stresses the wide-spread view that ethnocide is a serious international human rights law violation. U.N. Doc. E/CN.4/Sub.2/1985/6, attached hereto as Annex 9. The report also indicates wide support for the view that acts that destroy the rainforests and threaten the existence and well-being of forest Indigenous peoples should be considered ethnocide whether the acts are deliberate or negligent. Id. at p. 17. The report also indicates support for the view that ethnocide and ecocide are crimes against humanity. Id.

A United Nations study on apartheid listed practices of apartheid that can be considered an infringement of the right to life. Included was crowding people into areas where they could not earn sufficient livelihood or into areas where they could not exercise their traditional professions. Study concerning the question of apartheid from the point of view of international penal law, U.N. Doc. E/CN.4/1075.

The facts indicate substantial certainty that the territory granted to the Huaorani by the cession of April 3, 1990 will be inadequate to fully maintain Huaorani traditional ways so long as the Huaorani are deprived of legal means of controlling

¹⁷In the words of one Indian elder: "Next to shooting indigenous peoples, the surest way to kill us is to separate us from our part of the Earth. Once separated, we will either perish in body or our minds and spirits will be altered so that we end up mimicking foreign ways, adopt foreign languages, accept foreign thoughts and build a foreign prison around our indigenous spirits which suffocates rather than nourishes as our traditional territories of the Earth do. Over time, we lose our identity and eventually die or are cripples as we suffer under the name of 'assimilation' into another society." World Council of Indigenous Peoples, "Rights of the Indigenous Peoples to the Earth" (submission to the United Nations Working Group in Indigenous Peoples, July 1985).

oil development and other natural resource exploration and exploitation within their lands. The facts also indicate that should the road be built and should the activities of Conoco and other oil companies occur as planned in traditional Huaorani territory, it is a virtual certainty that irreparable harm to Huaorani people, their land and their culture will occur. The plans proposed by Ecuador and Conoco cannot guarantee otherwise.

Because the right to life is non-derogable (Convention Article 27) and a jus cogens norm, and because of the gravity and irreversible nature of the threats to the Huaorani people and culture, the Commission must apply the strictest standard of scrutiny to proposals to alleviate negative consequences. Golder Case, 16 Eur. Ct. H.R. (Ser.B) (1975) ("Convention should not be interpreted restrictively so as to prevent its aims and objects being achieved.") In case of doubt, petitioner urges that doubt must be resolved in favor of the Indians in order to give meaning to the sacred commitment mandated by the Commission. Governments and corporations should not be allowed to gamble when the stakes are so high.

Petitioner urges that intent for purposes of the right to life and its most serious attributes must be construed when there is sufficient certainty as to the result. The facts indicate that virtually all encroachments and intrusion into the lands of traditional forest peoples, particularly when accompanied by road construction, have resulted in many deaths and severe, irreversible damage to Indians and their cultures. These facts are well known to all involved in planning and carrying out petroleum exploitation and other activities in the Amazon region.

Petitioner alleges that the government of Ecuador and the oil companies are on notice of the devastating effect virtually certain to occur. Petitioner alleges that the government's and Conoco's plans to alleviate these effects are patently inadequate to prevent massive disruption of the area as well as eventual colonization. The inadequacy coupled with the extreme tardiness of these plans shows a wanton indifference to the potential loss of Huaorani lives and culture. If the government of Ecuador allows road building and other activities to go forward, petitioner alleges that the government of Ecuador and all who are involved in these activities are knowingly contributing to the destruction of the Huaorani and their traditional territory.¹⁸

The April 3, 1990 land grant ceding additional lands to the Huaorani partially alleviates the extreme danger to the Huaorani and their culture due to attempts to limit their land use to the small reserve granted in 1983. Nonetheless, the agreement's severe restrictions on the right of the Huaorani to use their

¹⁸These activities fall in the general category of development schemes. Regarding these types of projects, the world-renowned expert Rodolfo Stavenhagen writes: "Much damage has been done to indigenous peoples through economic development projects. . . . The isolated, marginal areas often occupied by indigenous peoples constitute the last great and until recently unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to "incorporate" these areas into the national and international economy. In the process, indigenous and tribal peoples have suffered genocide and ethnocide. Usually the grandiose development schemes . . . that third world government are so fond of, are not designed to benefit the local population, but rather the urban and rural elites. Indeed, when local, frequently indigenous populations exist, the idea is that they must be removed to make way for "progress." R. Stavenhagen, Background paper, in Report on the United Nations seminar on . . . indigenous peoples and states, U.N. Doc. E/CN.4/1989/22 (1989) at p.53, 58 (underlining in original), attached hereto as Annex 10.

land and to protect it from government-authorized encroachments and damage substantially reduces its value.

It is precisely the existing and future petroleum operations of Conoco as authorized by the government and the inevitable resulting colonization that threaten the right to life of individual Huaorani and their culture and traditional ways. Thus the April 3, 1990 agreement not only fails to improve the overall situation of the Huaorani vis-a-vis Conoco, it makes it worse by institutionalizing the problem. This deplorable situation reinforces the urgency of the need for immediate and special protection. As this Commission has indicated, the right to life of Indian peoples is compromised by conditions that make it difficult to resist the rapaciousness of colonizers and usurpers who steal their lands. Annual Report, Inter-Am. C.H.R. 27 (1973). The Ecuadorian government has already permitted Conoco to carry out activities which severely disrupt the Huaorani's lands. Additional activity may be fatal to the survival of Huaorani and their culture.

II. THE RIGHT TO PRESERVATION OF HEALTH AND WELL-BEING

It is well documented that encroachments into traditional lands of Indigenous peoples lead to severe declines in their life expectancy and general condition of health. See, e.g. The Yanomami case (Commission found that road and subsequent development in Yanomami areas in Brazil lead to widespread deaths and sufferings caused by disease constituting violation of the right to preservation of health and well-being). The encroachments also lead to cultural disintegration which in turn

has a decidedly negative impact on health and well-being. Id. "Disintegration is compounded by destruction of the ecology and habitat upon which Indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rainforests, and pollution introduced by outsiders jeopardize the modus vivendi of Indigenous groups. The social nexus binding the members of the group to the environment is thus annihilated." V. Muntarbhorn, Background paper in Report on the United Nations Seminar on . . . [I]ndigenous peoples and States, U.N. Doc. E/CN.4/1989/22 (1989) at. p. 24, 27-28, attached hereto as Annex 11. Other experts point out that merely restricting the normal freedom to move about in traditional ways can lead to "distress and demoralisation." International Commission on International Humanitarian Affairs, Indigenous Peoples: A Global Quest for Justice 85 (1987).

Governments are obliged to take "timely and effective measures" to prevent situations having a negative impact on the health and well-being of Indigenous populations. Yanomami case, at p. 33.¹⁹ The government of Ecuador failed to disclose to Conoco that Block 16 was in Yasuni National Park, failed to disclose the situation of the Indigenous peoples who have

¹⁹See also Velasquez Rodriguez Case, Inter-Am. Ct. H.R., Judgment of July 29, 1988, Inter-Am. Ct. H.R. Annual Report 35 at paras. 172-177. OEA/Ser.L/V/III.19, doc. 13 (1988) (affirmative duty regarding promotion and protection of basic human rights). The European Court has ruled that the European Convention on Human Rights and Fundamental Freedoms, in force Sept. 3, 1953, EUROP. T.S. No 5, 213 U.N.T.S. 221, imposes affirmative duties on governments to facilitate enjoyment of human rights against interference by governments as well as by non-governmental entities. See, e.g. X & Y v. Netherlands, 91 Eur. Ct. H.R. at p. 11 (Ser.A)(1985) (affirmative duty regarding privacy rights between individuals).

traditionally inhabited the lands incorporating Block 16, and has not required Conoco to prevent or ameliorate disease and illness likely to infect the Huaorani people due to contact with Conoco staff or others permitted into these areas.²⁰

III. AGGREGATE RIGHTS RELATING TO THE RIGHT TO SELF-DETERMINATION: HUMANE TREATMENT, PROTECTION OF FAMILY, FREEDOM OF MOVEMENT, THE INVIOABILITY OF THE HOME, FREEDOM OF RELIGION, THE RIGHT TO PROPERTY, THE RIGHT TO PRIVACY.

The rights to protection from inhumane or degrading treatment and to the protection of the family, residence and movement, inviolability of the home, religious freedom and worship, property and privacy set out in the Declaration and the Convention and at issue here make up the group of rights which together form the right to self-determination as it applies to Indigenous peoples. This minimal application of self-determination is considered essential to enable Indian peoples to survive in their distinct cultural ways. Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/11.62 doc. 10 rev. 3 and OEA/Ser.L/V/11.62 doc. 26 (1984) (hereinafter Miskito Report) at pp. 81-82; Communication 167/1984 (Ominayak v. Canada), U.N. Doc. CCPR/C/38/D/167/1984 (Annex) (Decision of Mar. 26, 1990) (hereinafter Lubicon Lake case and attached hereto as Annex 12) (Art. 27 of the International Covenant on Civil and Political Rights violated by oil and mineral development schemes that

²⁰Although Conoco was apparently unaware of the existence of Yasuni National Park or the danger its development posed to the Huaorani when it bid on Block 16, it has ample knowledge of those facts now and had such knowledge when it bid on Block 22 in early 1990.

threaten the way of life and culture of Lubicon Lake Band.)²¹
See also UDRI; Indigenous and Tribal Peoples Convention 1989
(I.L.O. Convention 169), attached hereto as Annex 13.

The right is somewhat different from the traditional formula of self-determination, in that while recognizing that Indian peoples are due rights different from those accorded minorities (particularly because they must have the right of control over traditional lands in order to survive as persons and as a culture),²² there is acceptance that self-determination of Indian peoples does not automatically mean the right to separate sovereignty.²³

The Huaorani people have not claimed the right to independent sovereignty in their struggle to preserve their lives, lands and culture in Ecuador. Rather, they, in conjunction with petitioner CONFENIAE, assert that Ecuador is a pluri-national and multi-ethnic state, and that the Indian peoples' right to self-determination can be fully realized in association with the state of Ecuador. Petitioner does claim,

²¹Ecuador has ratified the International Covenant on Civil and Political Rights and is thereby bound by Article 27 of that treaty. Miskito Report at 76.

²²See esp., UDRI, 4th preamb. para.: "Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, tradition, culture and legal, social and economic structures, especially as these are tied to the lands which the groups have traditionally occupied. . . ." (Underlining added.)

²³In finding this minimum application of self-determination under the Covenant's art. 27, which embraces the Convention's Articles raised here, rather than relying on article 1 of the Covenant, which sets out the traditional formula of self-determination of "peoples," the Committee found it did not need to address the issue of whether the Lubicon Lake Band constitutes a "people." Lubicon Lake case, paras. 32.1 and 32.2.

however, the right to self-determination of the Huaorani people to the degree necessary to afford them as a group their rights to freedom from inhumane or degrading treatment, to protect their traditional families and traditional family patterns, to their traditional patterns of residence and movement, to the inviolability of their traditional lands and homes, to maintain their traditional cultural identity, to practice their traditional religious ways and to defend their religious ways from outside coercion, to their traditional properties, and to privacy and freedom from intrusion into their traditional areas.²⁴

Because of the nature of Huaorani culture and traditional ways, they are unable to enjoy any of these rights if the government of Ecuador exercises an unfettered right to control sub-soil resources and surface access to sub-soil resources, and if Conoco or other petroleum companies carry out activities such as those planned for the immediate future.

The principle of self-determination as it applies to the Huaorani Indian peoples requires at a minimum:

1. the right of the Huaorani to possession and ownership of their traditional lands and the freedom from any encroachment or intrusion into those lands unless with express authorization by them;
2. the right of the Huaorani to protection

²⁴Similarly, the Lubicon Lake Band raised their right to self-determination in the minimal application. In the Band's submission of June 12, 1989, its chief stated: "The Lubicon Lake Band is not requesting a territorial right decision. Rather the Band requests only that the Human Rights Committee assist it in attempting to convince the Government of Canada that: (a) the Band's existence is seriously threatened by the oil and gas development that has been allowed to proceed unchecked on their traditional hunting grounds" Id. at para. 12.

against deterioration or destruction of lands, wildlife, or resources, which includes the right to just compensation for any illegal takings or damage;

3. the right of the Huaorani to maintain and protect all traditional ways and economic structures and styles of life and livelihood, including traditional ways of religion, family life, hunting, fishing and gathering;

4. the duty of the state to balance its rights to sub-soil resources with the Huaorani's rights to life, culture and self-determination, and a duty to secure the Huaorani's informed consent prior to any exploration or exploitation of mineral or sub-soil resources.

The Yanomami case; see also Indian and Tribal Populations Convention, 1957 (I.L.O. Convention 107), Arts. 11 and 12 (ratified by Ecuador); Indigenous and Tribal Peoples Convention, 1989 (I.L.O. Convention 169), Arts. 13-19; UDRI, Arts. 12-17.

The right of the Ecuadorian government to limit the rights of the Huaorani (Declaration, Article XXVIII, Convention, Articles, 12.3, 21.2, 22.3, 30, and 32) should adhere to the standard of strict necessity. *Klass case*, 28 Eur. Ct. H.R. (Ser. A) at p. 21 (1978); *Winterwerp case*, 33 Eur. Ct. H.R. (Ser. A) at p. 16 (1980). Strict necessity means more than merely convenient or desirable, and must incorporate a "pressing social need." *Handyside case*, Eur. Ct. H.R. (Ser. A) at p. 22 (1976). The Ecuadorian government has made no case for the limitation of Huaorani rights based on the doctrine of necessity.

The right of the Ecuadorian government to limit these same rights of the Huaorani should also conform to the least intrusive means rule established in international jurisprudence. Under that rule, any limitation of rights should be the minimum necessary to achieve a defensible government interest. See, e.g.

The Sunday Times case, 30 Eur. Ct. H.R. (Ser. A) at pp. 35-42 (1985) (conclusive presumption of contempt regarding media coverage of courts overbroad); The Christians Against Racism case, 21 Eur. Ct. H.R. (Ser.A) at pp. 138, 150 (1981) (complete ban on assembly rights invalid unless only means of preventing disorder); R. V. Big M Drug Mart Ltd., 58 N.R. 31 (S.C.C) (1985) (Canadian Charter of Rights and Freedoms imposes duty to impair rights as little as possible).

Assuming that the government of Ecuador could show pressing problems relating to poverty, a nation-wide need for agrarian reform and social justice, no justification can be made for permitting unfettered petroleum and mineral operations in Huaorani traditional lands. Many less intrusive and devastating measures are available to the government. The burden of years of neglect of successive governments adequately to address economic and social problems cannot be placed on Indigenous forest peoples and their fragile environments.

The specific provisions of the April 3, 1990 land grant indicated above, the proposed road and other oil company activities authorized by the Ecuadorian government, along with the inevitable colonization of non-Indian peoples in traditional Huaorani lands, all violate the principles of self-determination for Indian peoples because:

1. The land grant does not require the government of Ecuador to balance its rights to sub-soil resources at all, much less under the standards of strict necessity and least intrusive means, with the rights of the Huaorani to life, preservation of culture, preservation of health and well-being, and all attributes of the principle of self-determination as it applies to the Huaorani, nor to obtain the full and informed consent

of the Huaorani people prior to any removal of surface or sub-soil resources;

2. The land grant gives the government and companies authorized by the government superior rights to the Huaorani over large surface portions of their essential lands;

3. The road and its aftermath intrude into Huaorani traditional lands without a justifiable, pressing social need and without the Huaorani's consent: the Huaorani people would suffer inhumane and degrading treatment by being at the mercy of oil company personnel regarding such essentials as places of residence and locations for hunting, fishing and farming rather than the dictates of their own knowledge and traditions;

4. The road and its aftermath would alter the natural progression and growth of the Huaorani people, their culture, family life, religion, and their traditional ways by facilitating outside influence due to contacts with oil company personnel, including large numbers of construction workers and other non-native peoples authorized by the oil companies or the government;

5. The road and the existing and planned facilities would expedite the destruction and/or removal of surface resources from Huaorani traditional lands without just compensation;

6. The road construction and aftermath would irreparably damage the natural habitat of the Huaorani, with serious consequences to traditional forms of hunting and fishing and essential Huaorani religious and social ways; and

7. Neither the government of Ecuador nor the petroleum companies would be able to stop colonization into the Huaorani area once the road and other facilities are built.

Petitioner stresses that any conflict between the Ecuadorian government's needs and desires more fully to develop its natural resources and the Indian peoples' rights to protect their lives and traditional ways must be resolved in favor of the Indians.

This is true even though the Ecuadorian Constitution and the new proposed ILO Convention specifically grant to governments the right to maintain control of sub-soil resources. While the government theoretically holds the right to these resources, it may not exercise that right as long as there is a substantial likelihood of destruction of life and culture of the Indian peoples. The ILO Convention is not meant to be a carte blanche for any action of a government regarding sub-soil resources: any proposed action must still face a balancing with the right to life and other rights of Indian peoples. When the right to life and preservation of culture are at stake, then the government's rights may not be exercised.

CONCLUSION

Petitioner respectfully requests the Commission to take appropriate action on this petition with due consideration of the urgency of the matter. At a minimum, petitioner urges the Commission to request the government of Ecuador to halt any and all petroleum exploitation or other commercial ventures pending resolution of this petition. Petitioner also urges the Commission to consider an on-site investigation. Petitioner accepts a friendly settlement procedure pursuant to Article 45.1 of the Regulations, provided that the government of Ecuador halts all oil exploration and exploitation activities, including the

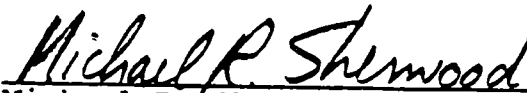
building of the Conoco road, pending final resolution of this case.

DATED: June 1, 1990

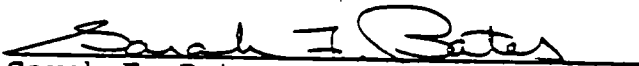
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ANNEXES

- Annex 1. Map showing location of Conoco's Block 16 in Huaorani traditional territory.
- Annex 2. Instituto Ecuatoriano de Reforma Agraria y Colonizacion, [Land Grant] (April 3, 1990).
- Annex 3. CONFENIAE, La Nacionalidad Huaorani y la Defensa de su Territorio (Quito 1989).
- Annex 4. Documents Arising From Meeting at Sarayacu Between Petitioner and Ecuadorian Governmental Officials (May 9, 1989).
- Annex 5. CONIAE, Las Nacionalidades Indigenas en el Ecuador, pp. 77-81 (1988).
- Annex 6. Conoco Ecuador, Ltd., Environmental Management Plan for Block 16 (May 9, 1990).
- Annex 7. William T. Vickers, Ph.D., Declaration Concerning the Planned Road Construction Through the Yasuni National Park and Huaorani Indian Territory (May 2, 1990).
- Annex 8. Report of the Working Group on Indigenous Populations and First revised text, Draft Universal Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1989/36 and Annex II.
- Annex 9. B. Whitaker, Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide, U.N. Doc. E/CN.4/Sub.2/1985/6 (2 July 1985).
- Annex 10. Report on the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations Between Indigenous Peoples and States, U.N. Doc. E/CN.4/1989/22, pp. 53-71 (8 Feb. 1989).
- Annex 11. Report on the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations Between Indigenous Peoples and States, U.N. Doc. E/CN.4/1989/22, pp. 24-49 (8 Feb. 1989).
- Annex 12. Communication 167/1984 (Lubicon Lake Band v. Canada), U.N. Doc. CCPR/C/38/D/167/1984, Annex II (Decision of 28 March 1990).
- Annex 13. International Labour Conference, Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILU Convention 169 (1989).

ATTACHMENTS

- A. Summary Record of the 12th Meeting, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1985/SR.12 (13 Aug. 1985).
- B. James A. Yost, Assessment of the Impact of Road Construction and Oil Extraction Upon the Waorani Living on the Yasuni (Report prepared for Conoco Ecuador, Ltd.) (April, 1989).
- C. Interview of Huaorani Conducted on April 12, 1990 by Laura Rival, Anthropologist.

SUPPLEMENTAL REPORT

TO THE PETITION

SUBMITTED TO THE

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

BY

THE CONFEDERACION DE NACIONALIDADES INDIGENAS
DE LA AMAZONIA ECUATORIANA (CONFENIAE)

AND

THE ORGANIZACION DE LA NACIONALIDAD HUAORANI
DE LA AMAZONIA ECUATORIANA (ONHAE)

ON BEHALF OF

THE HUAORANI NATION

AGAINST ECUADOR

JANUARY 1993

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VOLUME II

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- Annex 1. "Carta Abierta, Pedido del Pueblo Huaorani a la Compañía Maxus y al Gobierno Ecuatoriano" ("Open Letter, Requests from the Huaorani People to Maxus Corporation and the Ecuadorian Government", undated; approximately, winter 1992-93).
- Annex 2. (a) "Minutes of the meeting between Huaorani leaders and Maxus Corporation" (September 9, 1992).
(b) "Letter from Huaorani leaders to Maxus Corporation" (undated; approximately, October 1992).
- Annex 3. CONFENIAE, "Boletín de Prensa, Genocidio Contra el Pueblo Huaorani" ("Press Release, Genocide against the Huaorani People", October 26, 1992).
- Annex 4. "Letter from Huaorani leaders to Maxus Energy Corporation" (undated; approximately, August 1992).
- Annex 5. "Letter from Huaorani leaders to a U.S. organization"¹ (undated; approximately, summer-winter 1992).
- Annex 6. "Resoluciones del Congreso de la ONHAE, Sede Shiripuno" ("Decisions taken in the Congress of ONHAE in Shiripuno", December 9, 1991).

¹ All names of persons or organizations which are not directly involved with the Petition filed with the Inter-American Commission of Human Rights, OAS, by CONFENIAE and ONHAE on behalf of the Huaorani nation have been eliminated from documents presented as Annexes to this Supplemental Report.

- Annex 7. (a) "Chronological Events Taking Place at Jatun Sacha Biological Station Pertaining to Prospecting by Petroecuador" (undated; approximately, September 1992);
- (b) "Letter from Ing. Walter Palacios, President, Fundación Jatun Sacha, to Ing. Jorge Barba, Under-Secretary of Forestry and Renewable Natural Resources" (September 13, 1992);
- (c) "Letter from Alejandro Suárez, Administrator of Estación Jatun Sacha, to Ing. Mario Cárdenas, Field Supervisor, Petroproducción" (September 6, 1992);
- (d) "Letter from Mario Cárdenas, Field Supervisor, Petroproducción, to Alejandro Suárez, Administrator of Estación Biológica Jatun Sacha" (September 5, 1992);
- (e) "Denouncement against Petroecuador for not having duly respected private property" (September 5, 1992).
- Annex 8. "Informe de la Comisión Técnica de la Confederación de Nacionalidades Indígenas de Ecuador (CONAIE)" ("Report of the Technical Commission of CONAIE", August 1992).
- Annex 9. (a) Community of Capirona, "We ask the world" (July 18, 1992);
- (b) "Boletín de Prensa de la Federación de Organizaciones Indígenas del Napo (FOIN)" ("Press Release, FOIN", May 22, 1992);
- (c) "Letter from the President of FOIN to a U.S. organization" (July 28, 1992).
- Annex 10. Maxus Ecuador Inc., Environmental Management Plan, Block 16 (December 1991).
- Annex 11. Comité Ecológico de la Espol, Evaluación Plan de Manejo Ambiental de Conoco para el Bloque 16 de la Región Amazónica Ecuatoriana ("Evaluation of Conoco's Environmental Management Plan for Block 16 in the Ecuadorian Amazon Region") in M. Enriquez & B. Real, *Vida por Petróleo* (1992).
- Annex 12. J. Kimerling, *Amazon Crude* (1991) (excerpt, pp. 90-91).
- Annex 13. Scott McCreary, G. Mathias Kondolf, Joe R. McBride, Robert Twiss, Centre for Environmental Design Research,

University of California, Independent Review of
Environmental Documentation for Petroleum Exploration
in Block 10, Oriente, Ecuador (June 17, 1992).

Annex 14. L. Rival, "Huaorani y Petróleo", in G. Tassi (ed.), *Náufragos de Mar Verde*, pp. 125-77 (1992).

Annex 15. Newspaper Clippings

- (a) "Pueblos condenados", Hoy, Quito, November 22, 1992;
- (b) "Ecuador Ends Oil Monopoly", The Financial Times, October 31, 1992;
- (c) "Ecuador maps out its future path", The Financial Times, October 30, 1992;
- (d) "Petroleras piden garantías", El Universo, October 30, 1992;
- (e) "Los huaorani dicen no a carretera en su territorio", Hoy, Quito, October 29, 1992;
- (f) "Oleoducto, un peligro", El Comercio, Quito, October 29, 1992;
- (g) "Peligra oleoducto", Hoy, Quito, October 29, 1992;
- (h) "Las roturas del oleoducto", Hoy, Quito, October 7, 1992;
- (i) "Se convocará a licitación para exploración petrolera", El Comercio, Quito, October 12, 1992;
- (j) "S.O.S. para medio ambiente", El Comercio, Quito, October 5, 1992;
- (k) "Asolada, amplia zona", El Comercio, Quito, October 4, 1992;
- (l) "Petroleras quieren invertir", Hoy, Quito, September 29, 1992;
- (m) "Derrame de petróleo", Hoy, Quito, September 23, 1992;
- (n) "Ocho petroleras aún en el país", El Comercio, Quito, September 3, 1992;
- (o) "No existe una ley ambiental", El Comercio, Quito, August 20, 1992;

- (p) "Nuevo derrame de crudo en Amazonía", El Comercio, Quito, August 19, 1992;
- (q) "Protestan por derrame", Hoy, Quito, August 3, 1992;
- (r) "Loreto demanda por 100 millones de dólares a Petróleos del Ecuador"; La República, Lima, August 6, 1992;
- (s) "Tiene 60 Km de largo por uno de ancho"; La República, Lima, August 6, 1992;
- (t) "Admiten que error humano causó derrame de petróleo", La República, Lima, August 6, 1992;
- (u) "El ejemplo debe empezar por casa", El Comercio, Quito, August 4, 1992;
- (v) "Braspetro espera el desarrollo del bloque 16 de la Maxus", Hoy, Quito, August 1, 1992;
- (w) "Braspetro abandona el país", Hoy, Quito, July 31, 1992;
- (x) "ELF inicia explotación", Hoy, Quito, July 31, 1992;
- (y) "Protestan por derrame de crudo en Amazonía", Hoy, Quito, July 31, 1992;

Annex 16. Maps

- (a) "Oil Blocks in Ecuador". Source: Comisión Técnica de la CONAIE (August 1992).
- (b) "Oil Fields and Blocks in Ecuador". Source: Maxus Ecuador Inc. (December 1992).
- (c) "Oil Companies in Huaorani Territory". Source: CONFENIAE (January 1992).
- (d) "Blocks 16 and 22, Yasuní National Park and Huaorani Territory". Source: Maxus Ecuador Inc. (December 1992).
- (e) "Block 16 and Huaorani Territory in Detail". Source: Conoco Ecuador Ltd. (1991).

VOLUME I

I. INTRODUCTION

The Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE) and the Organización de la Nacionalidad Huaorani de la Amazonía Ecuatoriana (ONHAE) respectfully present to the Inter-American Commission of Human Rights of the Organization of American States ("the Commission") additional information to the Petition filed in June 1990 on behalf of the Huaorani nation against the Government of Ecuador ("the Petition"). Petitioners declare that violations of the human rights of the Huaorani people have gravely increased due to oil development authorized by the government in the traditional territories of the Huaorani nation. Petitioners urge the Commission to take immediate actions to avoid further irreparable harm. Finally, Petitioners request the Commission to accept their invitation, presented together with this Supplemental Report, to visit them in Ecuador and carry out an on-site investigation, pursuant to Article 18 of the Statute of the Commission ("the Statute") and Article 44 of the Regulations of the Commission ("the Regulations").

Petitioner CONFENIAE filed its Petition with the Commission on June 1, 1990, alleging present and imminent violations of the rights of the Huaorani to life and to health and well-being, as well as to humane treatment, protection of family, freedom of movement and of religion, inviolability of the home and to property and privacy. Petitioner also respectfully requested the Commission to take precautionary measures under Article 29 of the Regulations and strongly recommended that it make an on-site visit.

On July 11, 1990, Petitioner CONFENIAE presented to the Commission a copy of Canada's Supreme Court decision in Regina v. Sparrow, together with a comment on it. On July 28, 1990, in response to the request of the Commission, the Petitioner presented a supplemental statement on compliance with the requirements set out in Article 37.2(a) of the Regulations, on exhaustion of domestic remedies.

After being offered the opportunity to present an oral statement in *Audiencia* before the Commission, on September 16, 1991, Petitioner CONFENIAE filed with the Commission a summary of the statement to be presented by the Petitioner in the *Audiencia*. It also provided an annex with supplemental documents which offered ample additional information on the social and environmental impacts of petroleum exploitation in Ecuador, and an analysis of the latest developments in the United Nations regarding indigenous peoples' rights and the link between human rights and environmental protection.

At the *Audiencia* held September 20, 1991, Petitioner CONFENIAE, represented by its attorneys, informed the Commission about the serious human rights violations suffered by the Huaorani. Petitioner urged the Commission to consider making a trip to the Oriente and to consider requesting the Ecuadorian government to adopt precautionary measures.

Shortly thereafter, the oil company Conoco, which was authorized to exploit Block 16 in Huaorani territory, withdrew from all activities in the region. Its withdrawal was unquestionably influenced by the national and international campaigns addressed against the company's operations. The Petition was an important part of that opposition campaign.

Since then and up until a few months ago, most events in Ecuador have taken place in a climate of uncertainty. It was not known which petroleum operations were going to go forward in Huaorani territory; there were other companies with oil interests in Huaorani land which were in their exploratory phases, and it was not until April 1992 that Maxus corporation was finally authorized by the government to begin exploitation in Block 16.

The future awaiting the Huaorani has become much clearer now: its prospects are simply desperate. As of today, the Ecuadorian government has approved all possible oil operations in Huaorani lands, and some of these have already materialized in different parts of the territory. Work has begun on construction and laying out of pipelines. During 1993, as the road extends farther and farther into Huaorani territory, vehicles will be able to enter and, unavoidably, hundreds of colonists who are hoping to cut the forest and settle to farm the land will be able to do so.

Petitioners state that the Government of Ecuador, by authorizing oil exploitation in Huaorani territory, is generating the same misery, uprooting, malnutrition and injustice for the inhabitants as it has been doing in Northern Oriente for two decades. The consequences of the arrival of companies in the forest are devastating for the indigenous way of life and entail the direct contravention of the Huaorani people's fundamental human rights, as they are forced to live in permanent contact with colonists and oil workers. Some of these consequences are: the intensification of Huaorani dependency on largess from the oil companies; the relinquishment of hunting and garden farming; the loss of a way of life integrated with the natural environment; poor diets and alcohol consumption; environmental pollution; easy access to toxic and hazardous substances used by oil companies, and violent confrontations with colonists, which

have already caused the death of one Huaorani man². These examples demonstrate that fundamental human rights violations are a reality and, specifically, that an irreversible process of violations of economic, social and cultural rights recognized in Article 26 of the American Convention of Human Rights ("the Convention") and Article 27 of the International Covenant of Civil and Political Rights has begun.

Given the current desperate situation, Petitioners respectfully request the Commission to consider the Petition as an urgent matter, and to take precautionary measures according to Article 29 of the Regulations in order to avoid further irreparable harm to the Huaorani people. Petitioners believe that the Petition complies with all necessary requirements and should be accepted under the regular proceedings. Nevertheless, Petitioners would like to indicate that in other situations, international tribunals have taken precautionary measures even before deciding on questions of admissibility.³

Petitioners wish once more to encourage the Commission to accept their invitation to visit the affected areas in Ecuador and meet with indigenous leaders and Huaorani communities.

Petitioners reiterate the legal arguments presented to the Commission in the original Petition filed in June 1990 and subsequent documents. Petitioners state again their will to achieve a friendly settlement with the government of Ecuador, according to Article 45 of the Regulations.

Petitioners present in the following sections of this report detailed information on the events which have taken place in the last two years in Ecuador, as well as a description of the impacts of oil exploitation on the Huaorani nation and an evaluation of the government's and the oil companies' positions regarding the protection of Huaorani rights. This report is accompanied by an Appendix which presents additional information on the Huaorani society and, in a separate volume, a collection of documents which should be of interest to the Commission.

² See *infra* a detailed description of the situation in the community of Tiguino, by the Auca road, and in the "New Community" in the Shiripuno.

³ See Communication No. 210/1986 (X v. U.K.), U.N. Doc. CCPR/C/OP/2 (Decision of July 21, 1986); Communication 252/1987 (X v. U.K.), U.N. Doc. CCPR/C/OP/2 (Decision of November 13, 1987). In both cases, the Human Rights Committee took interim decisions before considering the admissibility of the case.

II. MAIN EVENTS SINCE 1990

Since Petitioners last communicated with the Commission, the most important events in Ecuador have been the creation of a new organization of the Huaorani nation and the Huaorani's resistance to petroleum exploitation in its traditional territories; the intensification of government efforts to exploit oil reserves; and the absence of measures which indicate the government's willingness to respect the human rights of the Huaorani, who are well along the path to losing their culture.

A. ONHAE IS FOUNDED AND SAYS "NO" TO PETROLEUM

The first initiatives to coordinate the Huaorani position, to increase awareness in the Huaorani communities of the implications of oil development, and to attempt to negotiate with government agencies, oil companies and others began in 1990. After the first assembly and Congress of the Huaorani Nation in 1990, the Organización de la Nacionalidad Huaorani de la Amazonía Ecuatoriana (ONHAE) was founded. In September 1992, ONHAE joined CONFENIAE as co-Petitioner in the Petition filed with the Commission, authorizing CONFENIAE to represent ONHAE in all matters related to the Petition.

A few years ago it would have been unthinkable to have representatives of the Huaorani nation as such, since traditional Huaorani society does not have "chiefs"⁴ and is sub-divided into small communities, or "segments,"⁵ which are bound together by

⁴ Fuente: ONHAE. See also Laura Rival, "Huaorani y Petroleo", en G. Tassi (ed.), *Náufragos de Mar Verde*, pp. 155-156 (1992); James A. Yost, "Twenty Years of Contact: the Mechanisms of Change in Wao ("Auca") Culture", Norman Whitten (ed.), *Cultural Transformations and Ethnicity in Modern Ecuador*, p. 677 (1981). Significant literature about the Huaorani by anthropologist Rival includes: "Our grandparents planted the trees, we feast on them." Towards an understanding of the Huaorani's use and representation of the forest (unpublished, London School of Economics, October 1992); Social Transformations and the Impact of Formal Schooling on the Huaorani of Amazonian Ecuador, PhD Thesis (unpublished, London School of Economics, January 1992); Shared, Consumed, Consummated: the Use of Food Consumption and Changing Relations among the Huaorani Indians of Amazonian Ecuador (unpublished, University of Manchester, December 1991); Sacred Words and Wild People: Human Rights, Development, Oil and the Huaorani of Amazonian Ecuador (unpublished, London School of Economics, May 1991).

⁵ Lucy Ruiz, "Movimiento Indígena Huaorani" in G. Tassi (ed.), *supra*, p. 59.

kinship and are completely independent from one another. However, as interaction of Huaorani people with other national and foreign groups--either opposed or favorable to oil development in Huaorani land--has increased, it became necessary to create an organized structure able to defend Huaorani interests in oil development discussions in Ecuador. It became clear to many Huaorani that it was necessary to present a strong common front and avoid the dangers of direct negotiation by individual communities with oil companies or government representatives.

Since its creation, Petitioner ONHAE has been very active, both in its coordination of Huaorani communities, which are spread out many days' walk apart in the Amazon, and in searching for solutions to oil development with the oil companies and the government. As ONHAE realized that legal remedies were not available in Ecuador, it took alternative courses of action. It wrote to Conoco when Conoco was the operator of Block 16, expressing opposition to road construction in Huaorani territory and rejection of any oil development activity there, since such activity is polluting and a source of illnesses.⁶ ONHAE has also written to Maxus Corporation requesting it not to enter on Huaorani lands and to respect their human rights;⁷ has organized several Huaorani "Congresos" to develop a coordinated position regarding oil development problems and the control of Huaorani territory; has made public statements on the matter.⁸ Huaorani representatives have met more than once with Maxus executives and government officials, but have not reached any satisfactory agreement with them.

Petitioner ONHAE, with the support of CONFENIAE,⁹ requests

⁶ "Letter from the Huaorani to Conoco" (January 11, 1991), presented to the Commission on September 20, 1991 as "Additional Document (10)".

⁷ "Letter from Huaorani leaders to Maxus Energy Corporation" (undated; approximately August 1992), "Annex (4)" to this Supplemental Report.

⁸ See "Carta Abierta, Pedido del Pueblo Huaorani a la Compañía Maxus y al Gobierno Ecuatoriano" ("Open Letter; Request of the Huaorani People to Maxus Corporation and the Ecuadorian Government"; undated, approximately winter 1992-93), "Annex (1)" to this Supplemental Report; "Los huaorani dicen no a carretera en su territorio", Hoy, Quito, October 29, 1992, "Annex (15.e)" to this Supplemental Report.

⁹ See, for example, CONFENIAE, "Boletín de Prensa, Genocidio Contra el Pueblo Huaorani" ("Press Release, Genocide (continued...))

the government to grant at least a ten-year moratorium on all oil exploitation in Huaorani territory, it is against road construction and the invasion of colonists, and it demands the recognition of Huaorani's rights to manage their own territory. Such requests have been agreed upon in the Huaorani *Congresos*¹⁰ and presented in several ways to the government and oil companies.¹¹

The dialogue between Petitioners, the Ecuadorian government, and the oil companies has taken place in a tense environment. The indigenous movement shares the view that the government and oil companies pursue a policy clearly divisive of indigenous leaders and organizations. This policy aims to obtain approval of oil development from certain leaders or communities in exchange for cash, goods or services. Some Huaorani communities find themselves under great pressure to accept the entrance of oil companies in their territories, and some have even signed "agreements" with companies which have later been repudiated in the general *Congresos*. One such "agreement" was recently signed by the president of ONHAE and a few other Huaorani individuals with a Maxus employee. In it, the Huaorani agreed to Maxus operating on their lands in exchange for receiving a power plant and some other goods. This "agreement" was signed on September 9, 1992 and repudiated by ONHAE's president himself and other leaders during a *Congreso* held between October 8-10, 1992. ONHAE's president declared in a letter to Maxus after this *Congreso* that "he was worried because Maxus made them sign a record of a meeting in which Maxus would give them some small things...which it has not yet delivered and where the Huaorani accepted that Maxus would work in Huaorani territory." He added that "the Huaorani communities do not want the presents offered by companies."¹²

Petitioners wish to communicate that the dangers arising from direct negotiations between the Huaorani and the government, companies or others are due mainly to manipulation of some

⁹ (...continued)
against the Huaorani People", October 26, 1992), "Annex (3)" to this Supplemental Report.

¹⁰ See ONHAE, "Resoluciones del Congreso de la ONHAE, Sede Shiripuno" ("Decisions of the ONHAE Congress in Shiripuno"; December 9, 1991), "Annex(6)" to this Supplemental Report.

¹¹ See, for example, *supra* note 8.

¹² See "Minutes of the meeting between some Huaorani leaders and Maxus" (September 9, 1992); "Letter from Huaorani leaders to Maxus Energy Corporation" (undated; approximately, October 1992) in "Annex (2)" to this Supplemental Report.

individual Huaorani by those who have better knowledge and experience in the non-Huaorani world. The Huaorani are the most knowledgeable about their environment and its ecology, but the majority of them lack the necessary experience and skills to anticipate all possible consequences of oil exploitation in their territory (such as pollution, colonization, etc...). They cannot place the oil companies, as they know them in the Oriente, in the overall framework of the economic, technological and social organizations common in non-Huaorani society. For this reason, many Huaorani may initially accept the arrival of a company near their communities because they enjoy having easy access to all the goods that it can provide, but, at the same time, they do not regard the companies' presents as a form of "compensation" for their intrusion, but rather view "the company"¹³ as an infinite source of wealth, in short, as a "tree to harvest".¹⁴

Although the Huaorani hold a clear common position against the operation of oil companies on their lands, there are good reasons to think that the government and the companies will continue pursuing their actions of "bribe and deceit"¹⁵ and that other "agreements" could be signed in the future.

Despite these risks, Petitioners have continued their fight during the last months as strongly as ever. A good example was the trip of last October 26, in which more than 100 Huaorani men and women travelled to Quito, demonstrated in front of the offices of Maxus Corporation and several government agencies, and presented their claims to them. Among their requests, they included a document addressed to Maxus in which they demanded a moratorium on oil exploitation. Regarding the construction of the Maxus road, petitioner ONHAE declared that: "there will take place a huge ecological and human disaster, with deforestation and new colonization fronts, land speculation and irreversible environmental pollution."

During their visit to Quito, Petitioners and other indigenous representatives met on October 29 with the President of the Republic in what the press described as a "tense

¹³ According to Rival, most Huaorani do not make distinctions between the different oil companies that operate in their territory; to them they are all the same: "the company." See Rival, *supra*, p. 140.

¹⁴ *Id.*, p. 146.

¹⁵ See "Boletín de Prensa, Genocidio Contra el Pueblo Huaorani," *supra* note 9; "Los Huaorani dicen no a carretera...", *supra* note 8.

dialogue",¹⁶ which did not result in any concrete decisions. Earlier, Petitioner CONFENIAE had tried to hold a meeting with the Ecuadorian Ministry of Energy and Mines and the Minister had refused to meet with the Petitioner.

Petitioners stress that they have tried to find solutions through negotiation and dialogue with the Ecuadorian government, but such mechanisms have been exhausted. This is why Petitioners are calling upon the Commission. Any further effort of the parties to protect human rights will have a much better chance of success if the Commission intervenes directly. In so doing, the Commission would play an historic role which would have extraordinary consequences, not only for the Huaorani people, but for all indigenous peoples who find themselves in similar circumstances.

B. NEW UNCONTACTED HUAORANI GROUPS HAVE BEEN IDENTIFIED

Besides the uncontacted Tagaeri, who have been repeatedly identified in an area partially enclosed by Petrobras' Block 17, South of the Cononaco river, another Huaorani group has recently been identified which has not maintained any known communication with the outside world. This group, which is known by other Huaorani as Taromanane, lives in the Eastern Huaorani territory, near the border with Peru. It seems they were seen by Petroecuador seismic workers east of Block 22.¹⁷

Elderly Huaorani also tell about another Huaorani clan, called Oñoma[na]ne, who live in the Southeast of the territory and have been forced out by oil development activities in Peru.¹⁸

From a total population of approximately 1,200 persons, about 500 Huaorani live in the Western territory--in the "protectorate"--and approximately 120 are dependent upon the land

¹⁶ "Tenso diálogo entre Sixto e indígenas," Hoy, October 30, 1992.

¹⁷ Source: ONHAE. This information has been provided by writer and journalist Joe Kane in an interview with Petitioners' attorneys (December 9, 1992) ["Interview with Joe Kane"]. Joe Kane has travelled extensively in the Amazon region, has lived for several months with the Huaorani and has travelled over much of their traditional territory during 1991 and 1992, when he was visiting Ecuador as part of his assignment with *The New Yorker* magazine.

¹⁸ Source: ONHAE; Interview with Joe Kane, *id.*

described as Block 16, which has the best hunting in Huaorani territory.¹⁹

The recent identification of new Huaorani groups--at least six years after the government's authorization of oil operations in Huaorani land--demonstrates the lack of reliable information on the number of Huaorani people dwelling in the Oriente. This clearly shows the lack of preparation and capability of the Ecuadorian authorities to plan for oil development in the Amazon, which now, without reasonable justification, is threatening the Huaorani culture and land. How is it possible for Ecuador to approve an oil development plan and at the same time to guarantee the human rights of the Huaorani when it does not even know how many of the Huaorani people there are, or where they live?

C. ECUADOR'S OIL POLICY VIOLATES HUMAN RIGHTS OF INDIGENOUS PEOPLES

A new Government of Ecuador was elected in July 1992, and Sixto Durán Ballén ascended to the Presidency of the Republic. The new government has adopted an aggressive strategy to augment oil production, but continues without a plan to protect basic human rights of indigenous peoples.

One of the first signs of the new oil policy was Ecuador's withdrawal from the Organization of Petroleum Exporting Countries (OPEC). This move has allowed the country to double its oil production targets, which were previously established by OPEC at 273,000 barrels/day (b/d). Recent data indicate that the government is aiming at producing 470,000 b/d in 1993 and 576,000 b/d in 1996.²⁰ The Minister of Energy and Mines has declared that the government's intent is to "encourage foreign investment" and, to this end, it will now open the seventh round of bidding for oil development rights.²¹ The government has also announced that it will end its monopoly on oil exploitation, which now is in the hands of the state's corporation Petroecuador.²² To all these policies must be added the new

¹⁹ *Id.*

²⁰ "Ecuador maps out its future path," The Financial Times, October 30, 1992, "Annex (15.c)".

²¹ "Se convocará a licitación para exploración petrolera," El Comercio, Quito, October 12, 1992, "Annex (15.i)".

²² "Ecuador Ends Oil Monopoly," The Financial Times, October 31, 1992, "Annex (15.b)".

government's aim to significantly reduce costs and increase speed and efficiency in production.²³

Petitioners believe that the Ecuadorian government will not be able to guarantee protection of human rights and the environment as long as its main objectives are the exploration and exploitation of all possible oil reserves in the country as quickly as possible and in a framework of greater "efficiency."

Petitioners also wish to point out that the new oil policy provides just one example of the government's chronic inability to address indigenous rights and environmental issues. As it has already been stressed in Petitioners' earlier submissions to the Commission, there is no Ecuadorian legislation regulating indigenous rights, and there are no effective means for indigenous peoples under domestic law to defend their rights. Adequate and enforcement of environmental protection measures and control of oil activities are also missing, and there is a blatant lack of coordination among the different competent bodies. The government's most frequent excuse for its ineffectiveness is its lack of financial resources, but there is an even greater lack of government sensibility, sensitivity and reflection in failing to look for alternatives to oil development which would take into account respect for all human rights.

In short, on top of not having the right objectives, Ecuador also lacks planning. There is no global and balanced plan that guarantees indigenous rights, nor one which effectively regulates and controls the oil industry, develops agriculture and controls colonization. There is no plan that guarantees the exercise of fundamental human rights. Ecuador has joined the rush to oil development without having the essential infrastructure to keep afloat, and now is sinking under the weight of problems the government itself has set in motion. Unfortunately, it is taking down with it not only peoples like the Huaorani, who are realistically doomed to disappear if current policies do not change, but also most Ecuadorians, who, already impoverished, are now losing the opportunity to provide a decent future to their children.

Petitioners wish to add that the government's attitude not only demonstrates a lack of planning, but also an apparent lack of good will in its negotiations and contacts with the Petitioners and other groups committed to the promotion and protection of human rights. Petitioners declare that the government has not shown any inclination to take Petitioners' claims into account nor to look for a solution fair to all.

²³ "Ecuador maps out its future path," *supra*, note 20.

D. CONOCO WITHDRAWS FROM BLOCK 16 AND ECUADOR AUTHORIZES SUBSTITUTION BY MAXUS.

The U.S. Corporation Conoco terminated its operations in Ecuador in October 1991, mainly due to the active campaign against its intervention by indigenous and environmental organizations in Ecuador and abroad. The Ecuadorian government authorized the substitution of Maxus Energy Corporation (Maxus) for Conoco's interests, and Maxus became the new Block 16 operator with 35% of the exploiting consortium's shares. In April 1992, Maxus signed an agreement with the government that authorized it to begin operations for the production phase in Block 16.

Maxus is a U.S. corporation, with its headquarters in Dallas, Texas. It was previously known as Diamond Shamrock, producer of the fatal "agent orange" used during the Vietnam war.²⁴ Maxus has kept almost all the staff and infrastructure relied upon by Conoco in Ecuador and has followed the operating plans designed under Conoco's lead, including its Environmental Management Plan for Block 16, which has remained essentially unchanged.

Now, Block 22, which is in Huaorani territory and in Yasuni National Park, also has been awarded to the consortium headed by Maxus. The president of Petroecuador announced recently that there have been no advances in the negotiations with Maxus regarding the exploration and exploitation of this block.²⁵

E. ECUADOR ALLOWS OIL DEVELOPMENT TO REACH THE HEART OF HUAORANI TERRITORY

The Ecuadorian government has authorized eight oil companies to operate on Huaorani lands in recent years. One of these has abandoned the country and two more have suspended their activities pending further negotiations with Petroecuador. The other five are advancing into Huaorani territory from all sides. Their threat seems now unstoppable. A summary of the current state of the activities of all the companies authorized to operate in Huaorani territory follows.

MAXUS. According to information received from Maxus, last August it began the preparatory work to build the access

²⁴ See Marcela Enriquez & Byron Real, *Vida por Petróleo*, pp. 122-3 (CORDAVI, E-LAW, ILDIS 1992).

²⁵ "Petroleras quieren invertir," *Hoy*, Quito, September 29, 1992, "Annex (15.1)."

road into Block 16.²⁶ As was mentioned in the Petition to the Commission (June 1990), it is foreseen that this road will be about 120 Km. long. Its construction will be of strategic importance since it will facilitate the construction of a whole new road network servicing other companies which have blocks neighboring Block 16.²⁷ The road begins at the South margin of the Napo river, going through the Quichua communities of Pompeya and Indillama. Maxus corporation has made some direct agreements with these communities, ignoring consultations with Quichua organizations and Petitioner CONFENIAE which co-ordinates the indigenous position regarding oil development in the Oriente. Maxus announced that before the end of 1992 the Bogi 1 well would be drilled and that before the end of 1993 it would be in full production. The road and pipelines to this well will also be finished before the present year ends. Development in Block 16 will continue for six years. During this time period, seven oil producing structures will be completed and linked with the previously mentioned roads and pipeline, and also with the trans-Ecuadorian transportation system of the Northern Oriente.

ELF-AQUITAINE EQUATEUR. Petroecuador and the Ecuadorian Ministry of Energy and Mines have approved the development plan of this French oil company, which has recently completed its exploratory phase.²⁸ Elf-Aquitaine's executive director in Ecuador declared that in this new phase the company will drill oil producing wells, build a 20 Km. pipeline, a production station and access roads.²⁹ There is already a 22 Km. road open which heads east from Km. 43 of the Auca road, to the Tiputini river.³⁰ Speculation from observers in the area indicate that this road could eventually be connected with the Maxus road. Elf-Aquitaine's exploratory phase left the usual signs of deforestation, toxic waste and disruption of the way of life of the communities in the area.

²⁶ Telephone conversation with Linda Covington, Director, Public Relations, Maxus Energy Corporation, Dallas, Texas (December 3, 1992).

²⁷ Giovanna Tassi, "Fluye petróleo...sangra la selva," Hoy, Quito, November 3, 1992.

²⁸ "ELF inicia explotación," Hoy, Quito, July 31, 1992, "Annex (15.x)."

²⁹ *Id.*

³⁰ "Fluye petróleo...", supra note 27.

PETROECUADOR. Operators Petroamazonas and Petroproducción, subsidiary companies of Petroecuador, play an important role in oil development in Huaorani territory. Petroproducción is exploring the large fields located in the Eastern Oriente which overlap with Huaorani territory and Yasuni National Park. Petroproducción also has rights over smaller exploratory and production sites within Blocks 9 and 14, which are assigned to Petro Canada and Elf-Aquitaine. One of Petroproducción's wells is a few meters away from the Huaorani community of Tiguino, and two other such sites are within Yasuni National Park, in the area of Garzacochoa, which is one of the most traditional settlements of the Huaorani nation.³¹ It is assumed that once the exploration of Petroproducción's Eastern block ends, a road will be opened connecting it with the Maxus road, and it is also possible that a pipeline will be built along the Napo river.³²

Petroamazonas is the operator of the fields which previously were exploited by Texaco. There is an alarming history of pollution, deforestation and cultural degradation in the Northern Oriente as a result of Texaco's operations.³³ Such consequences are also felt in Petroamazonas' most Southern oil fields on Huaorani lands.

ARCO. This company is still in its exploratory phase but has found significant oil fields in Quichua territory in Pastaza. At the moment, it is moving some of its exploratory operations towards the North, to the area of the old Huaorani protectorate, where the largest number of Huaorani people still live. Reliable non-official sources within Petroecuador have indicated that last August a decision was made by competent authorities to extend the Auca road to the South, crossing the Curaray river and cutting the Huaorani territory in half. This would facilitate the development of Arco's wells, among others.³⁴

PETROBRAS. Braspetro, the international subsidiary of Petrobras, is currently evaluating its exploratory phase, which was terminated due to force majeure before finishing all the exploratory work agreed to with Petroecuador. The operator is considering renegotiating its

³¹ *Id.*

³² Interview with Joe Kane, *supra* note 17.

³³ See Judith Kimerling, *Amazon Crude* (NRDC 1991)

³⁴ Interview with Joe Kane, *supra* note 17.

contract with the government and is waiting for adequate operating infrastructure to be set up by Maxus in Block 16.³⁵ Petrobras' expectations in this respect exemplify the "domino effect" that is determining the nature of oil operations in Ecuador: as one company penetrates deeper into virgin forest, building roads and pipelines, other companies, which are currently less committed to expanding their operations, are benefited by the networks set up by the preceding company and, thus, will in turn commence their exploratory phases and enter even deeper into the forest.

Petrobras' block is right in the center of Huaorani territory and, due to the company's operations, three Huaorani communities in the Cononaco river have already been forced to move as a result of the noise and destruction. The displaced people have gone to live in very undesirable places: an abandoned military landing strip, which is being rebuilt to bring tourists to the area, and an abandoned camp of the Compagnie Général Géophysique, where the Huaorani are constantly visited by tourists and wildlife traders.³⁶ It was due to the earlier presence of Petrobras in the territory of the uncontacted Tagaeri that Monseñor Labaca, in an attempt to avoid conflicts and harm to this Huaorani clan, decided to contact them. He was killed by the same Tagaeri in this attempt.

UNOCAL. This company is also presently evaluating its exploratory phase. In May 1991, it abandoned its installations South of the Auca road when it did not find enough commercially exploitable oil. However, it is continuing its negotiations with the Ecuadorian government.³⁷ Part of the Huaorani community of Tiguino has moved to the abandoned Unocal camp.

PETRO CANADA. Petro Canada abandoned its block and withdrew from the country,³⁸ leaving behind nine Km. of road elongating the via Auca. It also left colonists along the

³⁵ "Ocho petroleras aún en el país", El Comercio, Quito, September 3, 1992, "Annex (15.n)"; "Braspetro espera el desarrollo del bloque 16 de la Maxus", Hoy, Quito, August 1, 1992, "Annex (15.v)".

³⁶ See Rival, *supra*, pp. 155-6. The Quemperi and Mima communities moved 80 Km. downriver; the Caruhe community went upriver, to the Compagnie Général Géophysique camp.

³⁷ "Ocho petroleras...", *supra* note 35.

³⁸ Source: PROBE (Canada). See also "Ocho petroleras...", *supra* note 35.

road and exploratory wells as far South of the Huaorani territory as the Curaray river. Petro Canada's withdrawal was partly due to the campaign held in Canada by groups concerned with human rights violations, whose protests even reached international bodies. As an example, the Canadian organization PROBE sent a letter to the Commission supporting the present Petition and pointing out the negative impacts of Petro Canada's activities. Initiatives such as PROBE's demonstrate the worldwide importance of protecting fundamental human rights threatened by environmental pollution.

III. NEGATIVE IMPACTS OF OIL EXPLOITATION IN HUAORANI COMMUNITIES

While the Huaorani have mostly succeeded in adapting their way of life as hunters and gatherers and their egalitarian social relations in the seismic tests phase, they have not had such success when the drilling of oil wells has begun. It will become extremely difficult for them to defend their lifestyle and cultural values when oil is commercially exploited in their territory.³⁹

A. DIRECT CONTACT WITH THE OIL COMPANIES.

Petitioner CONFENIAE described in the Petition filed with the Commission in 1990 the negative impacts of oil development on the Huaorani and presented several examples of physical and cultural devastation suffered by other indigenous groups subjected to the very same factors now affecting the Huaorani.⁴⁰ Petitioner CONFENIAE also showed how the

³⁹ Rival *supra*, p. 149 (translation from Spanish).

⁴⁰ See Petition (English version), pp. 13-16. See examples of what happened to the Nahua in Peru, the Yanomami in Brazil or the Cofanes in Ecuador. See also, Kroeger Axel et al., *Cambio Cultural y Salud, con especial referencia a los Shuar-Achuar*, pp. 26-28 (1984) for other observations on the Shuar-Achuar people and the health impacts of ecological transformations due to the arrival of others in their territory:

One of the main external pressures to economic and social systems of the Amazon Indians has been the loss of their hunting grounds as a result of the invasion of colonists, or as a result of their confinement to a limited piece of land. In Ecuador, the law for colonization of the Amazon Region [...] has accelerated the process of spontaneous colonization by Andean farmers. All these pressures result,

(continued...)

penetration of foreigners into indigenous lands, and in particular, the construction of roads in the rain forest, has invariably devastating consequences for native peoples in the history of the Amazon.⁴¹

Regarding the Huaorani, Petitioners presented with the Petition a report by anthropologist James Yost which stated some of the damages suffered by the Huaorani as a result of their contact with the outside world.⁴² Some of these examples bear repeating: deaths of Huaorani left unaccompanied in towns;⁴³ illnesses and deaths caused by viral diseases introduced by oil workers and others;⁴⁴ accelerated exposure to and occurrence of illnesses as a result of the greater population in now

⁴⁰ (...continued)
unavoidably, in greater dependence on agriculture, changes in farming techniques [...]. Such changes have been and are prejudicial for the indigenous lifestyle, particularly when one realizes that as environmental constraints are more severe--as it happens in the tropical rain forest--, [...] is more limited man's capacity to respond to new conditions.

The main consequences of ecological change for the Shuar, in particular, and for Amazonian Indians in border areas in general, are:

- i) deep and prejudicial changes in indigenous people's social life and culture [...];
- ii) diet problems resulting from a fast transition from a subsistence to a market economy;
- iii) changes in the transmission of diseases as a result of the increasing population density (human and animal) [...]

⁴¹ See William T. Vickers, Declaration Concerning the Planned Road Construction Through the Yasuni National Park and Huaorani Indian Territory (May 2, 1990), presented as "Annex 7" to the Petition. In the Petition, see pp. 16-18.

⁴² James Yost, Assessment of the Impact of Road Construction and Oil Extraction Upon the Waorani Living on the Yasuni (Report prepared for Conoco Ecuador, Ltd.) (April 1989). Presented as "Attachment 'B'" to the Petition.

⁴³ *Id.*, p. 10.

⁴⁴ Yost, Assessment..., *supra*, p. 12.

sedentary Huaorani communities;⁴⁵ unhealthy conditions due to increased human density, particularly, from water pollution by sewage;⁴⁶ and prostitution of Huaorani women and consequent marginalization of them by their communities.⁴⁷

These facts already raised great concern during the nineteen seventies and eighties,⁴⁸ when contacts with the non-Huaorani world were infrequent. During the last few years, after the Ecuadorian government authorized oil development all over the Huaorani territory, contacts have multiplied exponentially, and prospects for the future are extremely dismal.

The intensification of oil activities is bringing sudden, rapid and irreversible changes to the Huaorani without giving them the chance to respond appropriately. Violations of their human rights are increasing with every day that goes by.

A telling example of the grave destruction arising out of the uncontrolled contact of many Huaorani with people from the outside is found in the small community of Tiguino. In this village lives the family group of the Babeiri, which until

⁴⁵ *Id.*, p. 16. On sedentarization of Huaorani communities, see Rival, *supra*, pp. 132-39.

⁴⁶ Yost, *Assessment...*, *supra*, p.16.

⁴⁷ *Id.*, p. 15.

⁴⁸ See Ministerio de Defensa del Ecuador, "Las Tareas Primordiales Frente al Desarrollo de los Pueblos y Etnias Amazónicas del Ecuador" in *Política Estatal y Población Indígena*, p. 82 (1984). Even the Ecuadorian Ministry of Defense stated in 1984 its concern about the impacts of the arrival of oil companies and colonists in the Oriente: "In our Amazon situations have arrived which threaten individual biological safety, the diffusion of alienating trends and ideas from the outside, theories and methods which have produced a deforming alienation of the local culture in all its forms" (translation from Spanish). The Napo Province in 1984 already faced severe problems, such as a high rate of prostitution, drug smuggling, alcoholism, crime, etc. The Ministry of Defense emphasized the need to pay special attention to environmental health and sanitation, since the most frequent complaint from inhabitants in the region is the lack of drinking water and sewage treatment systems. According to the Ministry of Defense "[this] situation has caused a rapid increase of environmental pollution and the proliferation of endemic diseases such as malaria, parasitosis, gastroenteritis and even typhoid." (Translation from Spanish)

recently had been living in Golondrina, by the Curaray river. As a result of confrontations with other Huaorani groups over access to the goods of Petro Canada--which was carrying on exploratory work near them--, and motivated by the tragic death of Babe's son--which was thought to be caused by Quichua witchcraft--, the Babeiri abandoned their land when they were offered a tempting alternative by Petro Canada: to move to the land of Babe's grandfather, in Tiguino, where an extension of the via Auca recently had been built. The group was flown to the new land by Petro Canada's helicopters, and a space was opened by bulldozers on which they built the village.⁴⁹

Nowadays, the Babeiri live on the land cleared by Petro Canada, right by the road, and in the camp abandoned by Unocal in May 1991, which is nearby. This camp has no water or electricity; all that are left are the linoleum and concrete floors that Unocal had once laid out. On these floors the Huaorani have built their houses with materials scavenged from the companies. For example, they used waste plastic and cables to build their new "hammocks". Babe and his close family live near the road, in a bright pink house built by the company when Babe's old house was burned down by colonists.⁵⁰

Babe's new village is permanently muddy, dirty and slippery, with a strong petroleum smell that comes from the road and from Petroproducción's well, which is just a few meters away. Cars go by on the road almost continually from the companies, and some from the military, colonists and tourists, to whom the Huaorani sell spears and ornaments.⁵¹ Interaction with other settlers is constant and the Huaorani do not have sufficient privacy.⁵² The situation in Tiguino is one of great tension on both sides: the Babeiri think that the companies are not giving them all the goods that they ask for and the latter promise to deliver; and the oil workers and military feel harassed by so many claims for goods, and sometimes fear for their safety when the Huaorani are angry.⁵³

The Babeiri do not hunt as often as they used to, since they now have to go very far away to find game. They mainly eat the food provided by the companies (rice, sugar, canned foods, sodas,

⁴⁹ For a detailed description of life in Tiguino, see Rival, *supra*, pp. 150-55.

⁵⁰ Interview with Joe Kane, *supra* note 17.

⁵¹ *Id.*

⁵² Rival, *supra*, p. 153.

⁵³ *Id.*

etc...) and sell most of their hunted meat to the military and oil workers. Anthropologist Rival explains that their children do not go to school, but do not go to the forest either, and that they spend the day watching trucks go by on the road.⁵⁴ Adults drink lots of alcohol and often visit brothels in the area.⁵⁵ Babe has had to undergo detoxification in a hospital far away more than once.⁵⁶ The infrastructure in the village has not improved and the impacts on "the health and diet of these Huaorani are dramatic".⁵⁷

On top of these problems, there are the considered risks of living next to machinery and materials used and discarded by the companies in the course of their oil operations. The following is a good example of the dangers of uncontrolled use and disposal of toxic products in the vicinity of Huaorani villages. One day a family living in the former Unocal camp was coming back from a hunting trip. They did not have success in their hunt, but they had found in the bushes a barrel full of some unknown substance. This family was going to take it to their village and hoped to use it as fuel for their lamps. Some who saw this thought that that rusty barrel was probably full of chemicals abandoned by Unocal when it left the site. The Huaorani tell that they often find such barrels amidst the bushes in the forest.⁵⁸ The risks of using toxic or hazardous substances are great, since they are people of great curiosity who almost always try new things by taste.⁵⁹

In Rival's own words, when commenting on Petro Canada's action of moving the Huaorani to Tiguino: "moving the Huaorani to the oil road and exposing them to the frontier is not a smart move: it is a crime."⁶⁰

Petitioners wish to point out that the Ecuadorian authorities have not taken any effective action to address the desperate situation of anarchy which reigns in Tiguino.

⁵⁴ Rival, *supra*, p. 154.

⁵⁵ *Id.*, p. 153.

⁵⁶ Statement of Rival in Kimerling, *supra*, p. 95.

⁵⁷ Rival, *supra*, p. 157.

⁵⁸ Interview with Joe Kane, *supra* note 17.

⁵⁹ Yost, Assessment..., *supra*, p. 15.

⁶⁰ Rival, *supra*, p. 152.

The situation in Tiguino provides a sample of some of the unfortunate consequences that a sudden and intense contact with oil workers and other non-indigenous persons will have for the Huaorani people. Significant threats arise from dependency patterns which are rapidly established with the companies. The companies are not going to remain in the Oriente forever and, in fact, it is easy to predict that they are not even going to keep up the pace in which, as part of their initial approaches, they are providing outside goods to the Huaorani. Some Huaorani communities are already facing being forced to pay for services or goods that they receive from the oil companies.⁶¹

If the government of Ecuador continues to allow such uncontrolled contacts, new Huaorani generations will lose not only the great part of their traditional culture--first assaulted under the missionaries, then by the oil companies--but also their capacity to be self-sufficient, to exercise their human rights, and, most fundamentally, to exist as Huaorani people.⁶²

As it was stated in the Petition, anthropologist Yost believes that the loss by the Huaorani of control over their land and resources will lead them to "deculturation" and ethnocide.⁶³

⁶¹ *Id.*, p. 147.

⁶² If the Huaorani fall into a situation of dependency of foreign agents and break their traditional subsistence economy, they will only have left the possibility of integrating in the dynamics of a market economy. If this happens, an unpromising future as farmers or unskilled workers awaits them: from being self-sufficient in a healthy and rich natural environment, they will become part of the under-classes of Western society. Already several cases of this have been observed. Yost tells that, already in the seventies, single Huao women went to work in the nearest towns as maids, usually in exchange of room and board. Other Huaorani went to live as *cohuori*, renouncing their lives in their home land. See Yost, "Twenty years...", *supra*, pp. 699, 702.

⁶³ Yost, *Assessment*, *supra*, p. 8. See Norman Whitten, *Sacha Runa. Ethnicity and Adaptation of Ecuadorian Jungle Quichua*, p. 278 (1976), referring mainly to Quichua communities in the Amazon:

When the might of international petroleum consortiums descended on eastern Ecuador in the late 1960s, many native peoples witnessed catastrophic short-run changes. Within a few years a subsistence economy with far-flung trade networks was saturated with a morass of technological imposition, and in some areas floods of highland colonists were flown into forest areas where they were totally

B. ENVIRONMENTAL DEGRADATION

In addition to causing grave social disruption, the arrival of oil companies in the rain forest results in severe pollution and environmental degradation, which threaten the very existence of the Huaorani⁶⁴.

Petitioners want the Commission to be fully aware of the environmental impacts of oil operations in the Oriente, particularly in light of the September 1991 additional documents Petitioners submitted on the matter.⁶⁵ Petitioners will not repeat here the detailed explanations of such environmental impacts that were included in those documents, but would like to inform the Commission about new instances of environmental harm that have occurred in the past year. Although many of these incidents did not take place in Huaorani territory, it is still relevant to consider them, since they clearly reveal the lax approach under which the Ecuadorian government is allowing oil exploration and exploitation.

The events that will be described confirm that, despite efforts from the government and some oil companies to appear environmentally sensitive, nevertheless, they continue violating the weak environmental laws of Ecuador, and government agencies do not carry out effective preventive, monitoring and enforcement functions.

1. Pollution in Huaorani Territory

Already three years ago one of the semi-nomadic communities depending on Block 16 observed some unusual changes in the nearby river and experienced health problems and suffered damage to its gardens, as a direct result of what was almost certainly an oil spill. Though the inhabitants did not know the cause of those changes, they explained that in a short period the water in the river changed color several times, the fish died, their yuca

dependent for their survival on either imported goods or take-overs of native chagras. Most of those who witnessed parts of the process, ... cried "ethnocide!"

The current attempts at ethnocide of indigenous peoples in Eastern Ecuador are systematic, large-scale, and planned, as well as random, local and unintended". (*Id.*, p. 277).

⁶⁴ See Petition, pp. 22-23.

⁶⁵ See particularly, Kimerling, *supra*.

plants were destroyed, and the people became ill and developed skin infections. This oil spill they referred to could have taken place in the exploratory well "Amo 2" which is upriver from the Huaorani community, but neither Conoco nor Maxus has ever acknowledged such a spill.⁶⁶

A year and a half ago a film was made showing oil companies dumping oil directly in the Cononaco river.⁶⁷

There is also recent information about problems in the new Huaorani community by the Shiripuno river, near the Auca road. There, some Huaorani children were observed to be covered in a "film" of an unknown substance after they came back from swimming in the river. Considering the location of the village, it is easy to conclude that pollution in the river was caused by the "clean-up projects" taking place in nearby waste pits containing produced water and other toxic substances from oil operations. Such clean-up projects usually entail digging a hole in the bottom of the waste pit, letting the polluted water flow out directly into the environment, and covering the pit with dirt.⁶⁸

Petitioners wish to remind the Commission that, in addition to oil pollution, there is severe environmental harm as a result of ongoing seismic tests. These cause deforestation, drive away wildlife, and kill fish with dynamite explosions. Some rivers, such as the Shiripuno, are also starting to be damaged after being cleared of vegetation and used as transportation lines for large motor boats.

2. Other Examples of Environmental Harm

(a) Spill in the Quinchiyacu and Napo Rivers.

It is estimated that about 5,000 barrels of oil were spilled approximately between July 24, 1992 and July 26, 1992 in the Sacha oil field, now operated by Petroamazonas in the Napo province. In the face of contrary declarations, executives from Petroamazonas maintained the spill was insignificant, while, on the other hand, an Italian scientist provided video images of a serious oil spill in the Napo river.⁶⁹

⁶⁶ Interview with Joe Kane, *supra* note 17.

⁶⁷ *Id.*

⁶⁸ Interview with Joe Kane, *supra* note 17.

⁶⁹ See "Loreto demanda por 100 millones de dólares a Petr6leos del Ecuador", "Annex (15.r)"; "Tiene 60 Km de largo por uno de ancho", "Annex (15.s)"; "Admiten que error humano caus6

To clean up the spill, Petroecuador's workers applied chemical dispersants and recovered 200 barrels. The rest flowed downriver all the way to Peru. The Environmental Unit of Petroecuador determined that the spill was due to negligence of Petroamazonas' staff, and the Directorate General on Hydrocarbons fined the company 20 million Sucres (approximately \$20,000)--an absurdly low amount. Even the Under-Secretary of the Environment declared that "the fine is very low, especially when one considers that it is very difficult to rehabilitate the areas affected by environmental damage."⁷⁰

Some of the damages suffered by the riverside communities after the spill were evaluated by the Technical Commission (TC) of the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE).⁷¹ The conclusions reached by the TC point out that, as a result of the spill, thousands of fish, as well as domestic and wild animals, died and that crops and plants were destroyed. The ecological condition of the Napo river--which already has deteriorated due to frequent spills--became significantly worse. People at the Quinchiyacu riverside could not fish or use the river's water. Health problems were observed in the river's residents, particularly headaches and stomach problems.

The TC concluded that Petroecuador gave late warnings of the spill to the affected villages, and at least as of the date of the TC's study, it had not provided material assistance to the communities which needed it. Petroecuador delivered contaminated barrels to one community to be used to collect rain water for drinking. Clean-up did not begin until five days after the spill, and techniques were used which were dangerous to both human health and the environment. Added to this poor performance was an apparent lack of emergency communication between Petroamazonas and the monitoring bodies of Petroecuador, the Ministry of Energy and Mines and its Environmental Under-Secretariat. The TC concluded that Petroecuador failed to implement even a marginally adequate contingency plan.

The Comité Ecológico de la ESPOL, from the University of Guayaquil, expressed its protests of this and other oil spills and declared:

derrame de petróleo", "Annex (15.t)". All these articles appeared in La República, Lima, August 6, 1992.

⁷⁰ "El ejemplo debe empezar por casa", El Comercio, Quito, August 4, 1992, "Annex (15.u)" to this Supplemental Report.

⁷¹ "Informe de la Comisión Técnica de la CONAIE" (August 1992), "Annex (8)" to this Supplemental Report.

In almost all health clinics in communities near oil fields, one can find cases of gastric diseases caused by consuming water contaminated with hydrocarbons and chemicals used in the oil operations, as well as skin rashes caused by the polluted environment.⁷²

Water quality tests carried out by this Comité in rivers and creeks within the oil fields of Northern Oriente uncovered average water quality levels with five times the contaminants as rivers far from oil fields which contain harmless hydrocarbon levels.⁷³

(b) Additional oil spills in the Oriente.

Shortly after the oil spill in the Napo and Quinchiyacu Rivers, three other smaller spills took place in the same region. On August 7, 1992 186 barrels of oil were spilled on the shores of the Aguarico River, in a Petroamazonas field. This spill was caused by the breakage of a rusty pipeline.⁷⁴ On September 12, 1992 there was another oil spill in Shushufindi--also a Petroamazonas operation--which polluted the Eno River, a tributary of the Aguarico. Shortly thereafter, there was another spill in the Yuca field area, which polluted the Indillama River, a tributary of the Napo river.

Petitioners complained in the press that those spills were caused "by negligence of technicians and officials in Petroecuador, who, with an absolute lack of preventive criteria and human sensitivity, are imposing a rapid social and environmental collapse in the Amazon...."⁷⁵ A representative of the Capuchin Mission in Coca declared that spills are commonplace in the Napo area because Petroecuador's pipeline is "old and obsolete".⁷⁶

⁷² See "Protestan por derrame", Hoy, Quito, August 3, 1992, "Annex (15.q)" to this Supplemental Report (translation from Spanish).

⁷³ *Id.*

⁷⁴ "Nuevo derrame de crudo en Amazonía", El Comercio, Quito, August 19, 1992, "Annex (15.p)" to this Supplemental Report.

⁷⁵ "S.O.S. para medio ambiente", El Comercio, Quito, October 5, 1992, "Annex (15.j)" to this Supplemental Report. (Translation from Spanish).

⁷⁶ "Protestan por derrame de crudo en Amazonía", Hoy, Quito, July 31, 1992, "Annex (15.y)" to this Supplemental Report.

Spills are also caused by frequent automobile accidents on the Oriente's roads which often damage adjacent pipelines. Roads are deliberately coated with crude oil as a way to maintain them and, when they become wet with the almost daily rains, their surfaces become very slippery. One of these frequent car accidents was recently reported in the Ecuadorian press: a tractor from a contracting company hit the oil pipeline and broke it, spilling 60 barrels of oil, according to company sources. This number was contested by one congressman for the province of Sucumbios, where the accident happened, who stated that at least 500 barrels of oil had actually been spilled as a result of the accident.⁷⁷

(c) The Trans-Ecuadorian pipeline is an environmental hazard.

The Trans-Ecuadorian Pipeline System (SOTE) has been operating for 20 years and "is always breaking down and threatening the bio-diversity of the Amazon Region..."⁷⁸ It is maintained by Petroecuador and is seriously deteriorated. The Minister of Energy and Mines recently stated that the pipeline is damaged at several points along its length, and announced that an international bid solicitation would be opened for projects to inspect the pipeline. This indicates that repairs to the SOTE may still have to wait a few years before actually beginning.⁷⁹

Petroecuador states that, up until now, 272,949 barrels of oil have been spilled. Other sources counter that the figure is much closer to 400,000 barrels spilled.⁸⁰ Petitioners wish to point out that these amounts refer solely to SOTE spills and do not include the constant spills from the many smaller pipelines, wells and production stations. Last September there was a new oil spill from SOTE, in which 8,257 barrels of oil were lost. It polluted several coastal areas and at least three rivers,⁸¹

⁷⁷ "Derrame de petróleo", Hoy, Quito, September 23, 1992, "Annex (15.m) to this Supplemental Report.

⁷⁸ "Refineria emana gases", El Comercio, Quito, November 1, 1992.

⁷⁹ "Peligra oleoducto", Hoy, Quito, October 29, 1992, "Annex (15.g)" to this Supplemental Report.

⁸⁰ "Informe de la Comisión Técnica de la CONAIE", supra note 71, p. 3.

⁸¹ "Se derraman 8.257 barriles", Hoy, Quito, October 3, 1992.

where "the water, which before had been crystal-clear, now has an oily and black appearance".⁸²

(d) **Seismic tests in Jatun Sacha Biological Station without authorization.**

Jatun Sacha is a private center for the promotion of on-site research on Amazonian flora and fauna in Misahuallí, a province of Napo. As a result of encountering problems with a seismic company, the staff of Jatun Sacha received valuable information which contributes to the understanding of the working procedures used by such companies, as well as the poor supervision carried out by the Ecuadorian authorities.⁸³

Petroecuador's contractor Seiscom Delta went onto private property, built a heliport, and started felling trees and preparing seismic lines, all without obtaining any prior authorization from the land owners and without completing the environmental impact study required by law.

Notwithstanding several discussions with the owners of the invaded lands, the seismic company did not comply with their demands and continued its operations. Jatun Sacha's administrator claimed damages to his property, as well as to the flora and fauna in the area, and to scientific research being carried out at the biological station.⁸⁴

⁸² "Asolada, amplia zona", El Comercio, Quito, October 4, 1992, "Annex (15.k)" to this Supplemental Report. (Translation from Spanish).

⁸³ See "Chronological Events Taking Place at Jatun Sacha Biological Station Pertaining to Prospecting by Petroecuador" (undated; approximately, September 1992); "Letter from Ing. Walter Palacios, President, Fundación Jatun Sacha, to Ing. Jorge Barba, Under-Secretary for Forestry and Non-renewable Natural Resources" (September 13, 1992); "Letter from Alejandro Suárez, Administrator, Estación Jatun Sacha, to Ing. Mario Cárdenas, Field Supervisor, Petroproducción" (September 6, 1992); "Letter from Mario Cárdenas, Field Supervisor, Petroproducción, to Alejandro Suárez, Administrator, Estación Biológica Jatun Sacha" (September 5, 1992); "Claim by several signatories against Petroecuador for not respecting their dignity and private property" (September 5, 1992), in "Annex (7)" to this Supplemental Report.

⁸⁴ "Letter from Alejandro Suárez...", *supra* note 83.

(e) Protests from the Federación de Organizaciones Indígenas del Napo (FOIN) and from the community of Capirona, in particular.

FOIN,--the Federation of the indigenous communities in the counties of Tena and Archidona in the Napo province,--and the indigenous community of Capirona have requested international help against the threats that they are suffering as a result of petroleum exploitation. The community of Capirona explained in its international call⁸⁵ that Seiscom Delta entered on their land without previous consultation and authorization, and established its camp in Capirona's school and community center. Without informing the affected communities, Seiscom opened trails and heliports in the forest and destroyed their fields. As of today, the company has not provided any compensation for the damages it caused. Seiscom admits not to have prepared an environmental impact study for its activities in the area.

FOIN also condemned the effects of Seiscom Delta's operations, as told by the community of Capirona, and stated that oil development in the Oriente causes misery, illness and desertion of its communities.⁸⁶ A U.S. non-governmental environmental organization was informed last September that Seiscom Delta had entered once again into the Community of Capirona. This time, it was accompanied by the military, and when it left, it abandoned unexploded dynamite that was to have been used in the seismic tests.

C. COLONIZATION

To the negative impacts of oil development in the Amazon, those of colonization must be added. It has particularly egregious consequences for both indigenous peoples and the environment. In fact, colonization represents one of the major threats to the future of the Huaorani nation, and one of the main reasons that the Huaoraini say "no" to the oil companies and road construction. Ecuador's colonization policy is contrary to the human rights of its indigenous peoples, and Instituto Ecuatoriano de Reforma Agraria y Colonización's (IERAC) intervention to remove illegal colonists from Huaorani land has proved to be

⁸⁵ See Comunidad de Capirona, "We ask the world" (July 18, 1992), "Annex (9.a)" to this Supplemental Report.

⁸⁶ See "Boletín de Prensa de la FOIN" ("Press release from FOIN", May 22, 1992); "Letter from the President of FOIN to a U.S. organization." (July 28, 1992), in "Annex (9)" to this Supplemental Report.

ineffective. The current presence of colonists in, and nearby, Huaorani territory is having alarming consequences.⁸⁷

1. Colonization Has Already Caused A Huaorani Death

As an example of the tension present in the relationships between colonists and Huaorani who are in close contact, Petitioners wish to inform the Commission about the homicide of a Huaorani leader. Huaorani sources have declared consistently that ONHAE's secretary Amo Quemperi was killed last August by a colonist while he travelled on top of a ranchera on the Auca road. The "official" version is that Amo Quemperi fell from the roof of the ranchera and hit his head. Other Huaorani in the same ranchera heard Amo yell "they are going to kill me." They then heard a shot, and Amo fell from the ranchera's roof. The vehicle left, leaving the Huaorani with Amo on the road, where he died without receiving any medical assistance. The Huaorani who were with him said that he had a hole in his head, and that the hair around it was burned, as if a bullet had gone through. The Huaorani say, as well, that colonists have threatened them with the same as what they did to Amo Quemperi if they are not given Huaorani land.⁸⁸

The new Huaorani community in the Shiripuno is at "war" with the colonists.⁸⁹ Colonists are threatening the Huaorani, shooting off their weapons, and the Huaorani have burned colonists' houses in retaliation. As it was mentioned before, Babe's house was burned down by the colonists.

The presence of colonists along the Auca road continues to be a sad reality, despite their having been expelled by IERAC from indigenous land.

2. Ecuador Does Not Have A Plan To Control Colonization

Colonization of the Ecuadorian Amazon Region is directly promoted by the government⁹⁰ and, *de facto*, by the advances of

⁸⁷ See "Los Huaorani dicen no a carretera...", *supra* note 8.

⁸⁸ Interview with Joe Kane, *supra* note 17.

⁸⁹ *Id.*

⁹⁰ Ley de Colonización de la Región Amazónica Ecuatoriana (Law of Colonization of the Ecuadorian Amazon Region), No. 2092; RO 504: 12.1.78.

the oil industry in the Oriente.⁹¹ Some believe that the same oil company people are the colonists⁹², and it is well known in Ecuador that land speculators play an active role in furthering colonization in remote areas. These speculators cut down most trees on the land, thus "preparing" it for farming before colonists arrive. As Petitioner CONFENIAE stated in its 1990 Petition to this Commission, and in later occasions as well, there are plenty of examples showing that colonization in the Amazon cannot possibly be halted once roads facilitating access are built.⁹³

On top of the immediate severe social and environmental problems resulting from the presence of colonists in indigenous land, the tragedy of Amazonian colonization is that intensive agricultural exploitation of the rain forest is simply not sustainable.⁹⁴ There are innumerable proofs of this, and even the Ecuadorian authorities have acknowledged in the past that these practices are unsustainable. Already in 1984, the Ministry of Defense of Ecuador stated that "the soil...of the Ecuadorian Amazon Region is not entirely usable for agriculture, neither for cattle raising; and therefore, neither for colonization". It also declared "we ought to establish that further colonization in the [Ecuadorian Amazon] region cannot be permitted without causing grave environmental and social threats".⁹⁵ Although eight years have gone by since those declarations were made,

⁹¹ See Ministry of Defense of Ecuador, "Las Tareas Primordiales...", *supra*, p. 82. The Ministry of Defense acknowledges that the oil companies in the Amazon are "the genesis of a new colonization movement. It should be totally forbidden and a tax should be established to partly compensate for damages caused by it, although, such taxes would never restore the already altered ecosystems" (translation from Spanish).

⁹² Rival, *supra*.

⁹³ See Vickers, *supra*.

⁹⁴ Petitioners recall that the Commission has demonstrated its awareness of the seriousness of colonization problems in cases such as the defense of the Yanomani nation. In the case of the Huaorani, though, the violations are mounting rapidly. The Commission still has the opportunity to take measures soon enough to avoid the worst of the damage which is coming to the Huaorani.

⁹⁵ See Ministry of Defense of Ecuador, *supra*, pp. 76, 88. (Translation from Spanish). The Ministry recommended in its article that all colonization should be halted until the problem of land tenure by indigenous peoples and colonists was resolved and defined, "since all usable land was being destroyed."

there has not been any change in the government's policy toward colonization which would be adequate to satisfy the needs of indigenous peoples and the ecological constraints of the Amazon.

IV. MORE ON THE INADEQUACY OF THE GOVERNMENT'S POLICY

All the information Petitioners have provided clearly reveals that the Ecuadorian government does not have a strategy to protect the Huaorani's human rights and their environment.

A. ECUADOR CONTINUES WITHOUT AN INDIGENOUS LAW

As the Commission was informed earlier in this case, there is no law protecting indigenous people in Ecuador. It is hard to understand how, in a country where about 40% of its population is Indian, no legal measures that protect indigenous rights and respond to their historical land claims can be found. A draft indigenous law has been discussed in Parliament for many years but never adopted; all other legislation on the matter is either incomplete or affects indigenous nationalities negatively.⁹⁶ The prevailing trend in Ecuadorian law has been to favor indigenous assimilation into the dominant culture, barely

⁹⁶ See *id.*, p. 75. Even the Ministry of Defense has noted the negative consequences of the legislation in force, stating in a critique of the Law of Colonization of the Ecuadorian Amazon Region:

...among the omissions of this Law which must be pointed out are the scarce, or non-existent, importance given to the ejection, the invasion and land rights of ethnic groups, and their lack of participation in the development process of the region.

The Ministry added that another limitation of this Colonization Law was that:

It considers that co-operatives are the only associative form of colonization. Other forms which exist in the region and are of known functionality, such as the extended family, the indigenous centers, federations, etc... are ignored. These cannot participate efficiently in the development process only because they lack legal personality.

(Translation from Spanish).

recognizing indigenous differences at all, and, in most cases, ranking indigenous peoples equally with farmers.⁹⁷

The Commission is aware that during the past few years, the Ecuadorian government has granted some land titles to the ancestral lands of the Huaorani and other Amazonian peoples. This initiative is not a negative step but, as the Commission is well aware, the conditions under which such titles have been granted do not allow effective control by indigenous peoples over development activities on their lands. Such circumstances show that there is an urgent need to have adequate legislation and regulation in Ecuador. The law should guarantee the exercise of fundamental economic rights of indigenous peoples, as well as of their political and cultural rights, in accordance with their desires and with international law. A new legal tribunal should guarantee the protection of indigenous cultures, including their control and exclusive use of their territory, and should recognize the right of indigenous peoples to be different and unique, to live as distinct communities, but also, as citizens of a democratic state.

B. ECUADOR DOES NOT HAVE ADEQUATE ENVIRONMENTAL LEGISLATION

Petitioners wish to point out that the new government's objectives for the oil industry are contrary to the Huaorani's own desire to establish a moratorium on oil exploitation. The government is focusing its policies on the intensification of oil production and cost reduction, not on promoting the development of other environmentally sustainable and productive activities.

Furthermore, Ecuadorian law does not recognize any priority rights of indigenous communities to develop their own natural resources in their territories so as to meet their needs. Thus, indigenous peoples are subjected to the absolute authority of the government and to non-indigenous exploitation and trade models for the management of their lands.

Both the government and the oil companies assert, without presenting any proof, that it is possible to undertake oil development without significant environmental harm, and without affecting indigenous peoples negatively. However, they have not been able to demonstrate that their "plans" are going to avoid damages just like the ones caused in many other parts of the Oriente. How can the Huaorani nation put its trust in projects

⁹⁷ Iturralde, Diego. "Legislación ecuatoriana y población indígena", p. 26 in Ministerio de Bienestar Social, Oficina de Asuntos Indígenas, *Política Estatal y Población Indígena* (Abya-Yala 1984)

which, at most, are experiments on a piece of paper with no history of successful implementation anywhere else in the region?

The government and the oil companies often justify their current actions by comparing them with their past ones. They conclude that the ecological and cultural disaster of the Northern Oriente in the seventies and eighties was the result of lack of legislation and lack of environmental awareness. There have been some improvements in this respect and the increase of public sensitivity in Ecuador on environmental matters during the last few years should not be disregarded. However, the changes have proven to be superficial only. New environmental measures regulating oil development have been approved, but they are not sufficient. Concern over the environmental impacts of the oil industry has increased, but the Ecuadorian authorities still dedicate their greatest energies to improving their public image and that of the contracting companies, neglecting the much more important aspect of bringing effective solutions to bear on specific problems, particularly with regard to the ongoing human rights violations.⁹⁸

⁹⁸ For an interesting self-critical view from the Ministry of Energy and Mines in 1984, see "Criterios para la Explotación de Recursos Naturales en Areas Indígenas" in Ministerio de Bienestar Social, *supra*. In this article, the author states, on behalf of the Ministry of Energy, that: "Control over oil activities is very scarce" (p. 60); and the results of the Ministry's projects which favor colonization

...in oil development are far more evident: wherever we go towards a well, there flows a permanent, temporary, fluctuating [or] stable migratory current...(p. 61).

This Ministry report later adds:

It is sad that there is not yet sufficient internal or external awareness of the fact that we are doing things in a very old-fashioned manner. We are doing it very badly, and we are feeling proud of percentages which, although they can be significant, they in no way are protecting the natural resources which we exploit and which are under our care. The current legislation does not let us do so" (p. 63);

Ecuadorian law only provides measures regarding the resources [...] We legislate about several aspects but we do not take into account people or considerations of a social order [...] (pp. 64-65).

(Translation from Spanish).

As Petitioners have stated earlier, one of the main impediments to efficient environmental control is the lack of appropriate legislation and co-ordination between the competent authorities. Recently, a new regulation for oil development activities was approved. It brings in some important innovations, particularly in the definition of specific discharge limits. It is a positive step, but its approval will not be particularly significant unless and until the competent authorities are granted the necessary powers and financial resources to monitor the companies' activities and enforce the new requirements effectively.

Lack of enthusiasm for the adoption of this new environmental regulation and for Ecuadorian environmental law in general is reflected in the words of the Under-Secretary for the Environment. In commenting on the low fine imposed after the Sacha oil spill of last July, he declared recently that nothing could be done about it; that in order to apply higher fines the law has to be changed. According to the Under-Secretary:

...it is necessary to have a complete and global legislation; all agencies linked with the oil sector have to coordinate on environmental matters. It is necessary to have a clear and consistent legal structure which provides for effective sanctions.⁹⁹

Even the oil companies agree that the Ecuadorian legal system is confusing and problematic. In a recent seminar in Ecuador, the companies holding service contracts with the Ecuadorian government agreed:

The Ecuadorian state should clearly define adequate environmental and indigenous policies, as well as its national objectives and status of development. In regard to oil development activities, one should expect that they

⁹⁹ "El ejemplo debe empezar por casa", *supra* note 69. It is interesting to observe that this 1992 declaration is not too different from those made by a representative of the Ministry of Energy and Mines back in 1984:

...There is too much and too disparate law...; the only coherent measures on environmental protection are in international agreements;...instead, all domestic law is completely incoherent;...the basic activity of our Ministry affects the environment and is inherently and substantially polluting; I would say that we do not have laws to address this at the moment...

See "Criterios para la Explotación..." in Ministerio de Bienestar Social, *supra*, p. 68.

would be the result of real coordination among the different bodies involved with this problem.¹⁰⁰

Plentiful examples of this lack of government control of oil activities are found in the cases already described, such as the recent oil spill in Sacha. In that case, there was a poor exchange of information between the oil companies and governmental authorities, little planning and environmental protection in clean-up operations, neglect of the needs of affected communities, low fines to offenders, and a general absence of preventive activities.¹⁰¹ Such behavior has also been observed in the lack of control of seismic companies that do not carry out environmental impact studies;¹⁰² in the poor maintenance of the pipelines¹⁰³ and, most certainly, in the absence of control over direct contacts between operating companies and indigenous communities.¹⁰⁴

V. INADEQUACY OF THE OIL COMPANIES' OWN POLICIES

Despite being critical of the lack of sufficient coordination and regulation of oil development activities by the Ecuadorian government, oil companies and their contractors often do not comply with the laws that do exist, and frequently take advantage of Ecuador's poor capability to monitor and control their oil activities. This situation constitutes a Bhopal of tomorrow, with consequences far beyond the government's ability to control.

Clear examples of the companies' offenses are their non-compliance with environmental impact assessment requirements¹⁰⁵ and the practice of "negotiating" directly with colonists or individual indigenous peoples, offering them attractive goods in the short term in exchange for entering their territories,

¹⁰⁰ "Petroleras piden garantías", *El Universo*, October 30, 1992, "Annex (15.d)" to this Supplemental Report.

¹⁰¹ See Informe de la Comisión Técnica de la CONAIE, *supra* note 71.

¹⁰² See *supra*, p. 32, on the invasion of Seiscom Delta in private property.

¹⁰³ See *supra*, p. 31.

¹⁰⁴ See *supra*, p. 13, regarding the "negotiations" by some Huaorani with Maxus corporation; p. 18, regarding the advances of Maxus onto Quichua territory.

¹⁰⁵ See *supra*, p. 32.

without respecting the competence of representative organizations democratically elected by the communities, or those of government agencies.

As Petitioners have mentioned previously, the oil companies are now themselves requesting more precision in environmental and indigenous government policies. However, it should be pointed out that their requests reflect an interest in obtaining better conditions in which to operate in the country and their desire to participate in new bidding rounds. Companies use language such as "being able to operate in peace in the country", and state that protection of the environment and indigenous cultures "is becoming a significant problem, which raises great concerns."¹⁰⁶

In response to the increasing pressures from indigenous organizations and public opinion in general, several oil companies are attempting to convey an image in which they are sensitive to environmental matters, as well as to indigenous rights. Petitioners do not wish to undermine the progress accomplished by some companies in improving their operations, but point out that the measures taken by such companies are not sufficient to prevent irreparable social and ecological damage. This is particularly true in the case of the Huaorani. Oil company measures also are no substitute for the government avoiding its own responsibilities to indigenous people.

Petitioner wishes to discuss one example of the inadequacy of the oil companies' policies: the fundamental weaknesses of their environmental management plans. The most advanced plans in Ecuador are those presented by ARCO for its exploratory operations in Pastaza, and by Maxus for its development operations in Block 16. These companies show a somewhat more "open" attitude toward the public, and Maxus in particular has made its study more easily available to the public than other companies. However, the operative plans of ARCO and Maxus, despite exceeding the government's requirements for environmental and social control in oil development activities, are not safe, either for indigenous peoples or for their environment. The following is a summary of the main weaknesses of these two environmental management plans.

The U.S. corporation ARCO prepared environmental guidelines which were presented for analysis to an independent body--the Center for Environmental Design Research (CEDR), at the

¹⁰⁶ "Petroleras piden garantías", *supra* note 100. (Translation from Spanish).

University of California, Berkeley (U.S.).¹⁰⁷ These guidelines applied only to the exploratory phase and not to the much more intrusive development plans that now threaten the Huaorani. The studies carried out by the CEDR included interviews with ARCO's staff and on-site visits in Pastaza. The results of its analysis show that, notwithstanding some positive elements in the guidelines, they present significant problems. They were prepared 18 months after the exploratory operations had already begun,¹⁰⁸ and did not show any specific strategies to address their implementation and monitoring. There also were no clear research methods, there was a lot of irrelevant material contained in the guidelines, and, they lacked strategies to mitigate specific impacts and to set up effective monitoring programs.¹⁰⁹ A reforestation program was included which has resulted in problems and has not had the success expected of it.¹¹⁰ The impacts of seismic exploration were not sufficiently documented.¹¹¹

The CEDR also determined that very little effort was dedicated to presenting documentation on the social, cultural and public health conditions in the area, or to foreseeing the impacts of oil exploration on indigenous communities.¹¹² Furthermore, it was pointed out that ARCO had not allowed free access to its environmental information.¹¹³

Maxus corporation has an environmental management plan for the development of Block 16. This plan is essentially the same as Conoco's prior plan, with only minor changes. Like Arco's, Maxus' plan also exceeds the environmental control requirements established by the Ecuadorian government, but nevertheless presents many problems and does not guarantee adequate

¹⁰⁷ See Scott McCreary, G. Mathias Kondolf, Joe R. McBride, Robert Twiss, Center for Environmental Design Research, University of California, Independent Review of Environmental Documentation for Petroleum Exploration in Block 10, Oriente, Ecuador (June 17, 1992) ("Independent Review"), "Annex (13)" to this Supplemental Report.

¹⁰⁸ See Independent Review, *supra*, p. 1.

¹⁰⁹ See *id.*, p. 35.

¹¹⁰ See Independent Review, *supra*, pp. 35-36.

¹¹¹ *Id.*, p. 35.

¹¹² See Independent Review, *supra*, p. 36.

¹¹³ See *id.*, pp. 36-37.

environmental protection and respect for the rights of the Huaorani people.

As the Commission knows, one of the major threats in Maxus' plan is the construction of the oil development road, which will facilitate access by colonists to the heart of Huaorani territory, even outside of Block 16. Maxus asserts that colonization will not be allowed along its road. However, as it was described in the original Petition, it is known that colonization in the Amazon cannot be controlled, particularly after roads are built.¹¹⁴ The case of the Cuyabeno Wildlife Reserve in Ecuador is a good example of this.¹¹⁵

Maxus' plan claims that colonization will not be possible because the road is not connected to other roads and begins on the south side of the Napo river. However, in a statement presented in 1990 to this Commission, Vickers pointed out that there are no detailed plans explaining how spontaneous colonization will be prevented, nor what will happen to security along the road once oil production is over.¹¹⁶ Furthermore, the fact that the road will not be connected by a bridge with the roads on the north side of the river is not a major impediment to colonization. Anyone can cross the river in a private boat and have access to the road by entering a few meters East or West of it. All this can happen even assuming that "spontaneous" colonization is not facilitated by oil workers or the military, as happened in Cuyabeno, and is likely to happen here.

In addition to the environmental management plan--which was included with the Petition to the Commission--Conoco had drafted a longer environmental management plan, of approximately 600 pages, which was criticized because of its vagueness.¹¹⁷ Maxus corporation adopts as its management plan just the reformulation

¹¹⁴ See Vickers, *supra*.

¹¹⁵ The government authorized the construction of several oil roads in this natural reserve. As a result, over two hundred colonist families currently live in this "wildlife reserve", and petroleum is being exploited intensively. See Vickers, *supra*, pp. 7-8.

¹¹⁶ Vickers, *supra*, p. 7.

¹¹⁷ See Kimerling, *supra*, pp. 90-91; see also Comité Ecológico de la Espol, Evaluación Plan de Manejo Ambiental de Conoco para el Bloque 16 de la Región Amazónica Ecuatoriana en Enriquez y Real, *supra*, pp. 185-204.

of Conoco's 20-page plan. There is no other operative environmental management plan for Maxus' operations.¹¹⁸

Conoco's plan was critiqued by the Comité Ecológico de la Escuela Politécnica of the University of Guayaquil with regard to its environmental impacts, and also in the book *Amazon Crude* by an expert on the impacts of oil development in the Oriente.¹¹⁹ Those reports found many defects and imprecisions in the plan, and reveal that many of the "technological advances" that Conoco pretended to introduce had not been tested before. Other innovations had not been tested in a rain forest, and their implementation had simply not been planned for.¹²⁰ The same criticisms can be applied to Maxus' plan, which makes the same proposals, but in an even less detailed manner.

Direct negotiations by companies with communities of indigenous peoples must be added to the list of objections to the companies' projects. The Huaorani have been very clear in their protests of the approaches pursued by companies seeking to negotiate directly with them. In a recent Ecuadorian newspaper article, the Huaorani denounced the practices of "blackmail and deceit" by Maxus as attempts to "buy the Huaorani's will to live and be free". They also accused an "anthropologist" on Maxus' payroll of "using science for colonialist purposes common to the 19th century" and promoting "activities divisive of indigenous communities."¹²¹

In light of the legal void in Ecuador regarding indigenous and environmental matters, and the lack of coordination, planning and implementation of national policies in this regard, oil corporations operating in Ecuador are not honoring their moral obligations to use the best possible practices. They maintain operating standards which are radically inferior to those that they comply with in their home or other countries. Some companies may not have sufficient knowledge and experience, or they do not invest enough financial resources to ensure that oil development is safe for indigenous peoples and the environment of the Amazon. The Ecuadorian government cannot jeopardize the future of the Huaorani and their environment just by

¹¹⁸ Telephone conversation with Ms. Linda Covington, *supra*, note 25. Ms. Covington stated she did not know of any detailed Maxus study.

¹¹⁹ See *supra* note 117.

¹²⁰ Petitioners particularly recommend to the Commission's attention the critiques of the environmental management plan found in "Annexes (11) and (12)" to this Supplemental Report.

¹²¹ "Los Huaorani dicen no a carretera...", *supra* note 8.

experimenting, or improvising, in unproven petroleum development techniques.

VI. CONCLUSION

Petitioners respectfully request the Commission to take appropriate action in light of the information Petitioners have submitted. In particular, Petitioners urge the Commission to take preventive measures and to accept Petitioners' invitation to visit Ecuador. Petitioners also indicate that they would accept a friendly settlement procedure in accordance with Article 45 of the Regulations, if the government of Ecuador establishes a moratorium on oil development activities on traditional Huaorani land.

Respectfully,

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APPENDIX

SUMMARY OF THE MOST RECENT ANTHROPOLOGICAL REPORTS ABOUT THE HUAORANI

As a complement to the information provided in the 1990 Petition and supplementary documents, Petitioners offer the Commission additional information on the Huaorani based on the most recent literature.¹²² Petitioners hope that this brief report will contribute to the understanding by the Commission of this Amazonian nation, and provide a better knowledge of its unique culture and the process of contact with the non-Huaorani world.

The Huaorani used to dwell in all the territory extending from the south margin of the Napo River to approximately the Curaray River, and from the south-east corner of the Napo to the border of Peru. Petitioners have explained in their prior submissions that the Government of Ecuador in 1990 granted the Huaorani land title over 612,560 ha. of their original territory. As the Commission knows, however, title does not give the Huaorani rights to control development of resources over the subsoil and, in fact, it forbids them from interfering in any way with oil development.

Census data on the numbers of Huaorani varies. The last published census stated that the Huaorani nation consists of up to approximately 1,200 persons, to which must be added the members of the recently contacted group in the eastern territory, which was unknown previously. The population is spread out in 17 communities, of which three are nomadic and another four or five keep more than one home. The rest are what is described in the literature as "sedentaries", which means they are settled, more or less permanently into single village locations.¹²³

The history of contact with the Huaorani has been marked by violence and exploitation.¹²⁴ Many Huaorani communities did not escape the rubber boom and were on the front lines of resistance against Peruvian soldiers. Many accounts describe the violent encounters between Huaorani people and foreigners due, in part, to thefts by the Huaorani and persecution by whites and

¹²² See Petition, pp. 6-10.

¹²³ Rival, *supra*, p. 132.

¹²⁴ Yost, "Twenty Years of Contact...", *supra*, p. 677.

Quichua people, which led to deaths on all sides.¹²⁵ This pattern of generally hostile relationships continued until the late nineteen fifties, when the evangelist mission of the fundamentalist Summer Institute of Linguistics (SIL) was accepted peacefully by the Huaorani community of Tihueno.¹²⁶ As the Commission is aware,¹²⁷ the christianization of the Huaorani people prospered during the sixties and seventies and, as a result, about 500 Huaorani came to live concentrated in a much smaller area than their original territory. The smaller area is known as the "protectorate."

The reduction and relocation of these communities took place with the frequent cooperation of oil companies, which entered ever deeper into Huaorani lands, as soon as the SIL attracted enough Huaorani to the protectorate. In 1983, the protectorate was designated by the government as a Huaorani reserve, with an extension of 159,310 hectares. Nowadays, the SIL is no longer allowed to perform any missionary activity in Ecuador. However, most of the resettled Huaorani continue to live in the area of the protectorate. Coincidentally with the granting of the Huaorani's land title in 1990, some communities began a migration back to their traditional lands, where their parents or grandparents used to live. Others, including the uncontacted groups, had never left their traditional territory in the first place.

The social organization of the Huaorani has been changing over three decades of contact with the outside world. Non-aculturated communities maintain a lifestyle of hunters and gatherers which is basically nomadic. These groups also maintain some small gardens, particularly in times of stability and multiplication of their households.¹²⁸ Their traditional social structure is based on the "nanicabo". This is a household

¹²⁵ Douglas Ferguson, "Importancia de la Amzonía Ecuatoriana" in G. Tassi (ed.), *supra*, p. 51. See also a collection of accounts of the encounters with the Huaorani from the early nineteen-hundreds, in Leonir Dall Alba, "Relatos de Colonos e Indígenas sobre los Wao" *id.*, p. 95.

¹²⁶ Regarding the evangelist activity of the SIL, see the stories of missionaries Elizabeth Elliot (*Through Gates of Splendor*, 1957; *Shadow of the Almighty*, 1958; *The Savage My Kinsman*, 1961) and Ethel E. Wallis (*The Dayuma Story*, 1960; *Aucas Downriver*, 1973). See also Yost, "Twenty Years of Contact...", *supra*; Rival, *supra*.

¹²⁷ See Petition, pp. 8-9.

¹²⁸ On the traditional Huaorani lifestyle, see Rival, *supra*, pp. 129-32.

based on kinship, which brings together about thirty people. Every *nanicabo* is self-sufficient and does not have relationships of economic exchange with other *nanicaboiri*. Within each social nucleus, all members are self-sufficient and independent, including children. There is a minimal division of labor between sexes, and no discernible male domination.¹²⁹ There is a prevailing equality among all members: as Petitioners explained in their earlier submissions, there is no one leader of the *nanicabo*. The Huaorani do not have "chiefs";¹³⁰ there is only some authority emanating from the couple which founded the *nanicabo*.¹³¹

Traditional *nanicaboiri* are established on hills¹³² and their members travel and go hunting on foot; they do not use the rivers to travel. Mainly as a way to divide the natural resources among themselves, the *nanicabo* may be sub-divided into different groups, which still maintain strong links among them.¹³³ Friendly contact between *nanicaboiri* takes place mainly to celebrate marriages,¹³⁴ and, of course, there are also unfriendly contacts due to feuds and rivalries.

All contacted Huaorani communities have been rapidly losing elements of their traditional culture and society. One of the main consequences of the influence of missionaries, tourists and oil companies has been the increasing sedentarization of Huaorani settlements, many of which are now established along the rivers. After the earlier phase of concentration of several hundred Huaorani in the small area of the SIL protectorate, new communities were created. They are somewhat scattered, although they remain relatively close together within a limited area. As a result of living close to the missionaries and later on, also to oil company employees, many Huaorani have developed a dependency on foreign products, for which they now have a great desire.

Due to high population density in the protectorate, the environment has gradually deteriorated.¹³⁵ Wildlife

¹²⁹ *Id.*, p. 130.

¹³⁰ Yost, *Twenty Years of Contact...*, *supra*, p. 692.

¹³¹ Rival, *supra*, p. 131.

¹³² *Id.*, p. 131.

¹³³ Rival, *supra*, p. 131.

¹³⁴ *Id.*, p. 132.

¹³⁵ Rival, *supra*, p. 135.

populations have decreased and hunters now have to walk much farther (two or three days walking) to find game. Partly to compensate for this problem, new types of foreign agricultural crops have been introduced in the reserve.¹³⁶ However, Rival points out that the Huaorani show great reluctance to intensify their agricultural methods. As primarily a gathering society, they prefer to depend on any foodstuff which can be obtained as gifts without them having to grow it themselves.¹³⁷

With the heritage of evangelization in the background of most Huaorani today, the more recent interaction with oil companies has intensified their economic and social transformation, and has imposed additional rapid new changes. According to data from Yost on the communities in the reserve, while in 1977 not even ten Huaorani men had ever worked for the oil companies, in 1978, 33 men did so (27% of the suitable male population). By the end of 1979, this percentage had reached 60%. By then, many of the Huaorani of the Yasuní area had frequent contacts with the oil companies and their contractors, and after their initial contacts with them, they started working for the companies.¹³⁸ Recently, Rival has provided data revealing that fully 90% of Huaorani adults have worked at least once for a seismic test company.¹³⁹

Most Huaorani men who have worked for the companies have been employed for short periods to cut the seismic lines through the forest by hand, and they have incorporated this job without much difficulty into their traditional lives. Rival states that one of the main motivations for the Huaorani to work for "the company" is not money, but ensuring their territorial rights over those of other Huaorani groups.¹⁴⁰ Rival adds that the job they must carry out for the seismic companies is not much different from those that they have to do frequently in the forest--although the company work is harder and the Huaorani dislike it.

¹³⁶ Rival, *supra*, p. 135. Yost described in the late nineteen seventies the Huaorani's complete awareness of the over-exploitation of fish and game. Huaorani people commented at that time that productive land was everywhere more scarce, and, as a result, they had to cultivate their gardens (*quehuencori*) more intensively. See Yost, "Twenty Years of Contact...", *supra*, p. 687.

¹³⁷ *Id.*, pp. 135-6.

¹³⁸ Rival, *supra*, note 5. Regarding these contacts, see Mons. Alejandro Labaca, *Crónica Huaorani* (1988).

¹³⁹ Rival, *supra*, p. 141.

¹⁴⁰ *Id.*, p. 142.

Contracts last from two to eight weeks and, during this period, the work crews are often visited by their relatives, who take back to their villages many goods obtained from the company. Very often, the Huaorani workers can take back the company's goods which are left after the exploratory work is over.

According to Rival's accounts, it seems that a significant number of Huaorani have managed successfully to incorporate their relationship with the company during the seismic test work into their traditional social structure. However, situations have also been observed in which the Huaorani have gone to work permanently for an oil company, renting rooms in towns, away from home.¹⁴¹

It must be also noted that sedentarization and the work of men for the oil companies have particularly affected Huaorani women. For the first time, a clear-cut distinction has been drawn between the work of men and that of women, and the fact that most men have obtained access to money and know about the lifestyle of the "cowode" gives them greater power now over women.¹⁴² The temporary absence of men from the Huaorani communities also makes it more difficult for those remaining in the villages to meet their daily needs. The level of protein in their diet decreases during these periods, since there are no men available to go hunting.¹⁴³

¹⁴¹ Rival, *supra*, p. 148.

¹⁴² Historically, in some Huaorani communities in the protectorate leadership has come from certain women who had greater contact with the "cowode." Rival, *supra*, pp. 148-149; Yost, "Twenty Years of Contact...", *supra*, p. 699.

¹⁴³ Yost, Assessment..., *supra*, p. 13.