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

Second periodic reports submitted by States parties to the Covenant,
in accordance with Council resolution 1988 (LX), concerning rights
covered by articles 6-9

ECUADOR*

[30 December 1983]

* The initial report concerning rights covered by articles 6-9 of the Covenant submitted by the Government of Ecuador (E/1978/8/Add.1) was considered by the Sessional Working Group of Governmental Experts at its 1980 session (see E/1980/WG.1/SR.4 and 5).

I. RIGHT TO SELF-DETERMINATION

(1) With regard to the right to self-determination recognized in article 1 of the Covenant, article 4 of our political Constitution provides that "The Ecuadorian State condemns all forms of colonialism, neo-colonialism and racial discrimination or segregation. It recognizes the right of peoples to liberate themselves from these oppressive systems".

(2) Article 19, paragraph 4, of the Political Constitution provides for equality before the law: "All forms of discrimination for reasons of race, colour, sex, language, religion, filiation, political or other opinions, social origin, economic position or birth are forbidden".

(3) As for the legal status of aliens, they generally enjoy the same rights as Ecuadorians, subject to the limitations established by the Constitution and by law.

Aliens are excluded from the exercise of political rights.

Article 13 of the Civil Code provides that the law applies to all inhabitants of the Republic, including aliens.

(4) The second subparagraph of article 19, paragraph 4, of our Constitution states that "Women, regardless of their marital status, have rights and opportunities equal to those of men on all levels of public life, private and domestic, especially in civil, political, economic, social and cultural matters". Moreover, the Government of Ecuador has ratified ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

(5) There are no restrictions.

II. ARTICLE 6. THE RIGHT TO WORK

A. Principal laws

Political Constitution, article 31; Labour Code.

B. Employment

(1) Article 31 of the Political Constitution of Ecuador states that work is a social duty which enjoys the protection of the State. The law ensures the worker respect for his dignity, a decent existence and remuneration covering his essential needs and those of his family.

Article 3 of the Labour Code provides that: "An employee shall be free to devote his efforts to such lawful work as he may choose. No person may be compelled to provide services, whether for remuneration or not, save as prescribed by law or in case of exceptional emergency or need for immediate assistance. Apart from such cases no person shall be obliged to work except on the basis of a

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contract and for the appropriate remuneration. As a general rule, all work shall be remunerated."

In addition, Ecuador has ratified ILO Convention No. 29 concerning Forced or Compulsory Labour and Convention No. 105 concerning the Abolition of Forced Labour.

(2) Article 31 (c) of the Constitution states that the State guarantees the intangibility of the recognized rights of workers and will adopt measures to extend and improve them. Article 31 (d) and article 4 of the Labour Code provide that the rights of workers are unrenounceable, and that any stipulation to the contrary is null and void.

(3) According to article 544 of the Labour Code, the Directorate of Employment and Human Resources has the following functions:

- (a) To provide guidance in connection with the proper use of manpower in Ecuador;
- (b) To promote and implement employment policy through the placement service;
- (c) To investigate and deal with all matters connected with the selection of migrant workers;
- (d) To keep a register of employed and unemployed persons, based on a systematic and complete classification corresponding to the different branches of employment and containing the necessary particulars;
- (e) Such others as may be prescribed by law.

Ecuador has ratified ILO Conventions No. 88 concerning the Organization of the Employment Service, No. 111 concerning Discrimination in Respect of Employment and Occupation and No. 122 concerning Employment Policy.

(4) Since October 1966, a specialized agency called the Ecuadorian Vocational Training Service has been working in the field of vocational training. It is headed by a tripartite directorate (composed of Government, employers and workers) presided over by the Minister for Labour. Ecuador has also ratified ILO Convention No. 142 on human resources development.

(5) The Labour Code, in articles 181 and 189, provides for compensation, payable by an employer who dismisses a worker without due warning.

(6) Although the right to work exists, it is not entirely clear to what extent the State is able to provide effective protection against unemployment among its nationals.

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C. Statistical and other available information on the level of employment and extent of unemployment and underemployment in the country; difficulties affecting the degree of realization of the right to work and progress achieved in this field

The main difficulties in this area have to do with the economic recession which is seriously affecting the countries of Latin America.

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

A. Remuneration

1. Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard the right to fair remuneration in its various aspects as set out in article 7 (a).

The Political Constitution of Ecuador, the Labour Code and the following ILO Conventions, which have been ratified:

- (a) No. 95 concerning the Protection of Wages;
 - (b) No. 100 concerning Equal Remuneration;
 - (c) No. 26 concerning the Creation of Minimum Wage-Fixing Machinery;
 - (d) No. 131 concerning Minimum Wage Fixing with Special Reference to Developing Countries.
2. Principal methods used for fixing wages (minimum wage-fixing machinery, collective bargaining, statutory regulations, etc.) in the various sectors, and numbers of workers involved; information on the categories and numbers of workers for whom wages are not yet set by such methods.

Article 120 of the Labour Code provides that "The State shall establish minimum salaries and wages in the various branches of employment and shall aim at introducing a family wage". According to the Act passed in June 1983, the minimum living wage is 5,600 sucres.

Besides the system of collective bargaining, there is the State's policy of improving the standard of living of workers through the Sectoral Commissions, which are responsible for fixing and revising minimum salaries and wages each year for various branches of activity.

These Commissions are composed of the following:

- (a) One member appointed by the Ministry of Labour and Human Resources;
- (b) One member appointed by the employers;
- (c) One member appointed by the workers for each branch of activity.

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3. Information regarding components of workers' remuneration other than regular wages (such as bonuses, temporary cost of living differentials, etc.).

The Act concerning the fixing of minimum living salaries and wages and the raising of wages for workers in both the private and public sectors subject to the Labour Code (published in Official Gazette No. 509 of 8 June 1983), provides for a raise in pay of 800 sucres for all civil servants and workers whose salary is no higher than 10,000 sucres a month as compensation for the high cost of living. Public employees and workers whose increased remuneration is more than 10,000 sucres per month but less than 11,000 sucres will receive, as compensation for the increase in the cost of living, an amount equal to the difference between their salaries and 11,000 sucres per month.

4. Statistical data showing the evolution of the levels of remuneration (covering, in particular, minimum wages and average earnings in a representative sample of occupations) and of the cost of living.

Since there is no detailed information on this subject, attention is drawn to the last report on measures adopted to implement ILO Convention No. 26 concerning the Creation of Minimum Wage-Fixing Machinery.

5. Provisions and methods designed to ensure respect for the right to equal pay for work of equal value, and to ensure in particular that women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

Article 31 (f) of the Political Constitution provides that pay for work is unattachable, except for payment of alimony.

Amounts owed by the employer for work constitute privileged first-class credits, having preference even over mortgage payments.

Article 78 of the Labour Code stipulates that "There shall be equal remuneration for equal work without distinction of sex, race, nationality or religion; but skill and experience in the performance of work shall be taken into account in determining remuneration.

6. Difficulties encountered and progress made in extending to all workers measures designed to ensure that they receive fair remuneration providing a decent living for themselves and their families in accordance with the provisions of the Covenant.

No difficulties have been encountered, because one development has been that the sectoral wage-fixing commissions are responsible for devising measures each year to ensure that workers receive fair remuneration enabling them and their families to enjoy decent living conditions.

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B. Safe and healthy working conditions

1. Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard the right to safe and healthy working conditions generally and in particular sectors or occupations.

The Labour Code and the following ILO Conventions ratified by Ecuador:

(a) Convention No. 115 concerning the Protection of Workers against Ionizing Radiations;

(b) Convention No. 119 concerning the Guarding of Machinery;

(c) Convention No. 120 concerning Hygiene in Commerce and Offices;

(d) Convention No. 136 concerning Protection against Hazards of Poisoning Arising from Benzene;

(e) Convention No. 139 concerning Prevention and Control of Occupational Hazards Caused by Carcinogenic Substances and Agents;

(f) Convention No. 148 concerning the Protection of Workers against Occupational Hazards in the Working Environment due to Air Pollution, Noise and Vibration.

The Industrial Safety Regulations of the Ecuadorian Social Security Institute (IESS).

We consider it important to mention that a first draft of industrial health and safety regulations has been prepared, and that they will enter into force after specialized agencies have been consulted.

2. Principal arrangements and procedures (including inspection services and various bodies at the national, industry, local or undertaking level entrusted with the promotion or supervision of health and safety at work) to ensure that these provisions are effectively complied with at individual work places.

Article 543 of the Labour Code establishes the functions of the Department of Occupational Safety and Health as follows:

(a) Supervision of factories, workshops and other work premises in order to enforce the rules governing the prevention of occupational hazards and safety and health measures;

(b) Participation of the chief medical officers of the departments in the central injury assessment boards and any other bodies to which they may be appointed;

(c) Drafting of instructions for inspectors and deputy inspectors on matters concerning the work of the departments. Such instructions shall be examined and approved by the Office of the Director-General or Deputy Director of Labour.

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(d) Such others as may be prescribed in the relevant regulations.

C. Equal opportunity for promotion

This is dealt with in the Labour Code, the collective agreements and the Civil Service and Administrative Careers Act.

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

Article 68 of the Labour Code, dealing with annual vacations, stipulates that employees shall be entitled every year to an unbroken rest period of 15 days including the non-working days within that period. An employee who has worked in the same enterprise or for the same employer for over five years shall be entitled either to an additional day of vacation for each year of service in excess of five or to a sum of money corresponding to his remuneration for the additional day or days.

Employees shall receive their vacation pay in advance.

Employees under 16 years of age shall be entitled to 20 days of annual vacation, and those over 16 but under 18 years of age to 18 days of annual vacation.

The number of additional days for length of service shall not exceed 15, unless the parties agree by individual contract or collective agreement to increase that number.

Public employees are covered by the Civil Service and Administrative Careers Act, which provides in article 50 that they shall receive 30 days of paid annual vacation.

Holidays and compulsory rest days are also considered paid vacations in both the public and private sectors.

With regard to the maximum working day, article 46 of the Labour Code, as revised in 1979, provides for a maximum day of 8 hours, so that the weekly hours of work do not exceed 40.

IV. ARTICLE 8. TRADE UNION RIGHTS

A. Principal laws

B. Right to form and join trade unions

C. Right of trade unions to federate

D. Right of trade unions to function freely

In article 31 (h) the Political Constitution guarantees the right to form trade unions.

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Article 436 of the Labour Code states that workers and employers, without any distinction whatsoever and without the need for prior authorization, shall have the right to establish occupational associations or unions of their own choosing and to join and withdraw from such associations, subject to the law and to the rules of the associations concerned.

Occupational associations and unions shall have the right to establish federations, confederations and other such groups and to affiliate with and withdraw from them and to affiliate with and withdraw from international organizations of workers or employers.

Any employee over 14 years of age may belong to an occupational association or union.

Workers' associations may not be suspended or dissolved except by judicial process before a labour judge.

Under article 437 of the Labour Code, the State protects all workers' associations pursuing any of the following aims:

- (1) Vocational training;
- (2) Promoting culture and education of a general nature or applied to the particular branch of employment;
- (3) Mutual support through the establishment of co-operatives and savings banks;
- (4) Any other aims involving the economic or social betterment of the workers and the defence of their class interests.

Ecuador has ratified the following ILO Conventions:

- (a) Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively;
- (b) Convention No. 11 concerning the Rights of Association and Combination of Agricultural Workers;
- (c) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize.

E. Right to strike

The Political Constitution of Ecuador, in article 31 (i), recognizes and guarantees the right of workers to strike and of employers to lock out, in accordance with the law.

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This principle is endorsed in article 463 of the Labour Code, which recognizes the right of workers to strike, a strike being defined as "a collective suspension of work by workers acting jointly."

The Civil Service and Administrative Careers Act prohibits public employees from striking. The armed forces and the police are also denied that right.

V. ARTICLE 9. RIGHT TO SOCIAL SECURITY

A. Principal laws

Compulsory Social Insurance Act.

The ILO Conventions ratified by Ecuador.

B. Main features of the schemes in force

The compulsory social insurance system is administered by the Ecuadorian Social Security Institute (IESS), an autonomous agency with legal personality and its own funds, which are separate from those of the Treasury. It is exempt from all taxes, except as provided in specific laws.

The following are covered by the compulsory social insurance system:

- (a) Persons who render services or perform work under a work contract or by appointment, that is, private employees, workers and public employees;
- (b) Self-employed professionals with a degree from a university or polytechnic, who are not covered by the preceding subparagraph;
- (c) Artisans: master craftsmen and self-employed craftsmen, workers and apprentices in trades;
- (d) Members of the secular clergy;
- (e) Apprentices who are under an apprenticeship contract, workers on probation, occasional and temporary workers, persons who work at home, construction workers and other persons mentioned in specific laws and decrees enacted in each case; and
- (f) Artists and farmers.

The Act also provides that the Central Board of the IESS may subsequently decide to extend social insurance to cover workers not now included.

The social insurance scheme affords protection against the hazards of:

- (a) Sickness;
- (b) Maternity;

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- (c) Disability, old age and death;
- (d) Work-related accidents and occupational diseases;
- (e) Unemployment;
- (f) Other contingencies for which insurance schemes may subsequently be established with their own financing.

The corresponding benefits are calculated and granted in accordance with the Social Insurance Act and the relevant regulations.

The social insurance scheme does not provide for unemployment benefits. However a worker who is out of work is entitled to unemployment insurance ("Seguro de Cesantía"). Under the Ecuadorian social insurance scheme, this unemployment insurance does not cover the contingency of unemployment as such but is a benefit consisting of a sum of money which is calculated on the basis of the participant's length of service and taxable earnings. The amount of the benefit is obtained by multiplying a variable reflecting the length of service recognized for insurance purposes by the total amount of taxable wages or salary.

Family benefits do not extend to the family members of participants, except in the case of those covered by the Act extending the rural social insurance scheme. Protection under the rural social insurance scheme is gradually being extended to all members of families belonging to communes, co-operatives, associations, committees or other similar types of popular rural organization; and to families which, while not belonging to a popular organization, express the wish to participate in the rural social insurance scheme. Old-age and disability pensions are contemplated under this insurance scheme.

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ANNEX a/

Political Constitution of the Republic of Ecuador

a/ This reference material is available for consultation in the files of the Secretariat in their original language as received from Ecuador.