



Economic and Social Council

Committee on Economic, Social and Cultural Rights

Thirty-second session

Summary record of the 15th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 5 May 2004, at 10 a.m.

Chairperson: Ms. Bonoan-Dandan

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Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Second periodic report submitted by Ecuador

The meeting was called to order at 10.15 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (agenda item 6) (continued)

Second periodic report submitted by Ecuador [(E/1990/6/Add.36); core document (HRI/CORE/1/Add.7); country profile (E/C.12/CA/ECU/3), in English only; list of issues (E/C.12/Q/EQU/1); written replies from the Ecuadorian Government, in Spanish only (document without a symbol distributed at the meeting)]

1. *At the invitation of the Chairperson, the delegation of Ecuador took places at the Committee table.*

2. **The Chairperson** welcomed the delegation of Ecuador on the Committee's behalf and invited it to make its preliminary statement.

3. **Mr. Escudero Martínez** (Ecuador) stressed that the second periodic report submitted by Ecuador, which covered the period 1992–2004, was based on the work of an inter-disciplinary, inter-ministerial committee. The written replies to the list of issues were the result of an exchange of views between the various players in Ecuadorian society on the progress and the gaps recorded in the attainment of economic, social and cultural rights. The State party had received support in this connection from the United Nations office in Ecuador and from national and international non-governmental organizations (NGOs).

4. The Ecuadorian State had made substantial progress since 1990 in the area of human rights, progress that was reflected in administrative, legal and legislative measures. The new Constitution, adopted in 1998, incorporated the promotion and defence of human rights and of economic, social and cultural rights in particular. It strengthened the protection of human rights by authorizing *habeas corpus*, *habeas data* and *amparo* remedies and by establishing the office of the Ombudsman, charged with the task of receiving complaints of violations by public servants or individuals.

5. The Standing Follow-up and Assessment Committee of the National Human Rights Plan, which included representatives of civil society and the State, analysed and prepared guidelines that were followed by sectoral and provincial subcommittees. The Plan, which dated from 1998, was one of the first to be produced in Latin America. Ecuador had also played an important part in the preparation and negotiation of the Andean Human Rights Charter adopted in 2002, and had proposed to other members of the Andean Community a draft regulation on the application of the principles of that Charter.

6. The National Coordinating Committee for Human Rights, established in December 2002, was tasked with preparing the reports to be submitted to the treaty bodies in the United Nations system and the Organization of American States (OAS). It was also responsible for applying the recommendations made by those bodies.

7. The undeniable efforts that the Ecuadorian State had made to guarantee the exercise and full attainment of economic, social and cultural rights had been impeded by social, economic and political difficulties, exacerbated between 1998 and 2000 by one of the most serious financial crises the country had experienced.

8. The dollarization of the economy, the banking crisis and the misappropriation by unscrupulous bankers of billions of United States

dollars in deposit and savings accounts had impoverished the middle and lower middle classes in urban and rural areas. The rise in Ecuadorian emigration and the ever-increasing immigration of nationals from neighbouring countries added to the difficulties.

9. Also, government action had been paralysed by political instability, creating uncertainty in many sections of the population and causing production to fall. Servicing the public debt was an added burden, absorbing government funds to the detriment of investment in social services and the manufacturing infrastructure.

10. Reducing the widespread structural poverty called for radical changes, which would inevitably be slow and gradual, in order to pursue social, trade union, health and education policies that would help to reduce the current inequalities, particularly for the benefit of the poorest.

11. In conclusion, Mr. Escudero Martínez reaffirmed that the State was responsible for the full and effective attainment of the rights listed in the Covenant, although the Ecuadorian Government considered that the current difficulties could be solved only by involving the various economic, social, cultural and political players in Ecuadorian society.

Articles 1 to 5 of the Covenant

12. **Mr. Pillay** asked whether it was true that the courts were highly politicized and why complaints of alleged human rights violations had been brought against the judiciary. On the enforceability of economic, social and cultural rights, he wished to know why no cases of violation of those rights had been referred to the courts, although the Covenant was an integral part of domestic law. Was it because the public bodies responsible for defending human rights, and the Ombudsman in particular, lacked the necessary resources?

13. **Mr. Atangana** was concerned about the method of appointing Supreme Court judges, who were elected by Congress despite the principle of separation of powers, and about the effects on the independence of the judicial system. Referring to the slow settlement of legal proceedings, he asked whether, as provided by law, judges who caused unnecessary delays had been penalized. Similarly, had the State ever been ordered to indemnify victims who had suffered injury in the exercise of their economic, social or cultural rights?

14. **Mr. Malinverni** felt some concern about the independence of the judicial system, in view of the fact that the police acted as judges in the courts of first instance. He also asked whether old acts which were inconsistent with more recent ones ought not to be repealed, as judges sometimes applied the one and sometimes the other. Also, what were the conditions for obtaining free legal aid?

15. Mr. Malinverni wished whether the new Constitution of 1998 contained a list of fundamental rights including the economic, social and cultural rights listed in the Covenant. Lastly, on the principle of non-discrimination, he asked whether it had been possible to implement the act passed in 2001 to promote the rights of persons with disabilities, despite the meagre resources allocated to it.

16. **Mr. Riedel** welcomed the fact that the State party recognized the obstacles to attaining economic, social and cultural rights. Regarding the written reply to question 2 in the list of issues, he wished for more information about complaints of the violation of rights listed in the Covenant that had been referred to the courts or to the competent national institutions.

17. Regarding the written reply to question 3 in the list of issues, Mr. Riedel asked whether the military and the police were informed of their economic, social and cultural rights. Lastly, he wished to know what action had been taken on the recommendations made by the institutions responsible for promoting human rights.

18. **Mr. Texier**, referring to article 1 of the Covenant, said that according to information obtained by Mr. Stavenhagen, the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, the Quechua community of Sarayacu was claiming its right to the land and to dispose of its natural resources, namely the oil deposits in its ancestral lands which had been exploited for the past five years by a consortium of North American and Argentinean undertakings under a concession granted by the Ecuadorian State. According to the International Labour Organization (ILO), the Ecuador Confederation of Free Trade Union Organizations (CEOSL) had condemned the fact that the Quechua communities had not been properly consulted before licence contracts for petroleum exploration and exploitation were awarded to those undertakings, which included Texaco and Chevron. Mr. Texier therefore wished to know how the Ecuadorian Government guaranteed the indigenous peoples' right to dispose freely of their natural resources, a question which, in his opinion, was of the utmost importance in view of the pluriethnic and multicultural composition of the country.

19. Mr. Texier also asked what specific measures the Government had taken to combat Ecuadorian emigration, to the United States of America and Spain in particular.

20. **Mr. Tirado Mejía** asked for more information about the adverse effects of dollarization on the Ecuadorian economy, including the uncompetitiveness of Ecuadorian exports and the ensuing wage cuts and decline in the Ecuadorians' standard of living. He wondered whether the Ecuadorian Government planned to review the policy of parity with the dollar in order to mitigate the catastrophic effects of that policy on the attainment of economic, social and cultural rights in particular.

21. Mr. Tirado Mejía observed that the report did not give the impression that the indigenous communities in Ecuador constituted almost 20 per cent of the population and were a great asset from a demographic and also from a cultural point of view. He deplored the fact that these peoples and the Afro-Ecuadorians were generally at the bottom of the social scale, and were consequently disadvantaged in many areas, including education, health and culture. Lastly, he asked for more detailed demographic data on the ethnic composition of the Ecuadorian population.

22. **Mr. Kolosov** remarked that the State party was a country that received numerous immigrants and also one that a great many of its nationals were leaving. He wondered whether the Ecuadorian Government had taken measures to combat the discrimination from which immigrants frequently suffered and to guarantee their fundamental rights, whether it had acceded to the International

Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and whether it had concluded agreements with the Spanish Government to ensure that Ecuadorian nationals received the necessary protection in that country, to which many of them emigrated.

23.**Ms. Bras Gomes** was dismayed that the policies pursued by the State party had not succeeded in mitigating the catastrophic effects of the current economic crisis in Ecuador and the many natural disasters. She wished to know whether the act requiring local authorities to allocate resources to children, young people, women, people with disabilities, the elderly and people living in rural areas had been implemented and, if so, to what extent.

24.**Ms. Bras Gomes** was also dismayed to note that, despite the constitutional provisions on the right to equal treatment and equal opportunities, unemployment was much higher in the rural areas where the indigenous peoples lived than in the rest of the country and wondered whether the projects conducted by the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE) had succeeded in reducing the gap between the indigenous and other regions in respect of the infrastructure in particular. She also wished to know what priorities the State party had set to guarantee the attainment of economic, social and cultural rights, including the right to land, education and employment. Lastly, she asked whether the acts on gender equality adopted since 1998 had helped to improve the condition of women.

25.**Mr. Martynov** regretted that, although the Ecuadorian Constitution specified that the indigenous communities must be consulted before anyone was granted the right to exploit the mineral resources on their traditional lands, it did not require the State to obtain the informed consent of those communities in advance and to ensure a fair division of the profits resulting from that exploitation. He therefore asked whether the Ecuadorian Government intended to amend that instrument accordingly.

26.**Mr. Sadi** was not convinced that economic, social and cultural rights held the same place as civil and political rights in the Ecuadorian constitutional order and wondered whether the 1998 Constitution had not perhaps been intended to alter that state of affairs. He welcomed the creation of the office of Ombudsman, which had marked a genuine advance in the area of human rights and questioned the Ecuadorian Delegation about the type of immunity the Ombudsman enjoyed. Had the grounds that had led to the first Ombudsman's removal in 2002 — namely fraud — been supported by evidence? Mr. Sadi also wished to know whether cases concerning violations of economic, social and cultural rights had been referred to the present Ombudsman, whether he cooperated with the National Coordinating Committee for Human Rights, and whether the National Human Rights Plan had taken into account the various upheavals the country had experienced. Lastly, why were indigenous peoples not included in the same way as children, adolescents, pregnant women and the elderly among the "vulnerable groups" listed in article 47 of the Constitution?

27.**Ms. Iyer** wondered whether the situation in which the indigenous peoples found themselves deprived of their ancestral lands was not perhaps attributable to those peoples' lack of awareness of their rights — in particular, of their right to the land and their right to dispose of its natural resources enshrined in the Covenant. She wished to know how far the indigenous movements, which had been extremely active in Ecuador for the past ten years or so, had succeeded in obtaining a greater measure of respect for the rights of indigenous people and whether, in some cases, they had managed to obtain payment of compensation for the damage suffered.

28.**Ms. Barahona Riera** welcomed the legislative framework that the State party had established to prohibit discrimination based on gender, and she thought the creation of the National Council for Women (CONAMU) was a genuine advance in this area. She asked whether the measures of positive discrimination adopted by that public institution to ensure that the country's policies took account of the national concerns of gender equality, equal opportunities and development of disadvantaged rural areas, had produced good results and, above all, whether that institution's budget allowed it to complete its task, demonstrating that the Ecuadorian Government attached priority to these questions.

29.**Ms. Barahona Riera** also wished to know whether the courts had already had to deal with cases of discrimination based on gender or ethnic origin and whether the people were sufficiently informed of their rights. Lastly, knowing that more than half the people who left Ecuador to settle in the United States or in Spain were women and that most of the women in Ecuador were heads of the family, she asked whether the Ecuadorian Government was introducing programmes to help the children or close relatives they left behind.

30.**Mr. Grissa**, referring to the ethnic composition of the Ecuadorian population, considered that it was a matter of some concern, in the Ecuadorian context, that the decision-making power was in the hands of the Whites, who constituted only 7 per cent of the population, compared with 65 per cent Mestizos, 25 per cent Amerindians and 3 per cent Blacks. This was blatant discrimination against the indigenous population. In view of the extreme poverty of the predominantly indigenous rural regions and the discrimination suffered by these people in the area of employment and education, he wished to know the extent to which access to positions of responsibility was really based on merit and not on the colour of the applicant's skin.

31.**Mr. Ceasu** asked where the State party's budget resources came from and what proportion of gross domestic product (GDP) was revenue from oil production and agriculture. Could the delegation also provide more information about the presence of transnational companies in the country and indicate the current dollar-Sucre exchange rate, so that members of the Committee could form a more accurate idea of the budget allocated to the various sectors of the economy?

32.**Mr. Escudero Martínez** (Ecuador) said that the figures given by some members of the Committee did not correspond to those collected during the latest national census in 2001. This showed that Ecuadorian society was more than 90 per cent Mestizo and that the population was decreasing because the number of immigrants was much lower than the number of emigrants to Europe and the United States. Ecuador attached great importance to the protection and promotion of the fundamental rights of migrants, be they immigrants in Ecuador, mostly from Colombia and Peru, or Ecuadorian emigrants in Europe. The State party was working closely with United Nations High Commissioner for Refugees (UNHCR) in order to deal more effectively with the applications for asylum and assistance filed by the 9,000 refugees from Colombia. Mr. Escudero Martínez stated categorically that there was no discrimination against immigrants and he explained that the Ministry of Foreign Affairs had established an immigration sub-secretariat, which was responsible for studying the specific problems encountered by the immigrant population.

33. On the disputes between the indigenous communities, particularly the Sarayacu community, and the oil companies, Mr. Escudero Martínez said that the information supplied by the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Mr. Stavenhagen, was now out of date.

34. **Mr. Prado** (Ecuador) said that Supreme Court judges were indeed elected by Congress but they were not subject to any political pressure and they demonstrated the highest degree of impartiality. The State party, in collaboration with NGOs and the OAS, had embarked on a vast programme of restructuring and modernizing the legal system, including the following measures, in particular: establishing a national competition to recruit judges; increasing the number of posts for judges in order to expedite legal proceedings and improve observance of the right to be tried without undue delay; re-examining the situation of detainees and reducing their sentences when their conduct was exemplary.

35. Ecuador had also thoroughly overhauled the legal system with a view to imposing severe penalties on judges who were found guilty of corruption and establishing very strict rules on professional conduct. As regards free legal aid, there was an extensive network of legal aid lawyers whose job it was to defend all those who could not afford to pay the costs of a legal action.

36. Mr. Prado said that the office of Ombudsman had been created by the 1998 Constitution. The Ombudsman, who had national jurisdiction, was responsible for promoting or sponsoring *habeas corpus* and *amparo* remedies for people who considered that their rights had been violated, for defending and encouraging respect for the fundamental rights guaranteed by the Constitution, for ensuring the quality of public services and for exercising the other functions assigned to him by law. Between September 1998 and December 2003, the Ombudsman's office had examined 53,316 complaints, mainly from Ecuadorian citizens but also from foreigners such as Colombians. The Ombudsman was required to act as mediator in disputes between the public authorities and an individual or association. He also appeared as a party, in cases connected with protection of the environment and preservation of the cultural heritage, to defend the interests of the community. He was also concerned with training and information on human rights, the environment and the cultural heritage. The Ombudsman's office included, in particular, the National Directorate for Constitutional Remedies, the National Directorate for Complaints, the National Directorate for the Defence of Consumers and Users and the National Directorate for the Defence of the Rights of Indigenous Peoples. Mr. Prado emphasized that the Ombudsman worked completely independently and enjoyed great prestige in Ecuadorian society.

37. As to the indigenous communities, the Constitution guaranteed respect for all Ecuadorian citizens, irrespective of their origin and their social situation, and defined Ecuador as a pluriethnic and multicultural State. As regards the land problem of the Sarayacu community in particular, the Ecuadorian State had recognized that it had not consulted the interested parties sufficiently and had not properly discharged its obligations under the ILO Indigenous and Tribal Peoples Convention (No. 169). That being so, Mr. Prado observed that opinion in the Sarayacu community was deeply divided on the subject of the oil companies: some considered that their activities were detrimental to the indigenous communities, while others thought they contributed to the communities' economic development. The Government was anxious to improve the dialogue with the indigenous communities and had organized three meetings to discuss the environmental problems in particular, but those most affected by the oil companies' activities had not attended, despite the Government's invitation. At the end of May 2004, a commission comprising public bodies, representatives of the NGOs and members of civil society, and chaired by the Human Rights Secretariat would visit the site to study the Sarayacu community's situation in relation to human rights and to identify solutions to its problems.

38. **Mr. Escudero Martínez** (Ecuador) said that Chapter IV, title II, of the 1998 Constitution dealt specifically with economic, social and cultural rights. As regards the indigenous communities' participation in political life, he pointed out that there were a number of indigenous members in the national Congress and that one of the Government ministers was of indigenous origin.

39. **Mr. Pachala** (Ecuador) said that dollarization had both positive and negative aspects. The positive aspects included improved economic stability, a 3 per cent increase in GDP, more exchange reserves and greater flexibility in negotiating the external debt. The negative aspects were the low average wage, currently US\$150, the unemployment rate of some 15 per cent and the substantial budget deficit. It would be inadvisable to change the monetary system, as dollarization had enabled the economy to become more competitive. The drive for change should actually focus on improving production strategies with a view to achieving better results and consequently better integration in the economic world.

40. Replying to a question from Mr. Ceausu, Mr. Pachala explained that the Government's resources came from oil revenues (44 per cent of revenue), taxes, levies and contributions from expatriates. Of a total budget of almost US\$9 million, about \$2 million were devoted to social expenditure, whereas 43 per cent of the resources went on repaying the external debt.

41. As regards the indigenous peoples, many efforts had been made since the democratic system was established, particularly through various organizations (including CONAIE [the Confederation of Indigenous Nationalities of Ecuador]), whose activities had brought substantial improvements in integration. Witness the appointment of indigenous people to very important posts in the civil service, particularly in parliament and in the various ministries. In 1996, the Government had established a pluricultural ministry and a national council, CODENPE [the Council of Nationalities and Peoples of Ecuador], to help the least favoured groups. This body had enabled new policies to be prepared for the rural sector and had recommended various studies, including studies on water, microbusinesses, etc. A project, PRODECO [the Cotopaxi Development Project], funded by the European Union to the tune of €5 million, aimed to provide the Cotopaxi province with a better basic infrastructure. Other international projects, such as PROLOCAL [Poverty Reduction and Local Rural Development], were concerned with sustainable development, particularly in indigenous areas, and assistance in starting businesses. As regards the legal provisions for the most vulnerable groups, including children, young people and women, the Government was tending to decentralize initiatives, a move that should enable the groups concerned to be more involved. Lastly, the indigenous peoples should not be regarded as a vulnerable group (inadequate standard of living, disabilities, discrimination, etc.), since they benefited from all the rights granted under the Constitution and were on an equal footing with the rest of the population.

42. **Ms. Rosero** (Ecuador) addressed the question of gender equality in the context of the administration of justice. Cooperation

between the National Council for Women (CONAMU) and judges, court officials and the public prosecutor's office had enabled mechanisms to be adopted to facilitate women's access to the administration of justice in the case of sex offences, domestic violence or abuse by the police authorities, but there were still instances of discrimination. CONAMU had planned a new programme, in the form of joint action with the judiciary and representatives of civil society in particular, to raise awareness of the principle of equal rights and opportunities for men and women and of the issue of violence against women.

43. CONAMU generally ensured the promotion of economic, social and cultural rights but it was also concerned with the promotion of civil and political rights. Ms. Rosero said that the country had as yet no policy on the protection of immigrants, but there was a programme for the victims of violence. The efforts made in the past eight years involved education at every level. Close collaboration with the universities and specialists in human rights was designed to meet the challenge posed by article 1 of the Constitution, namely to establish a State governed by the rule of law and that respected human rights. In the context of economic, social and cultural rights, studies had been conducted in order to gain better knowledge of social policies. Combined efforts by the national Congress, certain ministries and the authorities responsible for drafting the budget had enabled priorities to be set that would allow certain items of public expenditure to be protected. Ms. Rosero explained that 10 per cent of the State budget was devoted to measures for women. Lastly, CONAMU had defined the general thrust of its social and institutional action on the issue of equal opportunities for the next 20 years.

44. The principle of equal rights and opportunities for men and women was largely taken into account in the new constitutional framework. Indeed, the question was addressed in 36 chapters of the Constitution (the right to property, the right to work, to social security, to culture, to education, etc.). By insisting on respect for human rights, the new Constitution had paved the way, in particular, for legislation on free maternity services, reform of the Criminal Code and the Code of Criminal Procedure, various acts enshrining the principle of equal opportunities for men and women, implementation of the Children's Code, legislation on sexual abuse and harassment, and implementation of the Family Code.

45. **Mr. Cabrera** (Ecuador) said that free movement of persons was a priority. A secretariat for migration, established about a year ago, had been recognized by UNHCR and other United Nations bodies as exemplary in regard to human rights. The figures for the number of emigrants were alarming (more than 250,000 departures, mainly to Spain, in the past three years). The Convention on the Rights of Migrants, concluded by Ecuador and Spain, together with the multilateral dialogues and other agreements concluded in this area, had enabled progress to be made. A special programme was also being conducted with the International Organization for Migration (IOM) to train educators in the authorities concerned and increase migrants' own awareness of economic, social and cultural rights.

The meeting rose at 1 p.m.