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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-second session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,

on Wednesday, 5 May 2004, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Second periodic report of Ecuador (continued)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Second periodic report of Ecuador (continued) (E/1990/6/Add.36; E/C.12/EQU/1; HRI/CORE/1/Add.1)

At the invitation of the Chairperson, Mr. Escudero Martínez, Mr. Pachala, Mr. Prado and Ms. Rosero (Ecuador) took places at the Committee table.

Articles 1-5 of the Covenant (continued)

Mr. ESCUDERO MARTÍNEZ (Ecuador) said that all alleged human rights violations by police officers were recorded in a special register. Such allegations were investigated and those found guilty were punished and usually dismissed from the police force. Police courts, a monitoring system and a system of internal investigation had been set up to prevent human rights violations within the police force. Individuals whose economic, social or cultural rights had been violated were entitled to financial compensation.

He acknowledged that some laws were misinterpreted by courts and not properly enforced. The Government was taking steps to bring all laws into line with the Constitution and to codify laws so as to eliminate contradictions.

The concept of consumer protection had been incorporated into the country's human rights laws. A consumer protection law had been adopted as one of a range of measures designed to safeguard the economic, social and cultural rights of individuals. A consumer protection unit and a consumer protection court had been set up to ensure implementation of the legislation.

Ecuador was among the most advanced countries in Latin America as far as the rights of indigenous peoples were concerned. The rights of indigenous peoples were enshrined in the Constitution. Indigenous communities could elaborate their own programmes, and received financial assistance from the Government and donor States for their implementation.

Ms. ROSERO (Ecuador) said that the concept of vulnerable groups had been incorporated into the Constitution. Ecuador's indigenous population as a whole could not be classified as a vulnerable group as it consisted of people living in a variety of social and economic circumstances. However, some groups within that population were vulnerable, and the Government was making every effort to help them.

Special policies for the protection of vulnerable groups had been put into place. In 2000 the Government had begun implementing a policy on social welfare and protection. The emphasis was on ensuring access to basic services, including primary health care, basic education, employment and housing. A number of difficulties, in particular with regard to the provision of quality services in the health and education sectors, had arisen. To help women meet their basic financial needs and ensure that they were active members of society, the Government provided financial assistance to women who were heads of household.

The Government was taking steps to ensure that economic, social and cultural rights could be asserted in the courts.

Mr. TEXIER asked whether indigenous communities were consulted prior to the commencement of oil exploration or other such activities on their territories.

Mr. MALINVERNI said that, to his knowledge, the law adopted in 2001 to promote the rights of the disabled had still not been implemented owing to a lack of resources. He would welcome information in that regard.

According to a 2003 report by Amnesty International, in the police courts police officials were involved in the consideration of cases at all stages, including the passing of the judgement. Yet police officials were in a subordinate position, at the bottom of a chain of command. Moreover, it seemed that the higher courts were primarily staffed by retired members of the national police. Could the delegation comment?

Mr. KOLOSOV said that, according to a report by the Special Rapporteur on the human rights of migrants, many Ecuadorian citizens were leaving the country owing to a lack of job opportunities. It was also reported that Ecuadorian citizens manifested xenophobic attitudes with regard to Colombian citizens coming to the country, and that many foreign prisoners were deprived of the assistance of their consular representatives. He wondered whether that was not a violation of the Vienna Convention on Consular Relations, and asked whether Ecuador had ratified it.

Issues relating to migrants seemed to be the focus of the work carried out by the Office of the Ombudsman. He wished to know why that was the case if the delegation claimed that migrants were not being discriminated against.

He asked whether the Offices of the Ombudsman located in the United States of America, Spain and Portugal promoted the human rights of Ecuadorian citizens living in those countries. What status did the Offices have and what laws governed their work?

Mr. RIEDEL wished to know how many of the cases that had been dealt with by the Office of the Ombudsman to date had been related to economic, social and cultural rights.

Mr. ESCUDERO MARTÍNEZ (Ecuador) said that the Government always consulted the indigenous communities concerned before commencing exploration activities on the territories where they lived.

Mr. PRADO (Ecuador) said that the tension that had arisen between Ecuadorian citizens and Colombian immigrants was not due to xenophobia, but to economic difficulties and frustration about the fact that foreign people were occupying jobs at a time when there were so few of them.

The Office of the Ombudsman had implemented a number of projects in the United States of America, Spain and Portugal, in close cooperation with Ecuadorian ambassadors in those countries. For example, Spanish universities had provided free legal assistance in court cases. A number of family reunification programmes had been conducted with the financial assistance of the Government and various organizations.

He regretted that the report contained only general figures on the work of the Office of the Ombudsman. However, he would request the Office to provide more detailed data and would make it available to the Committee.

Mr. PACHALA (Ecuador) said that the Government had made considerable efforts to improve services for the disabled. The National Council on Disabilities was an independent body that coordinated initiatives by all institutions with responsibility for care, prevention, education and integration in respect of persons with disabilities. A technical sub-commission oversaw implementation of the national disabilities plan.

Agreements had been signed with, inter alia, the Ministry of Education and the Ecuadorian Vocational Training Service to facilitate access to education and vocational training for persons with disabilities. In addition, the right to equal access to employment for disabled persons was enshrined in Ecuadorian labour legislation.

The Government sought to empower the disabled by providing them with the means to actively generate income. To that end, seven microenterprises had been established at the various centres for persons with disabilities and the residents managed both production and marketing. A project implemented in coordination with the Ministry of Labour and Human Resources granted loans on preferential terms for disabled small business owners.

In spite of severe budgetary constraints, sustained efforts were made to promote the interests of persons with disabilities.

Mr. PRADO (Ecuador) pointed out that there had been a misunderstanding regarding judicial proceedings. No member of the police force simultaneously held office as a member of the judiciary. Under a newly established system, the office of the public prosecutor carried out criminal investigations in collaboration with the police and presented the results of those investigations to the courts. The proceedings entailed close cooperation between the public prosecutor, the judges and the police; courses were held to provide police officers with basic legal knowledge to facilitate constructive collaboration.

In order to avoid further confusion, the delegation would provide detailed information on the precise roles of the police, the public

prosecutor and the judges.

Articles 6-9 of the Covenant

Mr. TEXIER asked whether the delegation could provide disaggregated data, including by sex, on unemployment in the formal and informal sectors of the economy. Since official unemployment statistics were based on employment in the formal sector, it would be useful to know what the situation was in the informal sector. He also wished to know what initiatives had been undertaken to reduce informal employment and encourage employment generation in the formal sector.

He asked whether the minimum wage guaranteed workers and their families an adequate standard of living, and at what intervals and on the basis of what criteria wage levels were set.

Several reports had indicated considerable disparities in wages between men and women. According to one report, women earned 27 per cent less than men in the public sector and 16 per cent less in the private sector. While enforcing equal remuneration was conceivably more difficult in the private sector, adjusting public sector pay with a view to ensuring gender equality was clearly the State's responsibility, and he wondered what measures had been taken to that end.

The written replies had highlighted the important role of labour inspectors in eliminating hazardous conditions in the workplace. He commended the State party on the employment of 22 inspectors who worked specifically on the eradication of dangerous labour practices for children. It was difficult to see, however, how a total of 42 labour inspectors could be a sufficient number to enforce safety in the workplace at the national level considering the size and population of Ecuador.

Concerns had been raised about insufficient protection of trade union rights. The International Labour Organization (ILO) had repeatedly requested a reduction in the number of workers required to form trade unions, work councils or related associations. Requests had also been made to extend trade union rights to employees in the public sector.

In addition, ILO had requested the modification of article 522 of the Labour Code, concerning the determination of minimum services by the Minister in the event of a strike, and the amendment of article 505, with a view to ensuring that federations and confederations might undertake industrial action without penalty. He asked whether measures had been taken to grant non-citizens the right to become heads of trade unions.

Mr. MARTYNOV asked whether it was true that there was legislation that prevented workers from leaving the workplace for health reasons, even if hazardous conditions were present.

There was concern that safety regulations might not be enforced in small mines, which accounted for the majority of mining operations in the country. He asked whether that was true, and, if so, what measures had been taken to extend enforcement of safety legislation to all mines.

Allegations had been made that a widespread system of subcontracting and excessive use of short-term contracts impeded the implementation of trade union rights in Ecuador. He asked whether the Government actively promoted the use of long-term and direct contracts.

He was concerned by the fact that social security coverage by the Ecuadorian Social Security Institute extended to only 17 per cent of the population. The State reportedly owed the Institute over US\$ 2 billion, which seriously undermined the institution's financial viability and its capacity to grant protection. He asked whether the delegation could confirm those facts and provide information as to the current financial situation of the Social Security Institute.

Ms. BRAS GOMES asked whether it was true that the high unemployment rate was a direct result of massive dismissals in the public sector.

Sexual harassment in the workplace was reportedly a common occurrence. She asked how the relevant protective legislation was implemented in practice, how many cases had been brought to court, and what initiatives had been undertaken to raise public awareness.

With regard to the US\$ 2 billion owed to the Social Security Institute, it had been alleged that social security funds had been used to fill holes in the State budget. She asked what measures had been taken to correct the situation.

It appeared to be common practice for employers not to declare employees to the Social Security Institute in order to avoid paying contributions, even though deductions had been made from the employee's wages. As a result employees lacked social security coverage and formal recognition. She asked for information on strategies to combat fraud on the part of the employer, on the nature of penalties and on how social security inspections were conducted.

Given that only 2 out of 10 people were entitled to sickness and maternity insurance, it would be important to learn of the types of social protection available to the remaining 80 per cent of the population.

The gender disparity in social security coverage was considerable, and women who were employed in the informal sector were excluded entirely. She asked what provisions existed for granting minimum protection.

The report stated that the number of pensioners was growing faster than the number of new workers affiliated with the Institute, so that contributions in the short term would not be sufficient to finance the payment of benefits, which in the long run could result in the collapse of the system. She asked what action the State had taken to ensure the sustainability of the system.

Mr. CEAUSU asked why the report only provided data relating to rural and urban unemployment until 1990 and 1999 respectively

and asked whether the delegation could provide more up-to-date information. He would also welcome current population data broken down by rural and urban area.

He had been surprised at the distinction between the population aged 10 years and under, working-age population and economically active population. He wondered whether that meant that children aged 10 and over were included in the economically active population. In order to assess unemployment rates adequately, it would be important to know what exactly constituted a member of the active population.

According to the report, 1.6 million people in Ecuador were disabled, but only 30,000 had been issued special identity cards and only 4,500 were in receipt of a solidarity bonus. That suggested that benefits were only available to a very small number of disabled persons.

He asked whether the National Council on Disabilities had offices all over the country and how many people it employed. It would also be useful to receive up-to-date information on the Council's budget, and how that amount was to be interpreted in terms of gross domestic product (GDP) and the total State budget.

The report stated that the right to association only applied to people who were in an employer-employee relationship. He wondered whether that literally meant that the right did not apply to anyone else.

He asked on what basis, if at all, the Department of Labour could refuse to register trade unions.

Mr. SADI asked whether the delegation would agree that Ecuadorian legislation on labour relations could be classified as employer friendly. No punitive action was taken, for example, in cases where employers violated labour laws. In addition, employers could form so-called solidarity (*solidarismo*) associations to frustrate workers' attempts to organize labour. As the scope of those associations was unclear, he would welcome it if the delegation could comment.

He asked whether the stipulation that a minimum of 30 employees was required to form trade unions was purely coincidental, considering that the overwhelming majority of enterprises in Ecuador had fewer than 30 employees.

Mr. ESCUDERO MARTÍNEZ (Ecuador) said that certain questions raised by the Committee would require a detailed response; the information requested would be supplied.

In order to avoid misunderstandings regarding the financial implications of any programmes or benefits, it was important to note that Ecuador had a bimonetary system, where the US dollar was used alongside the Ecuadorian national currency, the sucre.

As to the question relating to employers' associations, those were similar to associations in other countries that were formed according to professional groups.

Ms. ROSERO (Ecuador) said that women, who accounted for 53 per cent of the total number of unemployed persons, were the ones who bore the brunt of the economic crisis. The wage gap remained a problem that the State was taking steps to address, inter alia through the inclusion of the National Women's Council in the deliberations of the National Wages Council. However, because the implementation of equal pay proposals depended upon the political will of public authorities and employers, progress in that area had been hampered by the frequent changes in Government.

Regarding the participation of women in the informal sector, she noted that the National Women's Council, together with the Ministries of Labour and Tourism, had begun to implement local-level policies that were aimed at generating tourism products and services to be provided primarily by women. That initiative had also received technical cooperation from the United Nations Economic Commission for Latin America and the Caribbean as part of a project on gender mainstreaming in employment policy; results were expected before the end of 2004.

In order to combat poverty, the Government's employment policy should include measures to reduce the gender gap and facilitate women's access to the labour market, taking into account the fact that many women had low levels of education. It was also important to implement mechanisms to improve women's access to economic resources, such as land ownership in the case of rural women. The National Women's Council had been engaged in such efforts for the past five years and had succeeded in securing land titles for women in various parts of the country. It had also established a mechanism for the provision and monitoring of microcredit, primarily to disadvantaged women in urban areas and to indigenous women in rural areas.

Another goal of the National Women's Council was to increase the coverage of the Free Maternity and Child Care Act, which provided mother and child health care and sexual and reproductive health services. Extending its coverage would provide poor women with basic protection.

Mr. PRADO (Ecuador) said that there were approximately 1.5 million child workers in Ecuador, of whom 32 per cent were between the ages of 5 and 9, and 48 per cent were between the ages of 10 and 17. The Government viewed those figures as very worrying and had consequently implemented a national plan of action to eliminate child labour. Its efforts centred on the National Child and Family Institute, which was working in close cooperation with the International Programme on the Elimination of Child Labour of the International Labour Organization on a series of projects. The National Child and Family Institute was responsible for protecting the rights of child workers, including the right to education, and for promoting public policies to deal with the problem of child labour.

In conformity with Ecuador's obligations under the Convention on the Rights of the Child to protect children from harmful work, the Government had established a children's code, which, inter alia, prohibited children from working in jobs that involved handling harmful substances. Safeguards for the employment of children were also provided by other international standards, which carried the force of law in Ecuador. Furthermore, the Children's Code prohibited the employment of children under 15, including in domestic service. The Ministry of Labour had recently hired and trained 22 new labour inspectors so as to be better equipped to combat the

phenomenon of child labour. Child labour had also been included in the national human rights plan of action, which was being carried out with the cooperation of various non-governmental organizations (NGOs) and other countries in the region.

The Government would continue its policy of extending social security coverage to the rural population, despite the fact that the social security system was experiencing financial difficulty. The Government was establishing mechanisms and funds to ensure that temporary budgetary constraints did not hamper the implementation of programmes for rural inhabitants.

In keeping with the Government's policy of transparency, he felt duty-bound to inform the Committee of the accidental death of a young person during a strike in the health sector several weeks earlier. Ecuadorian society at large was of the opinion that the right to strike should be limited by the need to protect other human rights, such as the right to life.

Ms. ROSERO (Ecuador) said that the National Women's Council had requested that a mechanism should be put into place to deal with sexual harassment at work and related issues, but that the turnover in government staff had made that impossible.

Government institutions coordinated their efforts. The National Women's Council, for example, had cooperated closely with children's institutions to take action against violence in schools, communities and the family. It had also taken steps to combat the worst forms of abuse of female children and adolescents and was developing a national plan to eliminate the most hazardous forms of work performed by female children and adolescents. Such efforts were carried out in conjunction with NGOs and local government, and were part of a wider government policy to eliminate child labour.

Mr. PACHALA (Ecuador) said that the Government had adopted a system of wage equalization to ensure that the minimum wage kept pace with the cost of the consumer basket. With regard to a question about the connection between the high level of unemployment and the massive redundancies that had taken place in the civil service, he noted that the Government had not dismissed workers, but had offered them buyout packages in an attempt to make the civil service more cost-effective. In certain institutions where funds were not available for buyouts, business training had been provided for staff members who had resigned voluntarily, so as to provide them with a capacity to generate income upon leaving the civil service.

Ms. BRAS GOMES asked what steps the Government was taking to lower the debt of the social security system. She requested more information on the programme to provide poor women with benefits.

Ms. ROSERO (Ecuador) said that wage levels for men and women in the public sector were theoretically the same, but that in practice they varied considerably from one sector and institution to another. One of the aims of recent Administrations had been to standardize wage levels, and the National Women's Council had intervened to ensure that such measures did not adversely affect the incomes of women civil servants. Efforts at standardization involved the development of a single wage schedule for all civil servants, under a broader policy of wage equalization and unification.

The Free Maternity and Child Care Act, adopted in 1998, provided services for sexual and reproductive health, obstetrical care and health care for children under 5. In 2003 the programme implemented under the Act had provided coverage to some 1.8 million persons; in 2004 it was expected to cover 2.4 million persons, including 1.6 million women and 800,000 children under 5. Among the services included were prenatal, perinatal and postpartum care, family planning, and the screening of pregnant women for uterine and breast cancer, HIV/AIDS and congenital birth defects of the foetus. The resources allocated to the programme totalled US\$ 20 million, provided from the Solidarity Fund administered by State-run enterprises, and from excise tax revenues. Efforts were currently under way to increase the resources available to the programme.

Mr. PACHALA (Ecuador) said that the Government's debt to the Ecuadorian Social Security Institute had decreased to approximately US\$ 2 billion thanks to a range of measures, including the creation of the Solidarity Fund for social projects supported by the revenues from the State-owned electricity and telephone companies and the oil industry. On the issue of labour legislation, he said that there were strict regulations to protect workers from unfair dismissal. Any employer found by a labour inspector to be guilty of unlawful dismissal could be forced to pay compensation.

Articles 10-12 of the Covenant

Mr. ATANGANA asked what measures were being taken to reconcile the fact that children were obliged to attend primary school with the high rate of child labour in Ecuador. He would like the delegation to clarify the age of majority, as the Civil Code was somewhat vague in that respect and appeared to use puberty as a benchmark. He asked whether there were any obstacles preventing victims of trafficking, physical violence or sexual abuse from seeking legal remedies. For instance, were women discouraged from reporting violations of their rights in the name of honour? He expressed concern about the high rate of prostitution among girls and young women in Ecuador. Not enough was being done to address the problem.

Mr. KOLOSOV said that he had been a member of the Committee on the Rights of the Child in 1998 when it had examined the situation in Ecuador. His attention had been drawn to the fact that boys as young as 6 years old were being employed in the slums around Quito to polish decorative stones in exchange for food and that many of those boys suffered health problems as a result. The local municipalities had condoned such work, on the ground that the boys were receiving professional training. He wondered whether any steps had been taken to protect the boys and whether the labour inspectors monitored working conditions in the informal sector. He had also been alerted to the fact that many families were living in very poor conditions in the swampy areas of Guayaquil. Alarming, the municipal authorities had not been able to indicate the infant mortality rate in those areas because of the lack of birth registration. The delegation should indicate whether any progress had been made since 1998.

Mr. SADI asked whether there were any health reasons to explain the high rate of disability in Ecuador.

Ms. BRAS GOMES said that, after her mission to Ecuador in 2001, the Special Rapporteur of the Commission on Human Rights on the human rights of migrant workers had drawn attention to the difficult situation of the families of migrants. It would be interesting to

know whether the Government had acted on the Special Rapporteur's recommendations in that regard and whether the fund set up under the programme for the development of Ecuadorian migrants and their families had become operational. She would also like to know the extent of the sexual exploitation of children and adolescents in Ecuador and what measures were being taken to implement the Stockholm Declaration and Agenda for Action adopted by the First World Congress against Commercial Sexual Exploitation of Children.

It appeared that chronic underfunding and mixed priorities had led to a crisis in the health sector. The situation in rural areas was of particular concern. Basic framework laws were not sufficiently regulated or implemented, and the overall situation had apparently been made worse by the poor management of the health sector at various levels and by the political way in which it had been run. The delegation should provide updated information on the situation and indicate, in particular, whether there had been any positive changes in the health protection provided to those in greatest need. She would also like further information about the "mixed" health care system that made allowances for cultural differences in the way patients were treated and involved the use of both indigenous and western medicine. She wondered whether the pilot projects mentioned in the report had yielded positive results and had been extended to other parts of the country.

Mr. MALINVERNI said that the definition of rape provided in the Penal Code was very limited: victims either had to be under the age of 12 years or unable to offer any resistance. It was therefore very difficult for women to prove that they had been raped; consequently the majority of cases went unreported. He would like some statistics. He would also like information on the measures taken by the Government to reduce the high rate of teenage pregnancies. For instance, what methods of contraception were recommended to girls?

He had been alarmed by reports that children as young as 8 years old were working up to 13 hours a day in the banana-growing sector and that they were obliged to continue working while the crops were sprayed with chemicals. He was equally concerned by reports that approximately 5,000 children were involved in prostitution. On the issue of poverty, he said that, according to figures provided by the World Bank, 54 per cent of the rural population had been classified as poor in 1995. By 2003, that figure had reached 88 per cent. The delegation should explain why there had been such a dramatic rise in poverty and what measures were being taken to reverse that trend.

Mr. TEXIER asked whether the crop fumigation campaign being carried out under Plan Colombia had any environmental consequences for Ecuador and whether there had been an increase in the number of Colombian refugees entering the country as a result of the Plan. In that connection, he asked what was being done to protect the rights of Colombian refugees in Ecuador, in particular in terms of access to housing and health care. He also asked whether any specific measures had been adopted to improve the access of the population to generic drugs.

Mr. PILLAY said that he would like to know the reasons behind the dramatic increase in urban poverty and wondered whether a poverty reduction strategy was in place. If so, the delegation should indicate whether the strategy targeted the most disadvantaged and marginalized groups and whether it incorporated the rights enshrined in the Covenant and the Committee's statement on poverty (E/C.12/2001/10). He would also like to know whether the Government took into account its obligations under the Covenant when negotiating with international financial institutions and whether it had tried to seek any debt forgiveness. He would also like to know the delegation's views on the allegation by a non-governmental organization that the State party was failing to meet its obligations to guarantee the right to food by allowing the destruction by the shrimp industry of the mangrove forests that sheltered the main food resources of the population on the coast.

It would be useful to know how the Government intended to address the housing problem. Some 88,000 people were reported to be homeless and over half of the urban population was living in temporary settlements without any basic services. As the housing incentive system seemed to benefit only the richest 40 per cent of the population, he would like to know whether the State party intended to take remedial action and provide housing credits and subsidies to low-income and disadvantaged groups. Lastly, he enquired what steps had been taken to protect indigenous populations from being forcibly evicted from their traditional lands and to ensure that the Government complied with the guidelines set out in the Committee's general comment No. 7 on forced evictions.

Mr. TIRADO MEJÍA said that, given the scale of the banana-growing industry in Ecuador, there was no reason why the Government should not be able to enforce child labour regulations in the sector. The State party indicated in its report that children as young as 14 could be employed as long as the work was appropriate, did not prevent the continuation of education, and had no harmful effects on health. However, it had subsequently indicated that the minimum age for work was 15. He wondered whether the legislation had been amended since the preparation of the report. He would also like to know whether the new Children's and Family Codes, which had been under consideration at the time of drafting the report, had been adopted, and, if so, what protection was accorded to children under those codes. The delegation should clarify the statistics provided in reply to question 27 in the list of issues, as they did not appear to make sense. He failed to understand how, if 79 per cent of working children attended school during the daytime and the remainder either attended evening classes or were involved in distance learning programmes, approximately 390,000 working children had not completed basic education.

He would welcome information about the access of the Ecuadorian population to generic drugs. The issue was of particular importance as many Latin American countries, including Ecuador, were taking steps to enter into free trade agreements that would subject them to strict patenting laws designed to protect the United States of America. He would also be interested in knowing whether any measures had been taken to reduce the incidence of malaria in Ecuador, given that 50 per cent of the population lived in malaria-prone areas and that the fatality rate of the disease was much higher than that of HIV/AIDS.

The meeting rose at 6 p.m.