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Second Session

SUMMARY RECORD OF THE 31ST MEETING

held at the Palais des Nations, Geneva,
on Friday, 19 August 1977 at 11 a.m.

Chairman:

Mr. MAVROMMATIS

CONTENTS

Organization of work

Consideration of reports submitted by States parties under article 40 of the
Covenant: initial reports of States parties due in 1977 (agenda item 2)
(continued)

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ORGANIZATION OF WORK

1. The CHAIRMAN announced that, after an exchange of views among the officers of the Committee, it was suggested that the Committee should consider only two other reports: that of Ecuador at the present meeting and that of Hungary at the next one. Consideration of all the other reports would be postponed: the States parties would have no objection as some had already let it be known that they were ready to submit supplementary reports and others had not yet been able to send their representatives. On 22 August the Committee would revert to its consideration of the remaining rules of its rules of procedure, then it would devote three days to general questions connected with the consideration of the reports. Starting on 25 August it would hold a general debate on other matters, some of which had, moreover, already been raised. On 26 August the Committee would deal with its calendar of meetings, which it would complete on 29 August. On 29 August it would also deal with the organization of meetings of inter-sessional working groups and with the question of co-operation with the specialized agencies. On 30 August it would hold an informal meeting as it would no longer be possible to include the discussion in its report. On 31 August it would approve its report. He suggested that the Committee approve that work plan.

2. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 2)
(continued)

Ecuador (CCPR/C/1/Add.8)

3. At the invitation of the Chairman, Mr. Valdez and Mr. Serrano (Ecuador) took places at the Committee table.

4. Mr. VALDEZ (Ecuador), introducing his country's report, first of all pointed out that the document was one of a series of initial reports prepared without guidelines from the Committee and which, as a consequence, lacked uniformity. He would endeavour to expand upon those parts of the report which were of more particular interest to members of the Committee.

5. Ecuador had adhered to the Universal Declaration of Human Rights and had ratified the Covenants. Human rights had always been guaranteed individually and collectively in successive Constitutions of the country since 1830. The report reproduced the constitutional provisions of the Political Charter of 1945, which dealt with the civil and political rights of Ecuadorian nationals and of foreigners. He would supplement the information provided by describing the relationship which existed between the various articles of the International Covenant on Civil and Political Rights on the one hand, and the political constitution and legal system of Ecuador on the other.

6. Ecuador had acceded to the Covenant on Civil and Political Rights on 4 April 1968, had ratified it by decree on 9 January 1969 and had deposited its instrument of ratification on 6 March 1969. The application of the provisions of the Covenant was guaranteed by their incorporation into the domestic law, since the Ecuadorian legal system recognized first the supremacy of the Constitution, then the legislation deriving from treaties and other international instruments ratified by the Government and, lastly, the domestic laws.

7. The principles set forth in article 1 of the Covenant were in full agreement with the provisions of articles 1 to 9 of the Constitution, which defined the juridical-political organization of the State, its form of government, its territory and so on. The protection of Ecuador's marine resources up to a distance of 200 miles, the entry of the country into OPEC and other decisions taken by the Ecuadorian Government in the exercise of its sovereignty were clearly in conformity with the principles laid down in paragraph 2 of the article; nevertheless, the first of those decisions had resulted in serious incidents with foreign fishing boats and the second in trade sanctions on the part of the United States.

8. Articles 2, 3, 5, 6, 7, 8 and 9 of the Covenant were likewise perfectly in keeping with the provisions of article 141 of the Constitution. In Ecuador the death penalty had been abolished at the beginning of the century and the maximum penalty was 16 years penal servitude; if two penal laws were applicable, the less severe was applied, even if it took effect after the offence. There was no punishment without a public trial; in the absence of counsel, a barrister was appointed by the Court and as he was a civil servant, he was paid by the State.

9. In connexion with article 10 of the Covenant, he pointed out that in accordance with the Juvenile Code, offenders under 18 years of age were not imprisoned in Ecuador. They were judged by Children's Courts and could be sent to social welfare approved schools, which were free re-education establishments. The rights set forth in article 11 of the Covenant were guaranteed under the Constitution, article 141 (paragraph 4) of which did not permit imprisonment for debts, tax arrears and, in general, obligations of a civil nature. The principles in article 12 of the Covenant were fully guaranteed in paragraph 7 of article 141 of the Constitution dealing with the freedom to choose and to change residence; an Ecuadorian could re-enter his country without any travel document. The provisions of article 13 of the Covenant were upheld by article 152 of the Constitution, which guaranteed foreigners the same rights as Ecuadorians, except for the right to vote and the right to hold public office. The guarantees in article 14 relating to the equality of all persons before the law and the right to be tried by a competent, independent and impartial tribunal were provided for in paragraphs 2, 3, 4 and 6 of article 141 of the Constitution and they were very carefully regulated in the Penal Code, the Code of Civil Procedure, the Code of Criminal Procedure and the Basic Law of the Judiciary. No cases were tried in camera, but the identity of minors and of female persons in cases of sexual offences and indecent assault was not divulged. The principles in article 15 prohibiting the holding of a person as guilty for acts which were not offences at the time when they were committed were the subject of detailed regulation in all Ecuadorian penal legislation, which was based on universal principles of modern Western penal law.

10. The inviolability of the home, the secrecy of correspondence and other principles set forth in article 17 were guaranteed in paragraphs 8 and 9 of article 141 of the Constitution. Freedom of thought, conscience and religion, provided for in articles 18 and 19 of the Covenant, was duly guaranteed in paragraphs 10 and 11 of article 141 of the Constitution, which also provided for the right of redress in the event of calumny. Moreover, the Ecuadorian Penal Code prohibited advocacy of crime and of national, racial or religious hatred, and incitement to war, discrimination, hostility or violence, which was in full agreement with the principles of article 20 of the Covenant.

11. The right of association or of assembly, mentioned in articles 21 and 22 of the Covenant, were dealt with in paragraph 15 of article 141 and in sub-paragraph (k) of article 148 of the Constitution. Moreover, the Labour Code fully guaranteed the freedom to form trade unions and groups of affiliated trade unions.

12. The family rights set forth in article 23 of the Covenant were protected in article 141 of the Constitution and in the corresponding provisions of the Civil Code. Civil marriage was compulsory; divorce existed since 1912 and could be granted on 13 grounds defined by the law, as well as by mutual consent or after three years or more of separation without conjugal relations. In the event of divorce, the joint estate was dissolved and each spouse took back his or her own property plus half of what had been acquired; in addition, the wife received a fifth of the husband's estate. Divorce could not be granted unless proper provision had been made for minor children. With regard to article 24, Ecuador had detailed legislation for the child, and adequate provision was made for measures enabling children to develop their aptitudes under the best conditions. Forty-two per cent of the national budget was devoted to education. Primary education was compulsory and free, and all children had the right to be admitted to a school. There were mother-and-child welfare centres, where working mothers could leave their children during working hours. The Labour Code made it obligatory for medium-sized and large enterprises to provide crèches. At birth, the child was registered and no distinction was made between legitimate and illegitimate children. Without distinction of any kind, any child born in Ecuador was an Ecuadorian.

13. The rights set forth in article 26 were guaranteed in the Constitution and in the pertinent laws. There was no discrimination between men and women or between Ecuadorian nationals and foreigners (except with regard to the right to vote and to hold public office). Moreover, the Ecuadorian Government guaranteed the protection of the customs, traditions and culture of ethnic, religious and linguistic minorities, while endeavouring to integrate them into the national life but respecting their identity.

14. To obtain recognition of his rights, an Ecuadorian could apply, not only to the ordinary courts, but also to special courts qualified to deal with administrative disputes involving individuals and the State and disputes concerning income tax, taxes, customs duties etc., between individuals and the State, or between municipalities and provincial councils.

15. Lastly, in connexion with the political rights mentioned in articles 22 and 25 of the Covenant, he pointed out that the Supreme Council of Government which had governed the country for 18 months had, of its own free will, been taking positive steps towards a return to a constitutional régime. Execution of the plan for democratic reform of the country's political and legal structures had begun in December 1976 with the promulgation of an amnesty decree for all political detainees. The Government had then opened a dialogue with the political parties, enterprises, trade unions, employers' associations, chambers of commerce and agriculture and with industry, as well as with students and representatives of popular movements. At the beginning of 1977, the establishment of electoral registers on the basis of identity cards had started and registration was proceeding in urban and rural areas. Three legal committees, composed of 12 members chosen from the lists submitted by the political parties, had been made responsible respectively for the following tasks: elaboration of a draft of a new Constitution; elaboration of a draft reformed text for the Political Charter that had been in force since 1945; preparation of a law on the status of the political parties, of an electoral law and of regulations concerning the operation of the referendum by which the Ecuadorian people would be called upon during the first few months of 1978 to decide on the draft constitutional texts prepared by the first and second committees. That referendum would be followed by the election, by universal suffrage, of the President of the Republic and of members of the legislative Assembly.

16. The work relating to the elaboration of new constitutional texts had been given the widest publicity by all the mass media. Exercising their right of political association, the political parties were at present conducting campaigns in favour of the constitutional draft of their choice. The Government was guaranteeing the free play of electoral rivalry and the freedom to engage in political activities, as the national and continental press testified, and two candidates were standing in the presidential election.

17. The organization of the referendum on the draft constitutional texts was in the hands of the Supreme Referendum Tribunal, which was composed of 12 of the most eminent political and intellectual personalities of the country, in particular three former Presidents of the Republic, whose presence guaranteed the widest exercise of the freedoms of assembly and of political association. The plan for reform of the State's legal structures had been completed very recently by the creation of provincial electoral tribunals, established on the basis of an equitable representation of the different political trends, which would be made responsible for supervising the elections and for counting the votes in each province. Before the elections, the Government foresaw a progressive transfer of senior administrative functions to the citizens. Already 18 of the 20 provincial governors were civilians and only two were military people. All those measures bore witness to the will of the Government to follow the plan it had mapped out for itself for a return to a constitutional régime and for enabling the Ecuadorian people to choose their representatives so as to ensure the full exercise of democracy.

18. He was ready to reply to any questions which members of the Committee might wish to ask with regard to the report.

19. The CHAIRMAN thanked the representative of Ecuador for the detailed account he had given of the legislation of his country in connexion with civil and political rights and invited members of the Committee to ask questions or to comment.
20. Mr. LALLAH said he was particularly grateful to the representative of Ecuador for having made a comparative analysis of his country's Constitution and the articles of the Covenant. He thanked him for the clarifications he had made regarding the right of association provided for in article 22 of the Covenant and the right of citizens to hold public office laid down in article 25, and welcomed the news of forthcoming reform of the legal structures, which had been hampered so far by various difficulties.
21. He wished to know, however, to what extent the political system of Ecuador had had adverse effects on the enjoyment of the other rights guaranteed in the Covenant, in particular with regard to the access of citizens to the Courts and with regard to the treatment of the accused during the investigation and during provisional detention. Was organization of the judiciary the subject of special provisions, or was it governed by the Constitution.
22. Mr. MORA ROJAS noted with satisfaction that Ecuador was on the road back to constitutionality and intended to apply articles 22 and 25 of the Covenant. Although its report was so complete that it went beyond the limits of the Covenant, he would confine himself to questions relating to civil and political rights. Above all else, he said, he would appreciate explanations concerning the exact meaning and scope of the terms "concertaje" and "huasipungo" in the Spanish text of article 141, paragraph 2, and subparagraph (m) of article 148 of the Constitution, respectively, since those words were peculiar to Ecuadorian usage.
23. With regard to article 141, paragraph 4, he would like to know which military laws governed recruitment. Concerning paragraph 9 of that same article, he asked in which cases and circumstances the law permitted breaches of the secrecy and inviolability of correspondence. Paragraph 12 of the same article indicated that the freedom of business and industry could be limited in certain instances and he wondered just what those limitations were and on what criteria they were based. The information on article 142 did not say why or how marriage could be dissolved by law and an assurance should be given that the principle of equality of the rights of the spouses was respected. Similar clarification was needed with regard to that part of the article dealing with filiation and investigation as to paternity. Nor did the text state how the law determined the value of family property or whether that property could be redistributed in cases where the State deemed it necessary to break it up for legal reasons.
24. He said he would also appreciate clarification concerning the limits that could be imposed in the interests of society on the right to own property and on the measures of expropriation for reasons of public benefit, mentioned in article 146.

25. With regard to the freedom of opinion, he was particularly interested in article 141, paragraph 10, which regulated the practice of journalism. It was essential that the Committee should have an idea of the enactments and administrative provisions which defined the defence of national interests and social service which, according to that paragraph, were the primary object of journalism. Similarly, to what extent had the provision prohibiting the suspension or closure of newspapers, referred to in the following paragraph, been applied in practice?

26. With regard to paragraph 17 of that same article, what remedies were open to citizens if they received no response to their petitions within 30 days, and to which court could they apply in order to secure their rights?

27. In article 143, the principle that the purpose of teaching was to make students socially useful was perfectly valid, although the "democratic spirit of Ecuadorianism and of human solidarity" - an expression which could lend itself to different interpretations - should be more precisely defined.

28. Lastly, article 148 described work exclusively as a social duty, whereas in most constitutions it was also a right of the individual.

29. Mr. URIBE VARGAS said that developments in Ecuador towards the restoration of civil and political rights in the shortest possible time were certainly commendable if it was remembered that several Latin American countries had followed an opposite course. The information given in the report and supplemented by the representative of Ecuador was extremely encouraging and it would be interesting for the Committee to receive the relevant documents (administrative texts, decrees, etc.), particularly those relating to constitutional reforms and the organization of referenda. He hoped that by the next session the Ecuadorian representative would be in a position to confirm the progress made towards the full enjoyment of all civil and political rights.

30. Mr. HANGA said he was satisfied with the additional details given by the representative of Ecuador, particularly with regard to the marriage laws and family rights. None the less, he wished to revert to the right to own property, as enshrined in article 146 of the Constitution. Admittedly, the Covenant contained no express provisions relating to property rights, but since that right directly affected the enjoyment of the civil and political rights recognized in that instrument the matter was of interest to the Committee. Under article 146 of the Constitution, property had a social role and was subject to the interests of the community. Private businesses had to implement State plans and could be nationalized if the country's economic situation so required, and anybody owning land had a duty to cultivate it. In that context, were there any political, social, economic, legal or administrative measures to ensure the equality of all before the law in accordance with the provisions of article 26 of the Covenant?

31. Although the first paragraph of article 148 referred to work as a social duty, the remaining paragraphs also endowed it with the nature of a right.

32. With regard to the provisions concerning the family, he said he attached great importance to family property and would appreciate further information on the subject, particularly details as to what became of it in the case of dissolution of the marriage.

33. Referring to article 141, paragraph 18, he asked in what form it was possible to exercise the right to accuse or denounce infractions of the Constitution before the competent authority; was it as an "action popular" taken in the interests of society as under Roman law?

34. Mr. OPSAHL said that, although there were positive aspects to the report of Ecuador, some members of the Committee might doubt, in view of the events which had led to the creation of a military government in that country 18 months ago, whether it was possible for civil and political rights to be exercised there; none the less, the Ecuadorian representative was to be thanked for the assurances he had given concerning the trend in his country towards a democratic reform of the legal structures.

35. The obligations imposed by the Covenant had nothing to do with a country's political régime or social structure, although it was difficult to apply some of its provisions unless the national Constitution was based on the principles set out in the Covenant, particularly article 25. The present Government of Ecuador was a transitional one and he wondered whether it had considered informing the Committee of that fact in accordance with article 4 of the Covenant and stating in what respects it might therefore have to derogate from the provisions of the Covenant.

36. Mr. ESPERSEN said he would like the Committee to be kept informed of developments concerning the rights guaranteed under article 25 of the Covenant. He shared the views expressed by Mr. Mora Rojas with regard to article 141, paragraph 10 of the Constitution. The position of journalists was important, but the "defence of the national interests" was open to widely different interpretations. How was that concept interpreted at present and how would it be interpreted in the legislation expected next year? What exactly was the scope of the last subparagraph of paragraph 15 of article 141, and was any new legislation expected in that field? With regard to article 154 concerning restrictions upon the guarantees set out in Title XIII of the Constitution, he asked whether it was possible to derogate from a part of the Constitution and whether there had already been any such derogations.

37. Sir Vincent EVANS inquired whether, now that the Covenant had been ratified by Ecuador, it formed an integral part of the domestic law of that country and could consequently be invoked before a court, or before the administrative authorities in the case of disputes, by an individual who considered that his rights had been encroached upon.

38. Title XIII of the Ecuadorian Constitution, on which the protection of civil and political rights rested, was exemplary in its clarity and scope. The effective protection of human rights depended largely, however, on the legislative and statutory measures taken to give them effect, and on administrative practices.

Mr. Mora Rojas had already asked questions on that subject. It would be useful if the Committee could be informed in a written communication from the Government of any legislative, statutory or administrative measures which more precisely defined or delimited those rights as enshrined in the Constitution.

39. Apart from the provisions of article 158, what remedies were available with regard, inter alia, to the rights set out in article 25 of the Covenant? Free elections were not only a fundamental right in themselves, but were also a guarantee of the uninterrupted enjoyment of all civil and political rights. He would therefore like the Committee to be informed of the progress made in Ecuador on the road back to constitutionality.

40. Like many other Latin American countries, Ecuador had large indigenous ethnic groups with languages, cultures and customs of their own, and he would appreciate further details of the special measures taken to safeguard the rights of such ethnic groups.

41. Mr. TARNOPOLSKY recalled that Ecuador had been the second country to ratify the Covenant (preceded only by Costa Rica) and that it had long ago abolished the death penalty.

42. Like Mr. Mora Rojas, he would appreciate details concerning the inviolability of the home (article 141, para. 8) and press offences (article 141, para. 10, fourth subparagraph). With regard to personal freedom and security (article 141, para. 4), he asked whether an accused person could contact a lawyer before proceedings had been started? The fourth subparagraph of paragraph 2 of article 141 whereby "Any discrimination ... is declared punishable", called for a number of explanations; for instance, what punishment was provided, who was empowered to impose it and who ensured that it was carried out? With regard to the rights of ethnic minorities (article 27 of the Convention), what measures had Ecuador taken to protect and promote Quechua and other native languages? With regard to the rights of children (article 24 of the Covenant), the rule in article 148 (p) of the Ecuadorian Constitution, whereby "no one may hire minors up to twelve years of age as domestic servants" could be interpreted as authorizing the recruitment of children aged under 12 years for other tasks such as agricultural work. How would that be compatible with compulsory elementary education as provided for in the sixth paragraph of article 143?

43. He noted with satisfaction that university professors could occupy another public post (article 141, para. 20).

44. Mr. TOMUSCHAT asked whether an individual who considered that a measure taken by a public authority was contrary to a provision of the Covenant could sue the State. Was there a more general procedure of inquiry? Article 152 of the Constitution, on the rights and safeguards recognized to foreigners, contained no provision concerning expulsion, as referred to in article 13 of the Covenant, and he would like further information in that connexion. Like other speakers before him, he said he wished to stress how important it was for the Committee to have the texts of legislative and statutory provisions, as well as administrative decisions, relating to questions of civil and political rights.

45. Mr. GRAEFERATH asked, first, by what means the Covenant had been incorporated into the domestic law of Ecuador; second, what safeguards accompanied the principle of non-discrimination against ethnic minorities, and, third, what steps had been taken to reduce infant mortality in accordance with article 152 of the Constitution, and with what success.

46. Mr. VALDEZ (Ecuador), speaking at the invitation of the Chairman, said he wished to reply to Mr. Mora Rojas' question concerning the meaning of the term "concertaje" (forced labour) and "huasipungo". "Concertaje", a heritage from Spanish colonial days, corresponded to serfdom in mediaeval Europe. Just as a serf was attached to the land, so did a "concierto" pass from one landowner to another when the land was sold. Although that form of exploitation of farm labour had been abolished in Ecuador by a law of 1870 or 1880, it had in fact survived until the end of the nineteenth century. That was why all the Constitution had specified that there could be no "concertaje", although there was no reason why the provision should appear in the 1945 Constitution since it referred to a practice which had long since disappeared.

47. The term "huasipungo" came from Quechua, the language spoken by the Incas. It was formed from two words, "huasi" (house) and "pungo" (land). A land worker engaged on a large estate received for his personal use a plot of land and a house. His wages were, of course, reduced accordingly, and that institution gave rise to all sorts of abuses. It had been abolished as such in 1864. Since then, although an agricultural worker engaged on a large estate could receive a house, he could not receive a plot of land in part payment of his wages (the full ownership of plots had been handed over to the workers). Since the allocation of a house was an advantage connected with the job, however, deprivation of the "huasipungo" would be tantamount to dismissal without notice. The Constitution of 1945 therefore included an older provision whereby deprivation of the "huasipungo" was regarded as arbitrary dismissal and gave entitlement to twice the compensation payable in respect of dismissal under normal circumstances. It should, however, be noted that, although Ecuadorian literature had lent great notoriety to the "huasipungo", the institution itself had in fact disappeared long ago.

The meeting rose at 1 p.m.