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STATES PARTIES TO THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9

COLOMBIA*

24 April 1978

ARTICLE 6. THE RIGHT TO WORK

The Political Constitution of the Republic of Colombia states that work is a social obligation and shall therefore enjoy the special protection of the State (see annex 1: Civil rights and social guarantees - Colombian Constitution). In order to apply this principle and protect the worker, the Government has drawn up a set of standards, laws and regulations provided for in the Labour Code and in the Constitution of the Republic of Colombia, thus ensuring:

1. Freedom of work. No person may prevent others from working or from engaging in the occupation, industry or trade of their choice, provided that it is lawful, without a decision of the competent authority aimed at protecting the rights of workers or of society in the cases envisaged by law (Substantive Labour Code, art. 8).
2. Equality of workers. All workers are equal before the law and have the same protections and guarantees; consequently, any legal distinction between workers on the basis of the intellectual or physical nature of their work, type of work or compensation received for work is abolished, except as provided by law (Substantive Labour Code, art. 10).
3. Right to work. Everyone has the right to work and to free choice of occupation or trade, within the norms prescribed by the Constitution and by law (Substantive Labour Code, art. 11).

* The materials referred to in this report as annexes 1 to 21 are available for consultation in the Secretariat files in their original language, as received from Colombia.

4. Remuneration for work. All work for an employer must be remunerated (Substantive Labour Code, art. 27).

5. Full employment. The State may intervene, by means of law, to provide for the full employment of human and natural resources, within a wage and income policy under which the principal objective of economic development shall be social justice and the harmonious and integrated advancement of the community and of the proletarian classes in particular (see annex 1: Constitution, art. 32).

6. In Colombia, the organization and control of the labour market is carried out by the Employment and Human Resources Division of the Ministry of Labour and Social Security. In order to perform this work, the Ministry of Labour has regional offices throughout the country which advise enterprises and workers in matters relating to the labour market.

Official employment agencies have been established in Colombia (Decree 2676/71) for the purpose of supplying permanent or temporary workers to employers (individuals or companies).

The Ministry of Labour and Social Security, through the Employment and Human Resources Division and by means of labour inspection, supervises and controls the placement and employment agencies and services which operate in the country by requesting and making visits and imposing any penalties that may be incurred.

7. Technical and vocational guidance and training programmes. In this respect, the important work carried out by the National Apprenticeship Service (SENA) should be noted (see annex 2: SENA; annex 3: Apprenticeship contract).

In recent years many universities and training centres, both public and private, have been established, providing access to higher education in various fields at the technical and professional levels (see annex 4: Higher education in Colombia, 1976).

8. Protection against arbitrary termination of employment. Colombian law protects the worker against termination of employment when the decision is taken without just cause, in accordance with the provisions of article 64 of the Substantive Labour Code (see annex 5), and, consequently, when the causes for dismissal are not as laid down in article 62 of the Substantive Labour Code (see annex 5). For the practical aspects of termination of the work contract, see annex 6; for the table of compensation by the employer in case of unilateral termination of the work contract without just cause, see annex 6.

9. Unemployment. To show the level of employment and unemployment in Colombia, a set of statistical tables prepared by the National Statistics Department (DAINE) in June 1977 is attached (see annexes 7 and 8).

The statistical data show the employment and unemployment index in seven cities, for a total population of 7,179,672, comprising 3,354,547 males and 3,825,125 females. The aggregate population of working age (over 12 years) is 5,285,034; when students, domestic workers, disabled persons and others are allowed for, the economically active population numbers 2,589,135, of whom 263,830 are unemployed; thus, the unemployment index for the seven cities is 10.2 per cent.

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

A. Remuneration

1. Article 143 of the Colombian Labour Code guarantees fair remuneration on the basis of the following principle:

Equal pay for equal work. Equal work shall, if the post, the working hours and the conditions of efficiency in which it is performed are also equal, entitle the worker to equal pay, including all the components referred to in article 127.

Article 127. Components: pay consists not only of fixed or regular remuneration but of everything received by the worker in money or in kind as compensation for his services, whatever its form or designation, such as bonuses, extra wages, customary allowances, compensation for extra work or overtime payment for work on obligatory rest days, percentages of sales, commissions or shares in profits (see annex 9: Wages).

2. Minimum wage. This is the wage every worker is entitled to receive in order to provide for the normal material, moral and cultural needs of himself and his family (Substantive Labour Code, art. 145).

Factors in fixing the minimum wage. The cost of living, working conditions, the economic capacity of enterprises and employers and conditions in each region and activity must be taken into account in fixing the minimum wage (Substantive Labour Code, art. 146).

Procedure for fixing the minimum wage. The minimum wage may be fixed by collective contract or agreement or by arbitral award. The Government, through decrees which will apply for the length of time indicated in them, may fix minimum wages generally or for any region or any occupational industrial, commercial, farming or forestry activity in a particular region, after hearing the views of committees in which employers and workers are represented on equal terms (Substantive Labour Code, art. 147).

Legal effect. The fixing of a minimum wage automatically amends work contracts providing for a lower wage (Substantive Labour Code, art. 148).

Practical aspects of wages: for special provisions concerning the minimum wage, modalities of payment and a table of the minimum wage in Colombia, see annex 9.

3. Payments not constituting wages. Neither ex gratia amounts occasionally received by the worker, such as casual bonuses, allowances and gratuities, nor anything received in money or in kind not for his profit or to provide for his needs or increase his possessions but to enable him to carry out his duties fully, such as entertainment allowances, means of transport, working materials or other similar items, nor special social benefits shall constitute wages (Substantive Labour Code, art. 128).

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B. Safe and healthy working conditions

Every employer or enterprise is required to provide and maintain working premises and equipment guaranteeing safe and healthy conditions for workers, to arrange medical examinations for employees and to take such health and safety measures as are necessary for the protection of the life, health and morals of employees, in accordance with the relevant regulations established by the Ministry of Labour (Substantive Labour Code, art. 348).

Employers with 10 or more full-time workers must draw up special health and safety regulations and submit them for review and approval by the Labour Medicine, Safety and Health Section, Labour Inspection Division, Ministry of Labour and Social Security (Substantive Labour Code, art. 349).

Content of regulations: The special regulations provided for in the preceding article must, as a minimum, establish standards, in the following areas:

1. Personal safety and health of workers.
2. Prevention of accidents and diseases.
3. Medical services, healthy conditions of premises and, where appropriate, day-care facilities.
4. Prohibition of the provision of living accommodation on the premises of industries that are dangerous or present a health risk.
5. The provision of chairs for workers in stores, shops, factories, workshops and similar establishments.
6. In the case of work involving electric welding, the conditions governing premises and protective equipment for workers.
7. Special standards for mining and oil companies.
8. Special measures for electric power stations and warehouses containing explosives, inflammable materials or other dangerous substances.
9. Health conditions in enterprises engaged in agriculture, livestock production and forestry (Substantive Labour Code, art. 350).

For health and safety regulations, see annex 10.

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

Rest with pay. The employer is required to give Sunday rest with pay to all workers. The minimum duration of this rest period is 24 hours (Substantive Labour Code, art. 172).

Remuneration. In respect of Sunday rest, the employer must pay the normal daily rate to employees who are required to work on all working days of the week and who do not miss work or, if they miss work, do so for just cause or through the fault of or by order of the employer. Just cause includes accidents, sickness, domestic crisis, force majeure and acts of God. Workers are not entitled to payment in respect of Sunday rest if they are in receipt of a monetary allowance or of compensation for sickness or occupational accident for the same day. For the purposes of this article, public holidays do not break the continuity of a work period and are counted as working days for the worker (Substantive Labour Code, art. 173).

Remuneration in respect of public holidays. All workers are entitled to rest on days declared to be national holidays, whether civil or religious (Substantive Labour Code, art. 177).

Work on Sundays and holidays. On Sundays and holidays, workers are paid at twice the normal rate to which they are entitled for working a full week (Substantive Labour Code, art. 179).

Compensatory rest. Workers who regularly work on obligatory rest days are entitled to rest with pay in compensation, without prejudice to the monetary remuneration provided for in the preceding article (Substantive Labour Code, art. 180).

Annual holidays with pay. Workers who have been employed for a full year are entitled to 15 working days' paid holiday. Professionals and assistants employed in private anti-tuberculosis establishments or in work involving the use of X-rays are entitled to 15 days' paid holiday for every six months of service (Substantive Labour Code, art. 186).

Holiday period. The holiday period must be designated by the employer at intervals of not less than one year, and the holiday must be granted officially or at the request of the worker, without prejudice to his employment or his entitlement to rest days (Substantive Labour Code, art. 187).

Monetary compensation. Monetary compensation in lieu of holidays is prohibited; however, the Ministry of Labour may authorize the payment of monetary compensation for up to half the holiday period in special cases, where the national economy or the industry would be adversely affected (Substantive Labour Code, art. 189).

During the holiday period, a worker shall receive the normal wage he is earning on the first day of the holiday. Accordingly, the only payments not included in holiday pay are those made for work performed on obligatory rest days and for additional work or overtime. When a wage is variable, holiday pay shall be calculated on the basis of the worker's average earnings in the year immediately preceding the date on which the holiday begins (Substantive Labour Code, art. 192).

Maximum working hours. The legal maximum for regular working hours is eight hours per day and 48 hours per week, subject to the following exceptions:

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(a) For discontinuous or intermittent activities and activities requiring nothing more than vigilance, the maximum working day may not exceed 12 hours;

(c) For work that presents a particular health risk, or is particularly dangerous, the Government may order an appropriate reduction in the working day;

(d) For work which is authorized for persons under 16 years of age, the working day may not exceed six hours (Substantive Labour Code, art. 161).

Exceptions in respect of certain specific activities. The regulations concerning legal maximum working hours do not apply to the following workers:

(a) Persons in managerial positions;

(b) Persons in domestic service, whether in urban or rural areas;

(c) Persons engaged in discontinuous or intermittent activities or activities requiring nothing more than vigilance, when the workers reside at their place of work (Substantive Labour Code, art. 162).

Distribution of working hours. The hours worked each day must be divided into at least two periods, with a break suited to the nature of the work and the needs of the workers. The break is not counted as part of the working hours (Substantive Labour Code, art. 167).

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ARTICLE 8. TRADE UNION RIGHTS

Right of association and right to strike. The Colombian State guarantees the right of association and the right to strike under the conditions specified by the Constitution and by law (Substantive Labour Code, art. 12).

Under article 12, the State guarantees employers, workers and all self-employed persons the right to associate freely in defence of their interests by forming professional or trade union associations, which may in turn federate. In exercising their rights and fulfilling their obligations, trade unions must comply with the standards laid down by law, and in matters of public policy they are subject to government inspection and supervision (Substantive Labour Code, art. 353).

Protection of the right of association. Article 309 of the Penal Code prohibits any person from violating the right of association in trade unions. Any person who by violence or threats in any way violates the right of free association in trade unions is liable to a fine of from 200 to 2,000 pesos, which will be imposed by the competent labour administration official when all the facts have been established. This fine will be repaid if a monetary penalty is imposed in subsequent criminal proceedings (Substantive Labour Code, art. 354).

Profit-making activities. Unions may not have the purpose of engaging in business or any other activities for profit (Substantive Labour Code, art. 355).

Classification of workers' unions. Unions of workers are classified as follows

- (a) Basic, if formed by individuals of more than one profession, occupation or speciality employed in the same enterprise, establishment or institution;
- (b) Industrial, if formed by individuals employed in more than one enterprise in the same industry;
- (c) Guild, if formed by individuals of the same profession, occupation or speciality;
- (d) General, if formed by workers of dissimilar or unrelated occupations.

The latter may be formed only in places where there is not the minimum number of workers engaged in the same activity, profession or occupation required for the formation of a guild, and then only for so long as that circumstance continues to exist (Substantive Labour Code, art. 356).

Freedom of senior employees to join unions. Workers may freely join and leave trade unions. Conditions and restrictions concerning admission, the return of dues or contributions to members in the case of either voluntary withdrawal or expulsion, and participation in any mutual benefit institution set up by the union with members' contributions are governed by the statutes. The statutes may

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restrict the admission of senior employees to basic unions (Substantive Labour Code, art. 358).

Minimum number of members. In order to be established or to continue in existence, any union of workers must have not less than 25 members, and any union of employers must comprise not less than five independent employers (Substantive Labour Code, art. 359).

Membership of more than one union. No person may be a member of more than one union of the same class or activity at the same time (art. 360).

Establishment. At the founding meeting of any union, the founders must draw up an "act of establishment" setting forth all their names, their identity documents, their places of residence, the common activity in which they are engaged and the name and purpose of the association. At the same meeting or at subsequent meetings, the statutes of the association shall be discussed or approved and temporary officers, including at least a chairman, a vice-chairman and a secretary, shall be appointed. Temporary appointments of a treasurer and an oversight officer (fiscal) shall also be made. The chairman and secretary shall be responsible for taking all necessary steps to secure recognition of the corporate status of the association (Substantive Labour Code, art. 361).

Legal effect of corporate status. No union may perform any act in that capacity, nor carry out the functions assigned to it by law and by its statutes, nor exercise the rights belonging to it until its corporate status has been recognized, and then only so long as such recognition continues (Substantive Labour Code, art. 372).

For trade union powers and functions, other functions, prohibitions and penalties, and internal regulations, see annex 11.

Right to strike. The right to strike is a means of applying pressure which Columbian workers have been given by law in order to seek a solution to collective labour disputes and because Colombia does not recognize "management-provoked strikes", during which the employer is obliged to continue to pay wages.

Definition of strikes. "Strike" means the temporary or peaceful collective suspension of work by the workers of an establishment or enterprise, for economic and occupational purposes of which their employers have been notified after the steps laid down in this title have been taken (Substantive Labour Code, art. 429).

Prohibition of strikes in the public services. In accordance with the Constitution, strikes are prohibited in the public services (Substantive Labour Code, art. 430).

Calling and conduct of strikes. If direct negotiations between the parties have ended without a settlement to the dispute being reached, the workers may decide either to call a strike or to apply to the Ministry of Labour for submission

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of the dispute to an arbitration tribunal for a binding settlement. The decision to strike or to seek arbitration shall be taken, in a secret ballot, by an absolute majority of the workers of the enterprise or by the general assembly of the union or unions to which more than half the workers belong. The labour authorities shall be notified before the assembly meets, in order that they may attend and observe its proceedings (Substantive Labour Code, art. 444).

Leaving the place of work. The collective cessation of work, when the workers decide to strike, may take place only after five days have elapsed since the strike was called, and not more than 30 days thereafter. The workers must leave the place of work. During the period referred to in this article, the Government may, through the Ministry of Labour, intervene in the settlement of the dispute as a mediator, and the parties to the dispute must supply it with any information it may request in order to make its efforts to avert the strike more effective (Substantive Labour Code, art. 445).

Form of strike. When the preliminary direct negotiation and conciliation procedures have been completed, if the union or a group of non-unionized workers calls a strike, it must be conducted in an orderly and peaceful manner (Substantive Labour Code, art. 446).

Strike committee. The leaders of the movement may set up strike committees to serve as channels of information for the workers and of communication with the employers or their representatives (Substantive Labour Code, art. 447).

For functions of the authorities and illegal collective suspension of work, see annex 12.

ARTICLE 9. RIGHT TO SOCIAL SECURITY

In Colombia, social security for workers is regarded as a fundamental obligation of all employers towards their employees; to fulfil this requirement, standards and regulations have been laid down covering:

Contributions by all employers. General rule. All employers are required to pay the contributions specified in this title, with the exceptions provided therein. Such contributions cease to be the responsibility of employers when the risk is legally assumed by the Colombian Social Security Institute, in accordance with the regulations of the Institute (Substantive Labour Code, art. 193).

For a definition of occupational accidents and disease and a list of occupational diseases, see annex 13.

Diseases presumed to be occupational diseases. Only diseases included in the list approved under article 201 (annex 13) are presumed to be occupational diseases (art. 202).

For the effects of occupational accidents and the benefits payable in respect of such accidents, see annex 14.

Article 209 deals with the assessment of permanent incapacity resulting from occupational accidents, application of the approved list, cases not included in the list, payment of death benefit, and death consequent on the accident or disease (see annex 15).

Basic wage for benefit purposes. For payment of the specified cash benefits, the basic wage is the wage being paid at the time when the accident occurs or the disease is diagnosed. If the wage was not fixed, the basic wage for this purpose is the average amount earned by the worker during the year of employment immediately preceding the accident or disease or during the entire period of employment, whichever is smaller (Substantive Labour Code, art. 218).

Insurance for occupational risks. The employer may, entirely at his expense, take out insurance with an insurance company against the risks of occupational accident and occupational disease for his employees; however, the employer shall in any event be the party liable to the employee or his beneficiaries for the benefits specified in this chapter (Substantive Labour Code, art. 219).

Monetary allowance in cases of non-occupational disease. In case of verified incapacity for work due to a non-occupational disease, the employee is entitled to a monetary allowance from the employer for up to 180 days, at the rate of two thirds of his wages for the first 90 days and one half of his wages for the remaining period (Substantive Labour Code, art. 227).

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Maternity protection:

(1) Maternity leave with pay. Every pregnant female worker is entitled to eight weeks maternity leave, paid at the rate of the wage she was earning at the beginning of the leave period.

(2) Where there is no fixed wage, as in the case of jobbing or piece-work, the basic wage is the average amount earned by the employee during the last year of employment or during the entire period of employment, whichever is smaller.

(3) In order to be granted leave as provided for in this article, the employee must submit to the employer a medical report certifying:

- (a) The employee's pregnancy;
- (b) The probable date of confinement;
- (c) The date on which the leave should begin, which must be not less than two weeks before confinement (Substantive Labour Code, art. 236).

Leave with pay in case of miscarriage:

(1) Any employee who, in the course of pregnancy, suffers a miscarriage or a non-viable premature birth is entitled to two to four weeks' leave, paid at the rate of the wage she was earning at the beginning of the leave period. If the birth is viable, the provisions of the preceding article shall apply.

(2) In order to be granted leave as provided for in this article, the employee must submit to the employer a medical certificate containing the following:

- (a) A statement that the employee has suffered a miscarriage or a premature birth, indicating the date on which it occurred;
- (b) An indication of the rest period required by the employee (Substantive Labour Code, art. 237).

Paid rest periods for nursing mothers:

(1) The employer is required to allow the employee two 30-minute breaks during the working day to nurse her child, without any corresponding reduction in pay, so long as the child is less than six months of age.

(2) The employer is required to allow more breaks than specified in the preceding subparagraph if the employee submits a medical certificate stating why this is necessary.

(3) In order to fulfil the requirement laid down in this article, employers must provide a room where the mother can nurse the child, or an appropriate place for tending the child, in premises adjacent to the woman's place of work.

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(4) Employers may make contractual arrangements with the child welfare services to provide the facilities referred to in the preceding subparagraph (Substantive Labour Code, art. 238).

Prohibition of dismissal:

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

(2) Dismissal is presumed to have occurred by reason of pregnancy or because the woman was nursing a child if it took place during the period of pregnancy or within three months following confinement and without the authorization of the authorities referred to in the following article.

(3) Any worker so dismissed without official authorization is entitled to the payment of compensation equivalent to 60 days' wages, in addition to any compensation and benefits payable under the work contract, and to payment in lieu of the eight weeks' paid leave referred to in this chapter if such leave has not been taken (Substantive Labour Code, art. 239).

Funeral expenses of workers. General rule. Every employer is required to pay funeral expenses for any of his employees, up to a sum equivalent to the last month's wages. This requirement does not apply to casual or transient workers (Substantive Labour Code, art. 247).

Termination allowance. On termination of the work contract, every employer is required to pay to his employees, and to other persons specified in this chapter, a termination allowance equivalent to one month's salary for each year of service, and a proportionate amount for fractions of a year. For interest on termination allowances, see annex 16.

Retirement pension. Any worker employed by an enterprise having a capital of 800,000 pesos or more who attains or has attained the age of 55 in the case of a man, or the age of 50 in the case of a woman, after 20 years of continuous or discontinuous employment with that enterprise, whether prior or subsequent to the entry into force of this Code, shall be entitled for life to a retirement or old-age pension equivalent to 75 per cent of the average wages earned in the last year of employment.

An employee who retires or is retired without having attained the qualifying age shall be entitled to a pension on attaining that age, provided that he has fulfilled the requirement of 20 years' employment.

The pensions referred to in the preceding article shall be not less than the highest monthly minimum wage or more than 22 times that wage (Substantive Labour Code, art. 260).

For assumption of this risk by the Social Security Institute, see annex 17.

For adjustments to retirement, invalidity, old age and survivors' pensions in the public, official, semi-official and private sectors, see annex 18.

For survivors' pensions, see annex 19.

Entitlement to allowances in cases of non-occupational disease. Any worker employed by an enterprise having a capital of 800,000 pesos or more who suffers incapacity for work due to a non-occupational disease shall be entitled, in addition to the monetary allowance provided for in article 227, to the necessary medical, pharmaceutical, surgical and hospital treatment for up to six months (Substantive Labour Code, art. 227).

Invalidity allowance. If as a result of a non-occupational disease or an injury other than an occupational accident, or of any deterioration of physical or mental capacity not wilfully caused, a worker suffers an invalidity which renders him incapable of obtaining a wage of more than one third of his previous earnings, he shall in addition be entitled to the following cash benefits:

(a) In case of permanent partial invalidity, one to ten months' wages, according to medical certification of the degree of invalidity;

(b) In case of permanent total invalidity, a monthly invalidity pension equivalent to one half of the average monthly wage earned during the last year, payable for up to 30 months so long as the invalidity continues;

(c) In case of severe incapacity, the worker shall be entitled, for a period of 30 months, to a monthly invalidity pension equivalent to the retirement or old-age pension.

For the assessment table for permanent partial incapacity resulting from non-occupational accidents or diseases, see annex 20. For the administrative organization dealing with labour matters, see annex 21.