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Preface to the Quito Declaration on the Enforcement and Realization of Economic, Social, and Cultural Rights in Latin America and the Caribbean

by Chris Jochnick† and Javier Mujica Petit‡

INTRODUCTION

Following many years of struggle against repression and dictatorship, Latin America's human rights movement faces a host of new challenges in the form of poverty, inequality, and social marginalization. Long the province of labor and social movements, these issues are increasingly assuming the banner of human rights and, in recent years, Latin America has seen a flurry of activity specifically focused on economic, social, and cultural rights (ESCR).

In the summer of 1998, a conference was organized in Quito, Ecuador bringing together experts and activists from fifty of the most active Latin American human rights, labor, women's, indigenous and development organizations to strengthen their collective efforts to promote ESCR. The conference culminated in the approval of the Quito Declaration on the Enforcement and Realization of Economic, Social, and Cultural Rights in Latin America and the Caribbean, arguably the most important document to come out of the developing world in terms of ESCR. The Quito Declaration has few parallels in terms of its legal scope, expertise, and political importance to the field.

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BACKGROUND

The fiftieth anniversary of the Universal Declaration on Human Rights provides an important opportunity to reflect on both the successes and failures of the human rights movement. While the movement has made great gains on some fronts, much remains to be done. Perhaps nowhere is this more obvious than in the systematic neglect of economic, social, and cultural rights.

In 1944, President Roosevelt urged the international community to take up the cause of rights based on his declared four fundamental freedoms, which included not only the "freedom from repression" but also the "freedom from want." As he stated, "necessitous men are not free men... [T]rue individual freedom cannot exist without economic security and independence." This view of rights became enshrined in the Universal Declaration, which, rooted in the international protection of human dignity, guarantees the full range of rights—civil, political, economic, social, and cultural. These latter rights have been elaborated in various treaties, starting with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), now ratified by all of the major industrialized countries (except the U.S.) and 141 countries in total.

Despite express codification in international law, ESCR have nevertheless been widely ignored by governments, the public, and NGOs alike. Cold War politics and the dominance of traditional civil liberties-minded NGOs like Amnesty International combined to showcase civil and political rights at the expense of ESCR. Today, most people in the North would still associate human rights exclusively with civil liberties. This trend is both reflected in, and undergirded by, the jurisprudence of national and international courts. While freedom of expression, due process, and prohibitions against arbitrary detention have been the grist of judicial systems dating back more than three centuries, rights to health, housing, food, and education have barely been touched by most courts.

Fortunately, things are changing. The end of the Cold War ideological divide, the various failings of free markets and economic integration, and the rising influence of transnational institutions and laws, have combined to spur new interest in ESCR. This interest is manifest at the international level in the surge of new declarations reinforcing ESCR and at the national

3. Id. at 2881.
6. See, e.g., Declaration on the Right to Development, U.N. GAOR, 41st Sess., Agenda Item
level in the activities around these rights among NGOs and social sectors.

These trends have been particularly evident in Latin America where a strong human rights tradition has intersected with the rise of labor, women's, indigenous, community, and environmental movements. Attention to these rights has further been prompted by the reality of increasing poverty, environmental degradation, and labor abuses in the midst of tremendous and growing economic wealth; indeed, Latin America suffers the greatest inequalities between rich and poor in the world. Increased attention to ESCR in Latin America has also been bolstered by the fact that ESCR are guaranteed in the majority of Latin American constitutions and are supported by a strong regional human rights system. 7

Today, at least a handful of organizations in every Latin American country are actively promoting ESCR and a number of regional networks have turned to these rights to promote their larger goals. Their efforts have included organizing seminars and conferences for civil sectors, judges, and government ministries; investigating and monitoring concrete violations; bringing cases in front of national courts; submitting petitions and reports to the relevant Inter-American and United Nations bodies; producing educational guides and materials; and campaigning for greater attention to rights in structural adjustment programs, debt scheduling, and free trade agreements.

QUITO CONFERENCE

In July, 1998, five Latin American networks and more than fifty of the most active human rights, labor, women's, community, indigenous, and labor organizations came together in Quito, Ecuador to unite forces around a common agenda. The event was precipitated by a series of Latin


7. ESCR are guaranteed in the American Declaration on the Rights and Duties of Man, signed May 2, 1948, OEA/Ser.L./V/II.71 (1988), and in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted Nov. 17, 1988, not in force, O.A.S.T.S. 69, reprinted in 28 I.L.M. 156 (1989), corrections at 28 I.L.M. 573 and 1341 (1989). While the former is binding on all Member States of the Organization of American States, the latter has not yet entered into force; it requires the deposit of two additional instruments of ratification or accession, having nine to date (including Brazil, Colombia, Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru, and Uruguay). See Organization of American States, A-52: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador (visited Apr. 29, 1999) <http://www.oas.org/En/prop/juridico/english/Sigs/a-52.html>. The rights have frequently been affirmed by the Inter-American Commission in reference to individual cases of violations as well as general country reports, but have not as of yet received express attention from the Inter-American Court.
American conferences and seminars underscoring the importance of ESCR. The Quito Conference was organized by three of the regional networks—the Latin American Association of Development Groups, the Latin American section of the International Federation of Human Rights, and the South American Platform on Human Rights, Democracy, and Development—along with the Center for Economic and Social Rights (CESR). A follow-up body, comprised of a representative from each of the five networks and the Ecuador office of CESR, was established to ensure follow-through on a list of six concrete activities to be undertaken collaboratively over the next two years.

**THE DECLARATION**

The Declaration is more comprehensive than its precursors, such as the Limburg Principles and Maastricht Guidelines. Its aim is both legal and

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8. See, e.g., Declaration and Plan of Action of the Latin American Seminar on Human Rights as an Instrument to Confront Poverty (Santiago de Chile, September 1997); Plan of Action of the Latin American Leagues of the International Human Rights Federation (Dakar, December 1997); Declaration of the Meetings of NGOs of Cuernavaca (February 1998); Declaration and Plan of Action of the South American Platform of Human Rights, Democracy, and Development (Lima, March 1998); Declaration and Plan of Action of the Human Rights Forum of the Peoples Summit (Santiago de Chile, April 1998).

9. The event was funded by the MacArthur Foundation and received additional support from the participating networks and various organizations including Terres de Hommes and the American Friends Service Committee.

10. The other two networks are the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) and the Inter-American Regional Organization of Workers (ORIT)

11. The activities to be undertaken include: (1) a Regional Report and conference on the state of ESCR in Latin America; (2) a Regional Report and coordinated activities around the impact of social security reforms on ESCR; (3) a package of educational materials on ESCR; (4) a campaign around the ratification of ESCR treaties, including the San Salvador Protocol; (5) a campaign aimed at human rights bodies reinforcing the importance of the interdependence of all rights; and (6) a regional conference and coordinated activities aimed at ensuring respect for ESCR in regional trade agreements and negotiations with international financial institutions. In addition, a followup conference to the Quito Conference is scheduled for the year 2000.


13. Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Jan. 26, 1997), in INT'L COMM'N OF JURISTS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A COMPILATION OF ESSENTIAL DOCUMENTS, 79, 82-86 (1997). The Maastricht Guidelines represent an elaboration and updating of the "Limburg Principles." Providing a conceptual guide to the interpretation of the rights protected in the ICESCR, it is designed to be of particular use to monitoring and adjudicating bodies at the national, regional, and international levels. As such, it contains sections on the significance of ESCR; the meaning of violations of these rights, including minimum core obligations; responsibility for ESCR violations; and remedies and other responses to ESCR violations.
political. On the one hand it confronts the glaring gap of jurisprudence around ESCR and provides an authoritative legal interpretation of these rights backed by considerable international expertise. On the other, it stresses the need to recognize and confront massive and systematic violations of ESCR by a range of actors and provides a call to action aimed at NGOs, government bodies, judges, international institutions, corporations, and the general public.

The Declaration is divided into four sections. Part I, the preamble, underscores the basic principles of human rights law, particularly as it governs ESCR. Part II constitutes a far-reaching description of the legal obligations of governmental and other actors to respect, protect, and fulfill ESCR. Part III enumerates the most common violations of ESCR in Latin America. Finally, Part IV articulates a set of demands on the various actors responsible for respecting, protecting, and promoting ESCR, including the government, international financial institutions, transnational corporations, and civil sectors.

The socio-economic problems facing Latin America are manifold, complex, and often overwhelming. These problems can only be effectively addressed with the active participation of affected populations and social sectors working locally, nationally, and regionally. The Quito Declaration represents a shared consensus around the importance and capacity of ESCR to engage these populations, to provide them the tools to influence public policy, and to join their efforts across social sectors and national borders.

14. These experts include, inter alia, Phillipe Texier, French Supreme Court Judge and member of the U.N. Committee on Economic, Social and Cultural Rights; José Bengoa, U.N. Special Rapporteur on Poverty and Human Rights; and dozens of published authors and professors on ESCR, including Victor Abramovich (Argentina), Rafael Barrios (Colombia), Eduardo Caceres (Peru), Alberto Leon Gomez (Colombia), Maribel Gordon (Panama), Chris Jochnick (Ecuador), Javier Mujica (Peru), and Alirio Uribe (Colombia), among others. Article 38(1) of the Statute of the International Court of Justice defines the interpretive sources that an international court should look to in determining the content of international law. These include: (a) international conventions; (b) international custom; (c) general principles of law; and (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

15. This legal assessment is based on the text, object, and purpose of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and related international instruments, as interpreted through the decisions of U.N. bodies (primarily the U.N. Committee on Economic and Social Rights), cases from regional and national courts, and interpretive documents such as the Limburg Principles and Maastricht Guidelines.