



Economic and Social Council

Distr.
GENERAL

E/1984/7/Add.21/Rev.1
26 February 1986
ENGLISH
ORIGINAL: SPANISH

First regular session of 1986

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second periodic reports submitted by States parties to the Covenant
concerning rights covered by articles 6 to 9, in accordance with
the first stage of the programme established by the Economic
and Social Council in its resolution 1988 (LX)

Addendum

COLOMBIA*

[28 January 1986]

1. The right to work and all individual freedoms are guaranteed in title III of the Constitution of the Republic, the fundamental law of the land.
2. As of 1950, Colombian labour legislation was unified, thus producing a body of rules which encompass and regulate all aspects of labour relations.
3. With respect to articles 6 to 9 of the Covenant, the Substantive Labour Code and the rules amending and amplifying it protect the right to work, the right to form and join trade unions and to engage in collective bargaining and the right to satisfactory working conditions.

* The initial report concerning rights covered by articles 6-9 of the Covenant submitted by the Government of Colombia (E/1978/8/Add.17) was considered by the Sessional Working Group of Governmental Experts at its 1980 session (see E/1980/WG.1/SR.15).

Reference material provided by the Government of Colombia is available for consultation in the files of the Secretariat.

4. Non-discrimination among workers is guaranteed by article 10 of the above-mentioned Code which provides that "workers are equal before the law and have the same protections and guarantees; consequently, any legal distinction between workers on the basis of the intellectual or physical nature of their work, type of work or compensation received for work is abolished, except as provided by law".

5. Article 11 of the Constitution establishes equality of treatment for Colombian nationals and foreigners. It provides that "Foreigners shall enjoy in Colombia the same civil rights accorded to Colombians. But the law may, in the interest of public order, subject foreigners to special conditions or deny them the exercise of certain civil rights. Foreigners shall also enjoy in the territory of the Republic the guarantees accorded to nationals, subject to the restrictions established by the Constitution or the law. Only Colombian nationals shall enjoy political rights."

I. ARTICLE 6: THE RIGHT TO WORK

A. Principal laws

6. The Constitution, the Substantive Labour Code and its additional rules guarantee the right to work, freedom of choice of work and non-discrimination.

7. Article 17 of the Constitution states that work is a social obligation which enjoys special protection from the State.

8. Article 39 provides that everyone is free to choose an occupation or trade and that the law may require credentials of competence and regulate the exercise of occupations. The authorities have the right to inspect occupations and trades in the interest of morality, safety and public health.

9. The Substantive Labour Code states, in article 9: "All work shall be placed under the protection of the State in the manner provided for in the Constitution and by statute. Public officials shall be bound, in accordance with their powers and duties, to extend to all workers proper protection for the effective guarantee of their rights."

10. Article 11 of that statute establishes the right to work as follows: "Everyone has the right to work and to free choice of occupation or trade within the norms prescribed by the Constitution and by law."

11. Article 8 prohibits preventing others from working or from engaging in the occupation, industry or trade of their choice and article 290 of the Penal Code provides a penalty of from six months to three years in prison and a fine of from \$Col 2,000 to \$Col 20,000 for anyone violating freedom of employment.

12. Act No. 13 of 1972 prohibits discrimination in employment. Article 1 states: "Letters of application for employment or job application forms, both in public and semi-public bodies and in the private sector, may not require data on the civil status of individuals, number of children, religion or political party affiliation except, as regards such affiliation, where jobs or positions require parity of representation and as long as that requirement exists".

/...

13. Article 2 of the Act establishes a penalty of 10 per cent of salary due for the first offence and dismissal if the offence is repeated for any public or semi-public employer or private employer who is found to be investigating any of the data set forth in article 1, even though he can show that it is not being done to anyone's detriment.

14. The same penalty applies to any public, semi-public or private employer who is shown to have established age segregation of persons between 30 and 50 years old.

B. Employment

15. The Constitution, in article 32, provides that integral development and social justice are priority objectives of State intervention in the economy. The article states:

"Freedom of enterprise and private initiative are guaranteed within the limits of the common welfare, but the general direction of the economy shall be the responsibility of the State. The State shall be mandated by law to intervene in the production, distribution, utilization and consumption of public and private goods and services with a view to rationalizing and planning the economy for the purpose of achieving integrated development.

"The State shall also be mandated by law to intervene in order to ensure the full utilization of human and natural resources under an income and wage policy which establishes as the principal objective of economic development the achievement of social justice and the integrated progress of the community as a whole, and particularly, of the working classes."

16. The planning function of the State is expressed concretely in the economic and social development plans the Government submits to the Congress for approval. The plans always deal with policies governing wages, employment, industrialization and foreign trade, the ultimate objective of which is to improve the living conditions of Colombians.

17. The overall purpose of the National Development Plan "Change with Justice 83-86", currently in force, is "to achieve change within a framework of justice". To that end, three basic objectives have been established: (a) revitalization of the economy, (b) consolidation of development and (c) ordering of social change.

18. For purposes of the harmonious co-ordination of the different activities necessary to achieve the three objectives stated above, the Plan, "Change with Justice" spells out the interrelationship between the economic and social components of development. Under existing conditions, revitalization of the economy and a return to growth rates approximating the traditional average are without doubt necessary in order to speed up significant changes in the social structure and produce a larger volume of investment resources to be used to reduce the extreme poverty.

/...

19. Growth in itself, however, will not generate a climate of social justice. During a recession, set-backs can be expected in income distribution, job generation and living standards. Accordingly, the revitalization policy was designed in such a way as to use the instruments applied for the purpose of stimulating aggregate demand and creating a stable market for productive activity to counter the trend towards social deterioration and to speed up changes benefiting marginal areas and social groups.
20. In adverse circumstances, a macroeconomic policy was designed with noticeably positive effects on social development. Thus, progress has been made with respect to control of inflation and its actual decline, wage and price policy, mass construction of low-income housing, protection of industry and the public service, investments in relatively less developed areas and increased investment in agricultural activity.
21. Investment in social development has been maintained and its share of the budget has even been increased slightly, as indicated in the attached table.
22. Nevertheless, in view of financial constraints, special emphasis has been given to implementing strategies which use resources most efficiently. They include strengthening the national health system, the initiative of establishing the national education service, a study of the behaviour of social financing, improved inter-institutional co-ordination and, above all, improvement of the social planning system.
23. Low-cost social programmes with proven spin-off effects such as the New School, distance education, the micro-business project and reduction of infant mortality have been designed and expanded.
24. The major priorities in the next biennium will be to increase the momentum of the reforms initiated in the field of justice and the fight against illiteracy and to increase the coverage of health services delivery through the primary care strategy.
25. The Development Plan, "Change with Justice 83-86", also provides for an employment and social security policy. The Government is aware that its labour (employment) policy is the most immediate link between the economic and social components of development.
26. The plan "Change with Justice" therefore lays down guidelines to ensure compatibility between growth and equity given the decline in productive activity and the persistence of serious social problems. Strategies such as inflation control, wage and price policy, job protection, protection of national industry and mass construction of low-income housing have tended to reduce the risks of sharp regression in income distribution and to soften the impact of recession on the rate of employment.
27. In this context, the employment and social security policy has been designed with three specific objectives in mind: to counteract the growing rise in the unemployment rate, improve working conditions of the most vulnerable groups in the

/...

labour force and increase the efficiency of the services providing social security to the worker and his family. Developments and prospects in each of these fields are summarized below.

Structural and situational factors in unemployment

28. It is a fact that unemployment is one of the most serious problems currently facing the country. In the four main cities, the total unemployment rate has increased substantially - from 8.9 per cent to 12.5 per cent between the months of December 1982 and December 1983 and from 14.2 per cent to 18.8 per cent between March 1984 and the current year (1985).

29. From the unemployment figures for different periods, it is possible to identify three major characteristics of the unemployed population. Firstly, unemployment is highest among young people between the ages of 15 and 29 years. Secondly, that is a population with a high educational level which will continue to rise. Thirdly, in recent years, young females have been most hard hit by unemployment.

30. There are various reasons for the rise in the unemployment rate. With regard to the supply of manpower, the expectation is that in the 1980s and 1990s masses of people - cohorts born in the 1960s when the population growth rate was over 3 per cent - will enter the labour market producing a considerable change in the structure of the population. Absorption of those masses may necessitate spreading available employment through job-sharing. As a result of the crises on the border, many Colombians are returning from neighbouring countries, swelling the ranks of those seeking employment. The economic recession has an impact on the demand, with low rates of growth of the gross domestic product (GDP), (less than 1 per cent in the last two years), aggravated by the crisis in the external sector and the fiscal deficit.

31. While the policies adopted with respect to fiscal matters, external trade and public and private savings can be expected to have the initial effect of reactivating and strengthening the productive sector, they will not affect the overall employment situation for some time.

32. Nevertheless, recognizing the need to intervene more actively in the structure of the labour market, the Government has designed some strategies and undertaken more specific actions such as those outlined below.

Modernization of the National Employment Service (SENALDE)

33. One of the problems in formulating more efficient employment policies is insufficient knowledge of the labour market. The data now being produced are fragmented, incomplete and sometimes out of date. In the absence of an institutional overview, any analysis of the structure of the labour market is necessarily limited since employment is the result of many disparate factors such as education, training, technological changes, characteristics of the productive sectors and labour legislation. Furthermore, State employment services are very limited in coverage and the private labour exchanges have become an instrument for exploiting the unemployed.

/...

34. The activities to be undertaken in the next two years will be designed to develop fully the various components of the labour market planning system, namely, programmes relating to demand, supply and technological change, which will serve as a basis for a diagnosis of the market and an analysis of economic policy, with a view to evaluating its impact on the dynamics of the labour market. Other programmes will develop the centre of information on the labour market and the documentation centre, which will serve as links between the system and users in both the public and private sectors.

35. Regulatory Decree No. 099 of 1984 established the Labour Market Planning System to co-ordinate the implementation of policies aimed at promoting employment on a national, sectoral and regional scale.

36. As outlined in article 4, the general functions of the System - which is made up of public bodies with the participation of private groups - are as follows:

(a) To plan human resources at the national, regional and sectoral level with a view to anticipating the behaviour of the labour market;

(b) To promote the formulation of policy guidelines designed to generate employment by anticipating how the labour market might evolve at the national, sectoral and regional level;

(c) To stimulate technology and productivity policies in line with the guidelines established at the national level;

(d) To formulate and submit to the National Council on Economic and Social Policy economic policy guidelines aimed at stimulating the generation of direct and indirect employment and to evaluate the impact of national economic policies on the employment situation.

37. The labour policy also includes activities aimed at stimulating employment by providing support to vulnerable groups, especially small businessmen, co-operatives and other types of business associations, craftsmen, minors and working women. Specific activities designed to benefit these groups include activities to improve the working conditions of the least protected groups in the labour market. To that end, particular attention is given to the informal sector of the economy by establishing entrepreneurial structures promoting and monitoring labour legislation and by manpower training.

38. In 1984, the National Plan for the Development of Microbusinesses was launched. In its first stage, the plan deals, as a matter of priority, with activities identified as dynamic. The basic strategy of the plan is to help develop the managerial capacity of owner-managers and to ensure optimal utilization of the productive resources of microbusinesses.

39. It is clear from the foregoing that the plan is intended to maximize co-operation between governmental and non-governmental bodies. An evaluation council lays down policy guidelines and periodically reviews progress.

/...

40. To resolve the problem of marketing the products of microbusinesses, some regional programmes have encouraged a marketing strategy using welfare funds (cajas de compensacion). The method is to set aside part of the commercial property of these institutions for permanent exhibit and sale of the products of microbusinesses. This initiative has yielded very good results and will be extended to all the programmes.

41. In addition, given the informal market practices of microbusinesses the National Planning Department has undertaken to submit to the National Council on Economic and Social Policy (CONPES) a social strategy which will deal with the problem: a study will be undertaken to analyse it and suggest various solutions. The terms of reference of the study are being worked out.

42. The National Apprenticeship Service (SENA), a government unit created by Decree-Law No. 118 of 1957 and attached to the Ministry of Labour and Social Security, is the body responsible for training and technical and vocational education.

43. SENA provides training programmes in a wide variety of fields and, in accordance with article 1 of Extraordinary Decree No. 2833 of 1960, all employers with a capital of at least 100,000 Colombian pesos or who permanently employ at least 20 workers must engage a number of workers not exceeding 5 per cent of the total number of employees as apprentices for jobs requiring comprehensive and methodical vocational training. SENA will fix the number of apprentices assigned to each enterprise depending on the availability of training facilities and bearing in mind the need for skilled workers.

44. By resolution No. 0438 of 1969, the Ministry of Labour and Social Security determined the occupations which, according to the technical recommendation of SENA, require comprehensive methodical training. They are:

Agriculture: qualified agricultural worker, qualified cattleman, skilled worker (light industry), qualified tractor driver, rural mechanic, mechanic for repair of agricultural machinery, qualified farm labourer and fishing-boat skipper (second class).

Industry: machine tool operator, welding torch operator and arc welder, sheet metal worker and boiler-maker, industrial maintenance mechanic's aide, die-casting assistant, automechanic, diesel motor mechanic, marine motor operator, installation and maintenance electrician, grid electrician, electromechanic specialist, radio and television repairman, industrial electronic equipment repairman, refrigeration and air conditioning mechanic, flat loom mechanic, mechanic specializing in knitting machines, maker of cast-iron moulds, foundryman, typesetter, linotypist, printer, offset printer, photo reproduction specialist, photo engraver, photo lithographer, book-binder, watch repairman, construction official, pipe plumber.

Business and services: accounting clerk, bank clerk, salesman, shorthand typist/office clerk, shorthand typist/bookkeeper, nurse's aide, cook, waiter, baker, pastry cook, butcher, window dresser, advertising assistant.

/...

45. As stated earlier, the National Apprenticeship Service (SENA) is the body with primary responsibility for this task. It carries out its activities in accordance with a set of major priorities which are reflected in 10 institutional projects designed to strengthen education and training activities.

46. In 1983, SENa trained a total of 447,442 worker-students; this represented the product of 3,068,780 teacher hours; the activities covered the whole country and all socio-economic sectors.

47. SENa gave advice to a total of 1,543 enterprises, 92 per cent of which were small- and medium-sized businesses. It provided services to something over 2,700 owners of microbusinesses under the plan to rehabilitate zones of violence and it helped about 6,200 people.

48. Table 1 shows what was achieved in the area of training.

Table No. 1

NUMBER OF STUDENTS TRAINED NATION-WIDE ACCORDING TO TYPE
OF TRAINING AND SECTOR

SENA - 1984

Type of Training	Sector			Total
	Agriculture	Industry	Business and services	
Training in centres	12 488	40 147	66 412	119 047
On-the-job training	11 818	32 149	61 738	106 705
General vocational training	154 263	65 982	15 068	235 311
Open and distance training (FAD)	13 828	16 715	48 455	76 998
Total for the year	192 397	154 993	191 671	539 061

49. Pursuant to article 61 of the Substantive Labour Code, as amended by article 6 of Decree-Law No. 2351 of 1965, a contract of employment shall terminate:

- (a) On the death of the employee;
- (b) By mutual consent;
- (c) On expiry of the agreed period;

/...

(d) On completion of the work or services agreed upon;

(e) Owing to liquidation or permanent closing of the enterprise or establishment;

(f) If work is suspended by the employer for more than 120 days;

(g) By enforceable judgement;

(h) By unilateral decision in the cases referred to in articles 7 and 8 of the decree (termination of the contract for just cause by the employer or the employee and unilateral termination without just cause);

(i) If, once the reason for the suspension of the contract has been removed, the worker does not return to his job.

50. The arbitrary dismissal referred to in the questionnaire is the same as unilateral termination without just cause.

51. Article 64 of the Code, superseded by Decree-Law No. 2351 of 1985, provides for payment of an indemnity, the amount to vary depending on length of service, in the case of unilateral termination of a contract by an employer without just cause, or if the employer is responsible for the unilateral termination of the contract by an employee for any of the just causes permitted by law.

52. Damages to be paid by the party responsible shall cover material loss and loss of earnings.

53. When an employee has completed 10 years of continuous service and is dismissed without just cause, the labour judge may, at the request of the employee, order his reinstatement on the same conditions as before and the payment of lost earnings or a cash settlement.

54. Employees are protected against unemployment by the termination indemnity and the free placement service offered by the State through the above-mentioned National Employment Service (SENALDE).

55. Article 249 of the Substantive Labour Code provides that every employer shall be bound, on the expiry of the contract, to pay to his employees, as a termination indemnity, one month's salary for each year of service and for fractions of a year on a pro rata basis.

56. Article 1 of Act No. 52 of 1975 established an interest rate of 12 per cent payable by the employer on the balances credited to the employee in respect of termination on 31 December of each year, or on the date of his retirement or as a partial termination settlement.

/...

II. ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Remuneration

57. Article 143 of the Substantive Labour Code, in full consonance with article 7 (a) of the Covenant, provides that equal wages must be paid for equal work performed in the same conditions with respect to the post occupied, hours of work and competence. There shall be no discrimination in the payment of wages on account of age, sex, nationality, race, religion, political opinions or trade union activities.

58. In connection with this principle, the Supreme Court of Justice, in an annulment of 1 October 1980, stated:

"There is no doubt that this rule seeks, essentially, to combat discrimination in employment, when it is reflected in remuneration and when it stems from sociological, psychological and cultural factors or mass phenomena. This is confirmed by the many international instruments and studies referring to the serious social problem of discrimination, which leads to terrible social injustice, since it has its origins in biological factors, personal beliefs or legitimate activities on the part of the employee, which are entirely unrelated to his work, viewed objectively.

"The text of the law, in keeping with the principles of law and jurisprudence, also apply, however, to individual cases, but in those cases there has been a strict requirement to fully demonstrate equality of competence between two employees holding the same position and performing the same job for the same number of hours who do not receive the same remuneration. Now it is common sense that seniority in the job and consequently, experience, may directly and unequivocally affect an employee's competence at a given time ...

"Seniority in the job necessarily influences efficiency in those cases in which importance can objectively be attached to competence arising from experience, the greater degree of confidence inspired by an experienced worker, his adaptation to the work environment, the initiative, reliability and sense of responsibility demonstrated in practice and which cannot be predicted in an employee who has barely started in the job, though in the long run he may well demonstrate superior ability. It is a common practice, which cannot reasonably be challenged by invoking the rule in question, that the starting salary should be lower, and it is inevitable that general salary increases which are not granted on the basis of personal merit should continue to reflect that initial differential and even increase it in absolute terms, even though it remains constant in relative terms. In any event it may be said that differences in the salaries of employees with very different degrees of seniority does not in itself constitute the wage discrimination proscribed under article 143 of the Substantive Labour Code. In those circumstances, equalization of salaries based on a strict interpretation and restricted application of the rule may not be imposed as an exception to the general principle of freedom to determine wages (Substantive Labour Code, article 142).

/...

"Furthermore, equality of competence, which enables an employee to perform work of equal value to that performed by another employee, must be judged objectively, but not only in terms of physical output, since they are not being paid on the basis of how much they produce. Work should also be judged to be of equal value in terms of important criteria such as capacity for initiative and sense of responsibility and respect for equipment, supplies, the work and safety of fellow workers and compliance with orders and instructions. Salaries must be equal both in quantity and quality".

59. The minimum wage, as defined in article 145 of the Substantive Labour Code, is the wage to which every worker is entitled in order to satisfy the normal material, moral and cultural needs of himself and his family.

60. The minimum wage may be determined by law or by agreement. It may be freely agreed to by employer and employee, but the legal minimum wage or that determined by contract, collective agreements or arbitration awards must be respected without exception (art. 132 of the Labour Statute).

61. The minimum wage established by contract can never be lower than the legal minimum, and the fixing of a minimum wage automatically amends labour contracts which stipulate a lower wage.

62. The legal minimum wage is determined annually by the National Wages Council, a tripartite government advisory body, established by Act No. 187 of 1959.

63. In accordance with article 2 (b) of the Act, the Council is responsible for establishing and periodically reviewing at least every two years, minimum wages for each sector of the economy, and increments to those regional minimum wages warranted by the degree of competence of the worker or his grade level in the professional salary scale which determines professional minimum salaries. By Decree No. 01 of 1985, agreement No. 1 of 21 December 1984 was approved, whereby the National Wages Council established legal minimum wages throughout the country for all employees with effect from 2 January 1985.

64. In accordance with that regulation, the monthly minimum wage was fixed at \$Col 13,557.60. It should be noted that beginning in 1984, a uniform minimum monthly wage was established for the rural and urban sectors; before 1984 there had been a wage differential between the rural and less developed areas and the urban and more developed areas.

65. The principal mechanism for fixing the minimum wage and the salary increments for public employees is the increase in the cost of living (consumer price index - CPI) of the year immediately preceding, as determined by the National Statistical Office. However, this year, the State's financial problems, the economic recession, the increase in the unemployment rate and other cyclical and structural factors relating to the Colombian economy resulted in a salary increase for middle-rank and senior public employees which was less than the cost-of-living increase, causing the trade unions and workers' confederations to oppose the wage measures.

/...

66. Similarly, it should be noted that certain groups of State employees enjoy special treatment in respect of wages and social benefits. Unionized State employees, in general, obtain more generous wages and fringe benefits each time they negotiate their wages by collective bargaining.

67. On the other hand, there is no uniform legal salary scale or uniform social benefits for State employees, which explains why there are so many rules governing the question. There is a special system for teachers, the Ministry of Defence (Armed Forces), the judiciary and the Office of the Attorney-General of the Republic, congress and assemblies, the executive branch, the executive branch of the Ministry of State, the Office of the Comptroller-General of the Republic, employees of municipalities, departments, districts and precincts.

68. Despite this range in the salaries of State employees and skewing of the pension scheme, this group enjoys better conditions, in terms of wages, than private sector employees, where underemployment and lack of knowledge about labour legislation lead to the payment of salaries which are in some cases below the legal minimum.*

69. In accordance with article 127 of the Substantive Labour Code, pay consists not only of fixed or regular remuneration but of everything received by the worker in money or in kind as compensation for his services, in whatever form or denomination, such as bonuses, extra wages, customary allowances, compensation for extra work or overtime, payment for work on obligatory rest days, percentages on sales, commissions of profit-sharing.

70. In a judgement of 18 November 1982, the Supreme Court of Justice stated that article 127 does not establish a legal presumption:

"Careful reading of article 127 leads to the conclusion that it does not establish any legal presumption, but that it indicates, in broad terms, the various forms or modalities for remunerating services or workers employed by others, known as wages.

"It is thus clear that when the employee, in addition to his agreed wages and additional payments for extraordinary or additional work provided for by law or under the collective labour contract or agreement also receives other sums of money in payment of his services to be included in calculating his real or effective wages, the letter of article 127 does not necessarily mean that everything the employee receives during the time in which he provides services shall constitute remuneration for those services, that is, wages."

71. Workers enjoy a number of fringe benefits, which are incorporated in the remuneration they receive in addition to the basic wage.

* No information is available on groups being paid wages below the legal minimum.

Social benefits for workers in the private sector

Termination indemnity. Upon termination of an employment contract all employers are obligated to pay their employees one month's salary for each year of service and to prorate the amount for fractions of a year. In addition, the employer must pay 12 per cent interest annually on the amount of the termination indemnity, thus providing a kind of unemployment insurance.

Service bonus. This bonus consists of 15 days' pay for every six months of service.

Transportation allowance. This allowance is paid to employees whose monthly remuneration is less than twice the legal minimum wage. The amount of the allowance varies each year depending on adjustments in the minimum wage. The allowance for 1985 stands at \$Col 1,350.

Family allowance. This allowance is paid in cash and services through the Family Welfare Fund. The money is given to employees who earn less than four times the legal minimum wage and who have children or dependants (brothers, sister or parents).

Social benefits for employees in the public sector

72. The benefits received by public employees vary in kind and in amount because of the variety of rules and regulations under which they work. The document entitled "General Description of Social Security" and in particular, its annex "Social Services for Public Employees and Public Officials at the Municipal, Departmental, District and Precinct Level, Legal Regulations: a Social-Juridical Analysis" provides a general introduction to the topic. However, the following allowances are generally paid in the public sector at the national level: service bonus, Christmas bonus, technical allowance, transportation allowance, family allowance and holiday bonus.

73. The International Labour Office (ILO) has all the statistical data provided by the Government on salaries and cost of living.

74. The text of article 143 of the Labour Statute, which establishes the principle of "equal pay for equal work" and prohibits discrimination in the payment of wages on grounds of age, sex, nationality, race, religion, political opinion or trade union activity was given earlier in this report.

75. Although the Substantive Labour Code prescribes payment of the minimum wage and Colombian laws establish the obligation to pay a fair wage without restrictions or discrimination on grounds of politics, religion or race, there are still some types of employment for which a fair wage is not paid and many employees do not receive the legal minimum wage, as indicated earlier.

76. The main difficulty in securing compliance with the rules governing employment and social security is that the workers do not know their rights and duties in this area. There are also too few Government bodies monitoring the situation by visits to labour exchanges and the Government bodies that deal with claims of violations of the legal regulations governing employment and social security take too little action and are too slow.

/...

77. To improve the situation, the Government has embarked on information and publicity campaigns on workers' rights, has trained employees in these subjects and has included among the objectives of the development plan, "improvement of working conditions for the most vulnerable groups in the labour market" by improving the physical working environment, raising salary levels, developing managerial skills, and fostering and monitoring labour legislation and manpower training.

B. Safe and healthy working conditions

78. Article 348 of the Substantive Labour Code, as amended by article 10 of Decree No. 13 of 1967, provides that every employer or enterprise is required to provide and maintain working premises and equipment guaranteeing safe and healthy conditions for workers, to arrange medical examinations for employees and to take such health and safety measures as are necessary for the protection of the life, health and morals of their employees.

79. Employers with 10 or more full-time workers must draw up special health and safety regulations and submit them for review and approval by the Ministry of Labour and Social Security, within three months of the commencement of work in the case of new establishments (art. 349 of the Code).

80. Title III of Act No. 9a of 1979 establishes regulations governing all matters relating to occupational health in Colombia: the obligations of employers and employees, buildings and equipment specifications, occupational health programmes, etc.

81. Regulatory Decree No. 614 of 1984 established the basis on which Government and private business should organize and administer occupational health services as an initial step towards the elaboration of a unified national plan for the prevention of occupational accidents and disease, and for the improvement of working conditions.

82. The National Committee for Occupational Health, established by Decree No. 586 of 25 February 1983, is the co-ordinating body for all action relating to safe and healthy working conditions. The Committee represents an amalgamation of the State bodies responsible for overseeing industrial safety. Decree No. 614 of 14 March 1984 establishes the principal methods and procedures for the monitoring and inspection of safe and healthy working conditions (see also the Handbook of Procedures for the Development of Safe and Healthy Working Conditions published by the Ministry of Labour and Social Security).

83. Despite the efforts and the substantial progress made in occupational health, it must be recognized that in many enterprises occupational health and safety rules are not being observed. The reasons are the lack of education of workers and management about minimum occupational safety and health standards, the lack of trained personnel to inspect and monitor enterprises and until recently, the absence of a unified policy on the question, a situation which was remedied by the establishment of the National Committee on Occupational Health.

/...

84. The International Labour Office (ILO) has in its possession the statistics on occupational accidents and disease provided by Colombia in its reports on ratified ILO Conventions.

C. Equal opportunity for promotion

85. The legislation governing private employees does not establish special obligations or procedures for promotion.

86. This aspect is generally dealt with through collective bargaining and the agreements signed by employers and workers specify the criteria for promotion.

87. In the public sector there are criteria governing career prospects in the public sector which include length of service for the State, salary level and grade and promotion procedures.

88. See also Title IX of Decree No. 1950 of 1973, which contains the regulations which apply to civilian personnel providing services to the State.

89. In addition to the 1950 Decree, Extraordinary Decree No. 2400 of 1968 establishes all the requirements and procedures for the promotion and training of State employees. Currently, however, the procedures for embarking on a public service career are set out in Decree No. 583 of 9 March 1984. All the procedures and ways of qualifying for promotion in employment are annexed to this report.

90. Although the process by which civil servants can embark on a career in the public service commenced some years ago, the percentage of career officials is very small at present (approximately 10 per cent of the 1,200,000 State employees). The limited development of the career structure is due to the fact that Government employees are unaware of this process and lack precise information on how to go about it and that there is political opposition to a career public service. There is no doubt, given the existence of Decree No. 583 and the prevailing harmony among political factions, that the building of a career public service will go forward much more rapidly, providing better promotion opportunities for State employees.

D. Rest, leisure, limitation of working hours and holidays with pay

91. Weekly rest. Article 172 of the Substantive Labour Code establishes, as a general rule, that the employer is required to give Sunday rest with pay to all workers. The minimum duration of the rest period is 24 hours.

92. Daily hours of work and overtime: the ordinary daily hours of work shall be the number agreed upon by the parties or, where there is no agreement, the maximum number permitted by law (art. 158).

93. According to article 161 of the Labour Code, superseded by article 1 of Act No. 6a of 1981, the maximum ordinary hours of work shall be eight hours each day and 48 hours each week.

/...

94. The maximum hours of work authorized for young persons under 18 years of age shall be six hours daily and 36 per week (art. 161 (b) of the Code, as amended by art. 17 of Act No. 20 of 1982).

95. With regard to the length of the working day, the Supreme Court, in a judgement of 13 February 1963, decided as follows:

"The ordinary daily hours of work shall not exceed the maximum number of hours permitted by law, which means that the law authorizes the parties to agree to fewer hours than the maximum permitted by law.

"Consequently any hours which exceed this limit and which can be justified within reason, shall be regarded as overtime. In the absence of agreement between the parties on another limit the law shall stipulate the maximum number of hours. If they have remained silent on this point, the law shall prevail."

96. According to article No. 159 of the Code, all work performed outside the normal daily hours of work and, in every case, all work performed in excess of the maximum daily hours of work permitted by law shall be deemed to be overtime. Night work shall be paid 35 per cent more than the normal wage, overtime during the day, 25 per cent more, and overtime at night, 75 per cent more.

97. Public holidays. Article No. 177 of the Labour Statute, as amended by article 1 of Act No. 51 of 1983, establishes that all workers, both in the public and private sector, are entitled to holidays with pay on the following secular or religious public holidays: 1 May, 29 June, 20 July, 7 August, 15 August, 12 October, 1 November, 11 November, 8 and 25 December, and also Maundy Thursday, Good Friday, Ascension Thursday and Corpus Christi.

98. Work on Sundays and holidays is paid at twice the normal rate to which workers are entitled for the hours worked, without prejudice to the normal wage to which they are entitled for working a full week (article 179 of the Code, superseded by article 12 of Decree-Law No. 2351 of 1965).

99. Paid holidays: Workers who have been employed for a full year are entitled to 15 consecutive working days as paid holidays.

100. Professionals and assistants employed in private anti-tuberculosis establishments or in work involving the use of X-rays are entitled to 15 days' paid holidays for every six months of service (art. 186 of the Code).

101. Workers under 18 years of age are entitled to 20 consecutive days of paid holidays for each year of service, with the employer ensuring that they coincide with school holidays (art. 15 of Act No. 20 of 1982).

102. The Substantive Labour Code in article 190, as amended by article 6 of Decree No. 13 of 1967, allows holidays to be accumulated for a period not exceeding two years, but the worker must be guaranteed six consecutive working days as holidays each year and they cannot be accumulated.

/...

103. The same article of the Code also authorizes holidays to be accumulated up to a period not exceeding four years in the case of technicians, specialists, employees in positions of trust, employees in administrative posts or aliens working in some place other than the place where the members of their family are resident.

104. There shall be no impediment to the implementation of the rights and benefits mentioned above to the greatest extent possible.

III. ARTICLE 8: TRADE-UNION RIGHTS

A. Principal legislation

105. The right of association, including the right to form and belong to a union, is guaranteed by the Constitution and by the Substantive Labour Code.

106. Article 44 of the Constitution provides: "Companies, associations and foundations may be formed provided that they are not contrary to morality or the legal order. Associations and foundations may be recognized as legal persons."

107. Article 12 of the Code points out that the State guarantees the right to association and the right to strike in the manner provided for in the Constitution and by statute.

B. The right to form unions and to belong to them

108. Article 363 of the Code stipulates that, in accordance with article 12, the State guarantees employers, workers and self-employed persons the right to associate freely in defence of their interests by forming professional or trade-union associations, which may in turn federate.

109. In exercising their rights and fulfilling their obligations, trade unions must comply with the standards laid down in Title I of part two of the Code and are subject to government inspection in matters relating to public order and in the cases specified in the Code.

110. With regard to freedom to belong to a trade union, article 358 stipulates that workers may freely join and leave trade unions. Conditions and restrictions concerning admission, the return of dues or contributions to members in the case of either voluntary withdrawal or expulsion, and participation in any mutual benefit institution set up by the union with members' contributions shall be regulated by the statutes.

111. The statutes may restrict the admission of senior employees to basic unions.

/...

C. The right of unions to federate

112. Article 363 of the Code regulates the right of trade unions to form federations (see para. 108 above).

D. The right of trade unions to function freely

113. Articles 359 to 404 of the Labour Statute govern all aspects of the functioning of trade unions: organization, status as a legal entity, faculties and functions, prohibitions and penalties, internal arrangements, dissolution and liquidation.

E. The right to strike

114. Article 18 of the Constitution provides: "The right to strike is guaranteed, except in public services. Its exercise shall be governed by law."

115. Article 429 of the Substantive Labour Code defines a strike in the following terms: "'Strike' means the temporary and peaceful collective suspension of work by the workers of an establishment or enterprise, for economic and occupational purposes of which their employers have been notified after the steps laid down in this title have been taken."

116. For purposes of prohibiting strikes in public services, the latter are defined as all organized activity intended to satisfy general needs in a regular and continuous way, in accordance with a special legal régime, whether carried out by the State directly or indirectly or by private individuals (art. 430 of the Code, superseded by art. 1 of Extraordinary Decree No. 753 of 1955).

117. The following activities inter alia shall be regarded as public services:

- (a) Services rendered in any of the branches of the public service;
- (b) Enterprises providing transportation on land, sea or in the air; also those providing water supply, electricity and telecommunications;
- (c) All kinds of health establishments, such as hospitals and clinics;
- (d) Social work establishments providing welfare and charity;
- (e) Milk plants, shopping plazas, slaughterhouses and the distribution outlets of those establishments, whether government or private;
- (f) All public health and sanitation services;
- (g) The mining, processing and distribution of salt;
- (h) The extraction, refining, transport and distribution of oil and its by-products when the Government considers that they are intended for the normal supply of fuel.

/...

F. Special restrictions

118. Article 1 of Decree-Law No. 672 of 1956 stipulates that no union meeting may be held without notification in writing at least five days in advance by the legal representative of the union involved, simultaneously to the foreman of the work brigade and the labour inspector who has jurisdiction in the place where the meeting is to take place, listing the day, time, place and agenda of the meeting.

119. For trade unions of the first rank, notification may be made by the federation or confederation with which they are affiliated.

120. The State cannot allow employees of public services to strike, as expressly stated in Decree No. 1848 of 1969.

121. Strikes are prohibited not only in "essential services" in the narrow sense, that is, where interruption of those services could endanger the life, safety or health of the individual in all or any segment of the population, but also in other services not necessarily essential, such as transport on land, sea or in the air, milk production, markets, the extraction and distribution of salt, oil and gas refineries and distributors and the activities of the banking sector (art. 430 of the Code and Decrees No. 414 and 437 of 1952; No. 1543 of 1955; No. 1593 of 1959; No. 1167 of 1963; and Nos. 57 and 534 of 1967). In view of the principle established above, the following list of services in which strikes are prohibited seems unduly extensive:

(a) Federations and confederations are prohibited from calling a strike (art. 417 (1) of the Code);

(b) Article 416 of the Substantive Labour Code expressly prohibits strikes in public services and in the civil service;

(c) In article 414 of the Labour Code, the law implies that strikes are prohibited when it states that the right of association extends to workers throughout the public service "except for members of the army and of all types of police forces or organizations".

G. Factors and difficulties

122. As trade-union rights have evolved, the unions are experiencing serious difficulties in applying those rights which flow from constitutional and legal norms:

(a) The right to strike, which is enshrined in the Constitution and regulated by labour legislation, immediately runs into difficulties with organized labour because trade-union institutions do not systematically educate workers in trade-union rights, with the result that the latter are not quite sure of the legal and practical effects of a work stoppage as a factor in collective bargaining;

(b) Although labour law bars politics in trade unions, this phenomenon, reflecting unrest in many sectors has recently emerged, seriously undermining the principles of trade-union rights;

/...

(c) The management of union funds constitutes a problem for trade-union development: unions receive monies into their general funds which are often not properly administered owing to a lack of knowledge of accounting, although there are economically powerful unions whose assets are managed efficiently, enabling them to flourish;

(d) The four trade union confederations adhere to different democratic and socialist philosophies and can work together, not on a legal footing, but as a practical coalition which is the case at present - for the purpose of presenting demands to the Government relating to cost of living, housing, taxes, etc.;

(e) In application of a labour regulation which allows for membership in more than one union, unions have been organized in enterprises which already were unionized by another local, thus creating friction between locals because every union is usually affiliated with a different confederation;

(f) Decree No. 694 of 1965 provided that health officers are public employees, and this has created serious difficulties in concluding collective contracts because most of them belonged to unions;

(g) Similarly, under the decrees governing the restructuring of the Social Security Institute, its employees became social security officers with the status of public employees, and in meetings with those employees the Institute is not allowed to hire staff, with the result that relations between the Institute and the unions have deteriorated;

(h) At the same time, the Ministry of Labour cannot act as mediator in all collective bargaining, as provided in Act No. 39, because it does not have sufficient staff for that task;

(i) Finally, the trade union situation in Colombia has improved considerably and it may be said that it has been an important factor in making employers see organized labour not as an enemy but as an instrument for protecting the workers and working with management to assist in the development and progress of the enterprise.

IV. ARTICLE 9: RIGHT TO SOCIAL SECURITY

A. Principal legislation

123. Act No. 6a of 1945 was promulgated to provide social protection for employees in the public sector. It established social benefits and created the National Social Security Administration for government employees as a decentralized public institution, with a corporate identity, administrative autonomy and independent funding under the Ministry of Labour and Social Security. In addition, Decree-Laws No. 3135 of 1958 and No. 1848 of 1969 established the principle of providing those benefits to public employees at the three public service levels by setting up departmental and municipal social security administrations to establish entitlement to and pay the social benefits due to employees at those levels.

/...

B. Main characteristics of the plans now in effect

124. There are two types of social benefits recognized under the social security system of the public sector: economic benefits and public assistance, and under the law, they must be made available to all social security administrations. They include medical, obstetrical, pharmaceutical, surgical and hospital services; dental services; non-professional nursing; maternity care; compensation for occupational accidents; compensation for occupational illness; disability pensions; old age or retirement pensions; old age pensions and life insurance.

125. Those receiving pensions for disability, retirement or old age and old age retirement are entitled to the following benefits: medical, pharmaceutical, surgical and hospital services; funeral benefits; transfer of pension to beneficiaries in case of death.

Public sector benefits

126. The following requirements have been established for entitlement to social benefits:

Pensions: disability, retirement, old age retirement (transfer of pension).

Special pensions: for dismissal without just cause, voluntary retirement and other contractual reasons.

Disability pension: for employees at the national level, articles 23 to 26 of Decree No. 3135 and articles 60 to 67 of Regulatory Decree No. 1848 of 1969 apply.

Requirements: Temporary or permanent loss of ability to work, resulting from occupational disease or accident not provoked intentionally or in violation of safety regulations.

Amount: If the loss of ability to work is:

(a) up to 75 per cent, the pension shall amount to 50 per cent of the last salary;

(b) from 75 to 95 per cent, the pension shall amount to 75 per cent of the last salary;

(c) over 95 per cent, the pension shall amount to 100 per cent of the last salary.

Payments: by the social security office with which the applicant is affiliated or by the employer organization when the applicant is not affiliated with any social security institution.

/...

Assessment: the extent of loss of ability to work shall be assessed by the medical service of the social security office with which the applicant is affiliated.

Retirement pension

127. Legislation and requirements concerning retirement pensions are described below:

Legislation: Act No. 5a of 1969 for the legislative branch; Acts No. 3135 of 1968, No. 1848 of 1969 and No. 1945 of 1978 for the executive branch; Decree No. 546 of 1971 for the judiciary.

Requirements: 20 years of service and 55 years of age for men and 50 years of age for women.

Amount: 75 per cent of the average salary received during the last year of service.

Payment: by the social security office with which the applicant is affiliated at the time of fulfilling the requirements.

Special arrangements: for teachers, under Acts No. 50 of 1886 and No. 114 of 1913; for workers in the government anti-tuberculosis campaign under Act No. 84 of 1948.

Old age retirement pension

128. The entitlement to old-age retirement pensions is described below:

Decrees: No. 3135 of 1969 and No. 1045 of 1978.

Requirements: being 65 years of age and being retired for that reason.

Amount: 20 per cent of the last monthly salary earned plus 2 per cent of that salary for each year of continuous or discontinuous service.

Payment: to be made by the social security office with which the applicant was affiliated at the time of retirement or by the employer organization.

Survivor's benefits

129. The spouse or permanent companion of an economically active person (Act No. 12 of 1975) who dies after working the number of years required to become eligible for a retirement pension shall be entitled to survivor's benefits. Spouses and minor children who are the pensioner's dependants and cannot work either because they are students or because they are disabled (Act No. 33 of 1973) shall also be entitled to such benefits.

/...

130. When the pensioner is not survived by any of the persons referred to above, parents, unmarried sisters and disabled brothers, who were economically dependent upon him shall be entitled to survivor's benefits for a period of five years (Decree No. 43 of 1971).

Amount: 100 per cent of the principal's pension distributed as follows:
50 per cent for the spouse, 50 per cent for the children.

131. The special entitlement benefit shall apply to: (a) parents; (b) unmarried sisters; (c) disabled brothers.

Defence sector (Armed Forces)

132. The Armed Forces Retirement Fund, established by Acts No. 75 of 1925, 105 of 1936 and 100 of 1946 and Decrees Nos. 1680 of 1942 and 240 of 1952, is a public establishment having legal capacity, administrative autonomy and independent funds. It is responsible for developing social security policy and general social security schemes to be applied by the Government to retired military commissioned and non-commissioned officers drawing a pension and their beneficiaries. This régime also applies to the National Police Retirement Fund for such personnel.

Special rules to protect working women

133. Maternity leave: every State employee who is pregnant is entitled to up to four weeks' paid leave at the time of confinement.

134. Benefits: There are two kinds of maternity benefits: monetary and service benefits.

(a) Monetary benefits: She shall be paid her last salary during the leave period; if the salary was variable, she shall be paid on the basis of the average monthly salary earned during the past year of employment. This benefit is paid as follows: if the establishment which employs her designates another employee to replace her temporarily for the time she is on leave, the benefit shall be paid by the social security office with which she is affiliated; if no replacement is appointed, said benefit shall be paid by the employer, out of the salaries and wages budget;

(b) Service benefits: These shall include medical, pharmaceutical, surgical, laboratory, obstetric and hospital services, as needed, without limitation; they shall be provided by the social security office with which she is affiliated, or by the medical service of the enterprise or the institution contracted by the latter to provide the service.

135. Paid maternity leave shall commence or be granted on the date indicated in the certificate from the relevant medical service.

Legal implications of maternity leave

136. The legal implications of maternity leave are as follows:

/...

(a) Maternity leave shall not be regarded as an interruption of the period of service used in computing such benefits established by law as holidays, Christmas bonus, termination indemnity and retirement pension;

(b) No female worker in the State sector may be dismissed by reason of pregnancy or the fact that she is nursing a child.

Private sector

137. The rules governing social security in this sector can be divided into two groups: (a) those which are outlined in the Substantive Labour Code and which govern enterprises and workers not yet covered by the social security régime and (b) those establishing and regulating the social security régime and its administrative arm, the Social Security Institute. The latter was established by Act No. 90 of 1946 and commenced operations in 1949 by providing general sickness and maternity care. In 1965, coverage was extended to industrial accidents and occupational diseases and in 1967, benefits were expanded to include disability, old age and death.

Social security régime

138. Background: Act No. 90 was replaced almost in its entirety by Decree-Law No. 0433 of 1971, which adopted a unified approach to social security. Its purpose is to provide social security coverage in the cities and rural areas as a protection against work-related health and economic risks and applies to salaried workers and self-employed persons and their families. It establishes that social security is a public service directed and administered by the State.

139. Social security is compulsory for:

(a) Colombian and foreign workers who provide services to private employers under contract of employment or apprenticeship, provided that they are not specifically excluded by law;

(b) Insured persons who are 60 years of age or over when they first apply for social security shall not be entitled to disability, old age and death benefits, nor shall they be liable for contributions relating to those benefits;

(c) Workers who provide services to the State, departments and municipalities for the construction and maintenance of public works and all workers in public establishments, State industrial and commercial enterprises and mixed companies, whether national, departmental or municipal, shall be treated like self-employed workers for purposes of social security;

(d) Self-employed workers and independent workers or small-scale employers, subject to the conditions for and limits on benefits, and the amounts of insurance established in the regulation;

(e) Workers who provide their services in execution of a trade-union contract, in which case the trade union shall be considered to be their employer;

/...

(f) Members of other groups of the economically active population, whether in rural or urban areas, not specified in the paragraphs above, provided that they are not required by law to be affiliated with another State social security scheme.

140. The wife of an insured person and any children under the age of 14 years as well as children over 14 who are economically dependent upon him shall be entitled to such health care and benefits as may be provided by the Institute's medical services. If the insured person does not have a wife and children, his mother and his father - if disabled or over 60 years of age - who are economically dependent upon him shall be entitled to those health benefits.

Benefits provided by the Social Security Institute

141. Workers affiliated with ISS shall be entitled to the following benefits: general sickness, maternity, occupational disease, industrial accident, disability, old age and death benefits and family allowances. In order to qualify for these benefits the worker must have been enrolled at least four weeks prior to commencement of treatment.

Ordinary sickness

142. For such sickness, ISS shall provide the necessary medical, surgical, pharmaceutical, hospital and dental care as well as paramedical services and diagnosis and treatment.

Non-occupational disease

143. Tuberculosis: Persons suffering from tuberculosis shall be entitled to service benefits and shall receive a daily subsistence allowance equal to the base salary they were receiving the month before the onset of the illness; they may draw this allowance for a period of 15 months. If the insured person is classified as disabled after the first six months, he shall be entitled to a disability pension and payment of this allowance shall be discontinued. To qualify for this disability benefit, the insured person must have contributed for a period of 150 weeks.

Persons who are no longer affiliated with the scheme

144. Persons who are no longer affiliated with the scheme shall be entitled to the above benefits for a period of up to 12 months from the date on which they ceased to be affiliated. If they should become ill during this period, ISS shall pay the required benefits for a period of up to 180 days reckoned from the commencement of treatment. Persons who are receiving service and monetary benefits at the time of their withdrawal from the scheme shall continue to receive them for a further period of up to 180 days.

Maternity

145. The monetary or service benefits are as follows:

/...

(a) Service: The necessary medical, obstetric, dental and paramedical care during pregnancy and during and immediately after confinement. In order to qualify for these benefits, the insured woman must have contributed to the scheme for a minimum of four weeks.

(b) Monetary: A daily cash allowance equal to the average base salary, calculated on the basis of 12 weeks of paid contributions prior to the prenatal leave benefit; this allowance shall be paid for a period of eight weeks. Working women who have contributed for at least 12 weeks during their pregnancy shall be entitled to this benefit. In order for his wife to qualify for service benefits the insured person must have contributed for four weeks. The insured person's companion must have been enrolled in the scheme for eight months prior to the commencement of prenatal leave; however, this requirement shall be waived if it can be shown that they have children in common.

Disability pension (Decree No. 3041/66, article 5)

146. The following requirements must be met in order to qualify for a disability pension:

(a) Be permanently disabled, as described in article 45 of Act No. 90/46;

(b) Have accumulated 150 weeks of paid-up contributions in the six years prior to the disability; 75 of them in the last three years.

147. If a person does not qualify for a disability pension at the time he becomes disabled, he shall receive in lieu of a pension, a benefit amounting to one month of the pension to which he would have been entitled for every 25 weeks of paid-up contributions. Moreover, insured persons shall be entitled to this benefit after reaching the age of 55 and 60.

Termination indemnity (Act No. 171/61, article 8)

148. Any worker who is dismissed without cause after at least 10 years of service in an enterprise capitalized at \$Col 800,000 shall be entitled to a termination indemnity payable when he reaches 60, which shall not be incompatible with the old-age pension awarded by ISS. If the worker is dismissed after completing 15 years of service, he shall be entitled to the termination indemnity on his fiftieth birthday.

Pension increments

149. The basic pension shall depend on how long contributions were paid into the social security fund and the salary on which those contributions were based; however, in no case shall this pension be less than the legal minimum wage.

150. Increments shall be granted to the spouse and children under 16 years of age - under 18 years if they are still students.

/...

Entitlement to a bonus

151. In December of each year all pensioners shall receive a bonus equivalent to one month's pension.

Adjustment of pension (Act No. 4 of 1976)

152. This rule provides for automatic adjustment of pensions in both the public and private sectors as of the first of January each year to reflect the increase in the legal minimum wage.

Transfer of entitlement to pension (Article 19, Decree No. 434/71)

153. This Act transfers the pension entitlement for five years to parents, disabled brothers and unmarried sisters who are economically dependent on the pensioner.

Act No. 33 of 1973

154. This Act transfers the pension entitlement to widows for life and to under-age children and children unable to work because they are students or are disabled and are economically dependent on the pensioner, until they attain their majority or complete their studies.

Act No. 12 of 1975

155. This Act transfers the pension entitlement to the surviving spouse or permanent companion, under-age or disabled children, that is, it facilitates the transfer of the pension to the spouse and under-age or disabled children of the pensioner when he dies.

Rules governing entitlement to a pension

Retirement pension (Art. 260 of the Substantive Labour Code)

156. Workers with 20 years of service in an enterprise having a capital of \$Col 800,000 as at 1 January 1967 are entitled to receive a retirement pension when they reach the statutory age of 50 for women and 55 for men.

Pension shared by the enterprise and the Social Security Institute
(Article 260 of the Substantive Labour Code and Decree No. 3041/66)

157. Workers with 10 or more years of service in an enterprise as at 1 January 1967 are entitled to receive a pension from that enterprise in accordance with article 260 of the Substantive Labour Code. At age 60 for men and 55 for women, a share of that pension shall be contributed to the Social Security Institute.

Old-age pension (Art. 11, Decree No. 3041/66)

158. Insured persons who fulfil the following requirements shall be entitled to an old-age pension:

/...

(a) They are aged 60 or over for men and 55 for women;

(b) They have paid contributions for 500 weeks over the last 20 years before reaching the minimum age limits, or for 1,000 weeks at any time.

Amount of retirement or old-age pension

159. In those cases which fall under article 260 of the Substantive Labour Code, the retirement pension shall amount to 75 per cent of the average salary received during the last year of employment. In cases falling under article 15 of Decree No. 3041 of 1966, a basic amount shall be paid equal to 45 per cent of the monthly base salary, plus an additional 1.2 per cent of that salary for each 50 weeks of contributions paid in by the insured person after having contributed for the first 500 weeks.

Miscarriage or premature birth

160. A minimum of four weeks' contributions must have been paid in to be entitled to benefits in the event of a miscarriage or a non-viable premature birth, but the benefit shall be reduced by the rest period, which shall in no case exceed four weeks, and shall amount to two thirds of the base salary.

Retirement prior to the commencement of prenatal maternity leave

161. The insured person shall be entitled to maternity benefits provided conception took place before the retirement date and a minimum of four weeks' contributions was paid in.

For the companion of the insured person

162. She has to have been registered eight months before the date of the commencement of prenatal maternity leave, except where it can be shown that the couple has previously produced offspring.

163. The rules governing the Compulsory Social Security system are to be found in Decrees Nos. 1650/77, 1700/77, 770/75, 3170/64, 3041/66, 0013/83 and 1138/84.

164. The current structure of social security in Colombia is described below.

Private sector

165. There are two institutions established by law in this sector: the Social Security Institute (ISS) and the Insurance and Assistance Fund of the Colombian Civil Aviation Association. In addition, there are employers who cover the workers for social security where there are no established institutions.

Public sector

166. It is paradoxical that there should be a greater variety of social security institutions in this area; there are institutions at the national, departmental,

/...

administrative, precinct, municipal and district levels with different rules and different systems of dispensing social and medical benefits.

167. There are 12 institutions at the national level, the most important being the National Social Security Fund (CAJANAL), the Communications Social Security Fund (CAPRECOM), the corporation and banking directorates and the retirement funds of the military forces and the national police.

168. There are 32 funds at the departmental, administrative and precinct levels and 131 funds at the municipal level. The State sector has a total of 175 social security funds.

169. Understandably, it is very difficult to implement a coherent social security policy given the multiplicity of funds, most of which have special legal régimes and are operating without supervision, regulations or manuals of procedure.

Social security coverage

Private sector

170. In 1983, 1,866,225 workers were affiliated with the Social Security Institute; they had 990,939 secondary beneficiaries* and 92,454 were pensioners. There was a total of 2,949,618 beneficiaries.

171. According to these figures, in 1983, the Social Security Institute covered 43.4 per cent of the salaried population.** The figure of 2,949,618 beneficiaries represents coverage of only 10.2 per cent of the total population.

172. It can be said that some 56.6 per cent of the people employed in the private sector are not covered by compulsory social security even though Decree-Law No. 1650 of 1977 provides that "Colombian and foreign workers employed by private employers under labour or apprenticeship contracts ... must enrol in the system; officials of the social security system ... and pensioners ... the provision notwithstanding ... as well as other sectors of the population such as small businessmen and independent or self-employed workers may also be enrolled" (Decree-Law No. 1650 of 1977, arts. 60 and 70).

173. In all, there are approximately 2.4 million workers not covered by compulsory ISS social security.

* Secondary beneficiaries are people who are dependants of insured persons; according to the regulations of the social security body, insured persons, secondary beneficiaries and pensioners receive benefits. Insured persons are workers registered with the social security office.

** The percentage given represents the ratio of the population affiliated with ISS to the salaried population in the private sector.

/...

Public sector

174. The number of beneficiaries covered by social security in this sector in 1983 was 2,814,967. Of these, 1,102,145 were covered by the social security administration at the national level (12 funds) and 660,176 at the level of the rural districts and precincts (32 municipal funds). The total number of workers covered by public social security in 1983 was 1,105,087.

Total coverage

175. In 1983, the total population covered by social security was 3,071,312 workers, 2,392,100 eligible dependants and 301,775 pensioners. In all 5,765,187 persons were covered by the Colombian social security system.

176. From the foregoing data, it can be inferred that 55.8 per cent of the wage-earning population of the country has social security and that only 19.9 per cent of the total population is covered by the system.

Analysis of social security institutions*

177. There are institutions which demonstrate a measure of economic solvency and provide adequate services; some of them may also provide additional benefits such as housing loans, scholarships for children, special subsidies and other economic benefits besides those prescribed by law. Those institutions include the Superbank Social Security Fund (CAPRESUB), the Directorate of Limited Liability Corporations (CORPORANONIMAS), the Military Forces Fund and the National Police Fund. However, it should be noted that the first two are financed basically from transfers made to them by the respective fund directorates, whose resources are made up of contributions from the entities they supervise.

178. The other two funds (Military Forces and National Police) are active and show surpluses reflecting resources allocated from the national budget,** without which they would operate at a deficit.

179. Other funds such as CAPRECOM and the fund of the National University show operating deficits (see table 2).

* It should be pointed out that this analysis is only partial because there is no information available on all the institutions.

** The percentage share of the national budget in the total income of these two funds is as follows: Military Forces Fund, 75.3 per cent in 1980, 76.4 per cent in 1982 and will be 71.8 per cent in 1984 under the Appropriations Act. For the National Police Fund, 72.3 per cent, 67.7 per cent and 70.4 per cent in the same years. It should be noted that the percentage for 1984 may increase with additional contributions which are sometimes made to the budgets of the funds.

/...

Table 2

Financial status of social security institutions at the national level

Entities	Year	Income	Expenditures	Debt	Costs <u>1/</u>	Difference
CORPORANOMIAS	1981	208 218 268	167 861 477	1 881 343	169 742 820	38 475 448
SUPERBANCARIA	1982	543 909 382	430 149 930		430 149 930	113 759 452
Police Retirement Fund	1983	8 104 480 903	6 368 971 598	790 400 000	7 159 371 598	945 409 305
Military Forces Retirement Fund	1983	6 505 438 131	6 209 666 278		6 209 666 273	295 771 853
National University Social Security Fund	1982	321 735 596	321 844 079	12 942 143	334 786 222	-13 050 626
CAPRECOM	1982	3 097 528 031	3 446 033 808	161 673 000	3 607 706 808	-510 078 777

Source: Ministry of Labour. Data from surveys of the institutions.

1/ The figures in the costs column represents the sum of the expenditures and debt columns.

/...

180. The funds at the departmental level in general show deficits (see table 3). This is a reflection of poor management, bureaucracy and the absence of a sound financial base because employers' and State contributions are not sufficient and the funds have no reserves to cover their liabilities.

181. Of the 16 funds analysed, which represent 70 per cent of the departmental funds, only two (Nariño and Quindío) showed a surplus in 1982 of 15.5 and 58.6 million pesos respectively. The others showed a deficit of 1.1 billion pesos.*

182. The system of benefits for State employees and local (municipal) and departmental workers is regulated basically by Act No. 6 (a) of 1945. Under that Act, as a result of decrees issued by the assemblies, agreements of the Councils or decisions by the governing bodies, the funds have been gradually restructured administratively and financially and the benefits system has been modified. These modifications, which create new benefits without plan or method, without the necessary calculations and without anticipating the financial implications, are aggravating the problems of the funds and the difficulty in restructuring the public sector social security system.

183. It should be noted that the systems of benefits established by the assemblies and councils are illegal because the Congress has exclusive competence to establish such systems. That is confirmed by the decisions handed down by the Council of State and the Supreme Court of Justice, which hold that in matters of social benefits, whether at the national, departmental or municipal level, Congress has exclusive competence by virtue of the provisions of article 76 (9) of the Constitution, and that such matters can be regulated by the President of the Republic only when he is granted specific competence to do so by the legislature for a specified period of time.

184. In order to remedy the chaotic situation of the State sector social security funds, the Government officially ordered their "Dismantlement" by Decree-Law No. 3135 of 1968. Article 1 of this decree provides that "the President of the Republic, through one or more technical committees, as established in articles 30 and 40 of Decree No. 2814 of 1968, will within a year undertake a study of the National Social Security Fund and other bodies providing benefits and services to public employees and government workers at the national level ...".

185. The study will include the financial situation of each body, the sources of its funds, the cost of the benefits and services it provides and how they are distributed ... and such other aspects as the committee or committees may deem it necessary to investigate to complete the data on the benefits and services provided in the public sector and "TO ESTABLISH A POLICY ON THE INTEGRATION OF THE VARIOUS SOCIAL SECURITY INSTITUTIONS subsequent incorporation into the Colombian Social Security Institute on a sound financial basis."*

* It should be noted that this figure will vary because the statistics are for different dates and some date back to 1981.

** Decree-Law No. 3135 of 1968, article 1. Capitalization by the author. The committees mentioned in Decree No. 2814/68 would be appointed by the President to do research on the public sector social security institutions.

/...

Table 3

Financial status of social security institutions at
the departmental level 1/

(in thousands of pesos)

Departmental social security entity	Year	Income	Expenditures	Difference <u>2/</u>
Boyaca	1981	349 166	420 398	71 232
Córdoba	1982	209 903	277 146	67 243
Huila	1982	197 276	268 462	71 186
Guajira	1982	88 896	102 864	13 968
Magdalena	1982	146 323	222 724	76 401
Meta	1982	115 943	151 354	35 411
Nariño	1982	129 126	113 446	+ 15 680
Risaralda	1981	148 992	169 614	20 622
Tolima	1981	387 485	378 455	9 030
Norte de Santander	1983	345 688	428 769	83 081
Santander	1982	525 171	538 650	13 479
Cundinamarca	1981	167 257	760 176	592 910
Caqueta	1982	29 401	37 295	7 894
Quindío	1982	154 383	95 740	+ 58 643
Cauca	1983	535 631	559 697	24 066
Choco	1982	36 273	51 270	14 997

Source: Ministry of Labour. Data from surveys of the institutions.

1/ Information is not provided on all departments because in some, such as Antioquia, Valle and Bolívar, payments are made by the central Administration, and others, such as Caldas and Cesar, have contracts with social security institutions, a situation which makes it difficult to obtain information.

2/ + = surpluses. The other figures represent deficits.

/...

186. It is clear that the Government tried to straighten out the situation, but unfortunately the provisions of the laws were not implemented and attempts to amalgamate the social security institutions have been continuing since 1968.

187. The situation is more difficult in the national territories (rural administrative districts and precincts) because under Decree No. 1926 of 1975, the administrative and precinct councils are empowered to establish regulations governing social services, subject to approval by the Department for the Administration of Districts and Precincts (DAINCO).

188. Despite the authority of these councils, no legislation has been enacted on the subject and that is why some of the funds are applying the provisions of Act No. 6 (a) of 1945 and other legislation dating back to 1930. Other funds are applying Decrees Nos. 3135 of 1968, 1848 of 1969 and 1045 of 1978 establishing the structure of the national benefits system.

189. In view of the situation and in accordance with the guidelines of the development plan "Change with Justice", DAINCO, the Ministry of Labour and Social Security and the National Planning Department are promoting a programme designed to incorporate the social security system of the national territories into the régime at the national level and to restructure the social security funds of those territories.

190. Through the combined efforts of the district and precinct authorities, the directors of the funds and the workers, the programme was successfully publicized, and it has already been accepted by the administrative districts of Arauca and San Andres and by the precincts of Guainía and Vichada. The programme was also introduced in Putumayo and will soon be introduced in Casanare.

191. This work illustrates the real possibility of unifying the social security system provided there is co-ordination between State institutions.

C. Achievements, difficulties and future prospects of
social security in Colombia

192. The aim of the social security policy is to provide integrated care for the worker and his family, to increase social security coverage, to improve the quality of economic security by prompt payment of social benefits, to offer better medical care to insured persons and their families, to improve social recreation facilities and to enhance the efficiency and scope of the family allowance funds.

193. In order to ensure implementation of those policies, steps are being taken to organize social security institutions for greater efficiency and genuine co-ordination and planning of institutional activities.

194. The State will establish the necessary legal and technical mechanisms to co-ordinate and consolidate social security in the State sector. Once this has been achieved, it will work to bridge the gap between the private and public sector systems of social security so as to guarantee the worker better social security protection.

/...

Broader social security coverage

195. Social security coverage has been broadened with the protection afforded minors in the work force and in domestic service and by extending the social security system to the self-employed. Coverage has also been broadened by establishing medical services in various regions of the country. The system is now functioning in 70 municipalities of 15 divisions of the Social Security Institute.

196. To obtain better coverage, social security organizations will inform employers of their obligation to enrol their workers in the system of social security and family allowances. Legislation providing penalties for failure to comply with the relevant legal provisions will be revised at the same time.

197. A study will be undertaken in conjunction with the Agrarian Fund to determine ways of extending social security services to include agricultural workers in the rural sector.

Better quality of benefits and services

198. In this area not much has been achieved because of financial and administrative problems. However, the National Social Security Fund established a pension fund and made progress in systematizing the benefits it administers. Despite financial problems, the National Fund has substantially reduced the number of cases of non-payment of benefits to persons entitled to receive them.

199. The restructuring begun in the social security funds of the national territories will undoubtedly affect the various services. The funds of Guainía, San Andres and Providencia, Arauca and Vichada have already accepted the new legal, administrative and financial restructuring.

200. Over the next few years, legislation will be passed to prescribe how the State social security funds should manage their resources and the allocations of funds from the national, departmental or municipal budgets. In that connection, Congress is considering a bill explaining how funds should manage their budgets, and the conditions for the payment of contributions and pensions. This law and the strengthening of the pension fund of the National Fund (CAJANAL) will contribute greatly to prompt payment of cash benefits and will enhance future solvency. In this connection, it will be made compulsory for the funds to prepare financial and actuarial studies which can be used as a basis for projections of the behaviour of various types of insurance (general sickness, maternity, occupational accident, disability, old age and death).

Improvement in the quality of medical care and services

201. Although there are still glaring shortcomings in the provision of services, sometimes because of the system for administering them and sometimes because of a lack of co-ordination between the social security bodies and the national health system, progress must be acknowledged in the provision of more and better health services to beneficiaries of the social security system.

/...

202. For example, the National Fund used four basic modules in operating the system of medical services: automatic assignment of doctors' appointments, monitoring of patient care, management and control of hospital records and resources. The Fund also carried out an administrative reorganization of the medical branch, established the Malkita out-patient hospital (Bogota Centre) and redistributed the functions of the various units in the medical field. The Tunja hospital was opened and diagnostic out-patient clinics were established in Medellín and Santa Marta. The Fund acquired premises for the improvement of its administrative and medical services in Arauca and Guajira and is in the process of purchasing space for that purpose in Cordoba and Norte de Santander. Dental equipment was bought for the medical units in Buenaventura, Cartagena, Medellín, Montería, Pereira, Pasto, Mocoa and Sincelejo.

203. The Social Service Institute, for its part, carried out a number of programmes aimed at providing improved medical care and services. It undertook a rationalization of the supply of medical services according to levels of complexity, initiated and completed the construction of a number of primary care centres (CAB) and this year will open the Manizales hospital.

204. Co-ordination between institutions will be promoted with a view to improving medical care and services. The functions of the Department of Labour and the Department of Health will become more operational to avoid duplication of activities. Furthermore, there will be more communication between the various State planning bodies, the National Hospital Fund and the Directorate of Public Health and Family Allowances to ensure that investments in health are designed to benefit the people who really need health services.

205. Hospital administration management will be streamlined for optimal utilization of the existing infrastructure in order to ensure efficient and prompt care. Activities in the area of preventive medicine will be promoted; many social security bodies have the necessary human and financial resources for that purpose, but they are being underutilized and do not serve any social function.

Family allowances

206. The "National Family Allowance Policy" was established and agreed upon; it provides guidelines for the family allowance funds and helps them to define their role in the social security system in conformity with the family allowances law (Act 21/82). To that end, the Directorate of Family Allowances advises on, co-ordinates and monitors programmes so that family allowance benefits in cash and in kind (health, education, housing and goods), will reach the lowest-income families.

207. For greater efficiency, the Directorate will keep systematic data on family allowances, continue publicity campaigns on family allowance benefits and set in motion an institutional co-ordination project to serve as a model for integrated family care.
