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

Reports submitted in accordance with Council resolution 1988 (LX)
by States Parties to the Covenant concerning rights covered by
articles 6 to 9

ECUADOR

19 September 1977

1. With reference to your letter G/SO 221/912 of 1 June 1977, I am pleased to transmit to you the first report of the Government of Ecuador submitted in accordance with articles 16 and 17 of part IV of the International Covenant on Economic, Social and Cultural Rights and with Economic and Social Council resolution 1988 (LX). In so far as possible, the general guidelines which you prepared pursuant to the above-mentioned resolution have been adhered to.
2. In Ecuador, two State institutions - the Ministry of Social Welfare and Labour and the Ecuadorian Social Security Institute - are responsible for giving effect to the rights proclaimed in articles 6 to 9 of the International Covenant on Economic, Social and Cultural Rights, which are the subject of this report. The legal instruments governing the work of these institutions are the Labour Code and the Compulsory Social Insurance Act respectively, the texts of which are transmitted herewith.
3. Under the 1945 Constitution of the Republic currently in force, work in its different forms is a social duty in Ecuador and enjoys special protection under the law in order to guarantee to workers the minimum conditions of a decent existence.
4. Labour legislation is of an organic and systematic nature, and under this legislation no one can be required to work except under contract, save in those cases expressly stipulated by law. Fulfilment of the work contract is obligatory for management and labour, and collective agreements are given special protection. Any provision which implies the waiver, diminution or modification of any right of workers is null and void; workers must receive a minimum remuneration sufficient to cover their personal and family needs, and this remuneration must be unattachable, except for the payment of alimony as provided by law.

5. Equal remuneration must be paid in respect of equal work, without distinction as to sex, race, nationality or religion. A worker's wages are protected against any reduction or discount not authorized by law and may not be paid in kind or with promissory notes, tokens or forms of payment other than legal tender, nor may the period in respect of which wages are paid exceed one month.
6. The maximum working day is eight hours, with rest on Saturday afternoons, so as not to exceed 44 hours per week, except as provided by law. Night work is shorter than day work, and a salary differential is paid in respect of it; neither women nor minors under the age of 18 are permitted to perform night work. The latter provision reflects the State's policy of protecting women and minors. The maximum permissible period of actual underground work is six hours daily, and the total working day may in no case exceed seven hours.
7. Every worker is entitled to a minimum uninterrupted weekly rest period of 42 hours as well as annual holidays. Annual holidays, weekly days of rest and those holidays established by law are remunerated.
8. The Ecuadorian State recognizes and guarantees the freedom of association of employers and workers in the pursuit of their economic and social activities as well as the right of public employees to organize. It also recognizes the worker's right to strike and the employer's right to order lockouts, and it regulates the exercise of those rights. Improper dismissal is punishable by fines prescribed by law. In industries and activities requiring technical knowledge, employers are required to provide apprenticeship programmes as prescribed by law.
9. Special provisions exist for the protection of working mothers. Pregnant women may not be dismissed from their employment, nor may they be required during a period prescribed by law to perform activities entailing great physical exertion. The law prescribes the pre-partum and post-partum periods for which compulsory leave with pay must be provided, without loss of any of the rights arising from the employee's work contract. Nursing mothers are given the necessary time off to feed their children.
10. The employment of minors under the age of 14 is prohibited, except as provided by law, and there is specific regulation of the employment of minors under the age of 18. Health and safety conditions at work are regulated for the purpose of safeguarding the health and lives of workers. In addition, State agencies promote the development of technical standards of industrial health with a view to protecting workers against risks.
11. Workers share in the profits of an enterprise in the manner and to the extent prescribed by law, which also determines bonuses and seniority payments and lays down the requirements for pensions, to which workers are entitled. The sums owed by employers to workers in respect of salaries, wages, compensation and pensions constitute first-class privileged debt claims, taking precedence even over mortgage payments.

12. Collective labour disputes are submitted to conciliation and arbitration commissions that are composed of employers and employees and headed by an official of the Ministry of Labour. Individual disputes are settled by labour tribunals organized in such a way as to ensure prompt proceedings and accurate judgements at no cost whatsoever to the worker. Urban and rural labour inspection ensures compliance with labour legislation.

13. The foregoing constitutional principles are translated into rules of positive law relating to labour, the ultimate expression of which is the Labour Code. The Code is divided into eight major titles, namely "Individual labour contract", "Collective labour agreements", "Working conditions", "Work risks", "Labour associations and collective disputes", "Organization, jurisdiction and procedure", "Penalties" and "Prescription".

14. Under each of these titles are to be found various sections and articles dealing with the rights recognized under the International Covenant on Economic, Social and Cultural Rights with which this report is concerned. Thus, as regards article 7 of the Covenant (the right to just and favourable conditions of work), chapters I (nature and forms), II (capacity to contract), III (effects of the work contract), V (maximum working day, obligatory rest periods and holidays), VI (salaries, wages and bonuses and additional compensation), VII (employment of women and minors), X (termination of the work contract with notice and dismissal) and XI (reserve fund, availability and retirement) deal comprehensively with the right of every individual to the opportunity to earn a living through work freely chosen and accepted, including the right to guidance and technical and vocational training, and the preparation of programmes, rules and techniques for promoting constant economic, social and cultural development and full and productive employment in conditions which safeguard the fundamental political and economic freedoms of the individual.

15. Chapters I and II of the Labour Code guarantee the right of every individual to establish trade unions and to join the trade union of his choice, subject only to its by-laws, for the purpose of promoting and protecting his economic and social interests. In title IV, chapters I (identification of risks and the employer's liability), II (accidents), III (occupational diseases), IV (compensation) and V (prevention of risks, safety and health measures, first aid facilities and impairment of the capacity to work) deal with on-the-job safety and health and provide for enforcement in accordance with the provisions of the Covenant.

16. As regards article 9 of the International Covenant on Economic, Social and Cultural Rights, which relates to the right of the individual to social security, including social insurance, it should be pointed out that the Ecuadorian social insurance scheme is national in scope and is administered by the Ecuadorian Institute of Social Security, a self-governing agency having legal personality and funds distinct from those of the national Treasury. The Institute is exempt from all national or local taxes, except as provided by specific laws. Its income is not subject to encumbrance of any kind.

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17. As to the principal laws, regulations and rules relating to the social security scheme, the Ecuadorian Institute of Social Security is governed by the Compulsory Social Insurance Act of 1942, as amended in 1963 and on other occasions, and by its Statute, Regulations, Rules and Decisions, including the resolutions of its Central Board, the resolutions of its Appeals Commission, the resolutions of its various committees (on investments, budget, competitive bidding, lending, etc.), the General Lending Regulations, and the Laws, Ordinances, Regulations and Rules of the Rural Social Insurance Pilot Scheme.

18. The Ecuadorian Institute of Social Security (IESS) falls under the jurisdiction of the Central Board and has a General Manager, who is its legal representative.

19. As regards legislative plans for the near future, a Social Security Code has been drafted in Ecuador and is to enter into force shortly.

20. The Ecuadorian social insurance scheme has an interesting distinctive feature. In addition to providing for normal contingencies such as sickness, maternity, disability, old age, widowhood and orphanhood, industrial accidents, occupational diseases, unemployment and social assistance, it provides other kinds of benefits, such as mortgages for housing, unsecured loans to solve economic problems, emergency loans (in the event of sickness in the family), loans for the validation or restoration of prior service, and automatic credit.

21. This distinctive arrangement, which until recently was not regarded as a feature of social security, has come to be seen, since the Fifth Ibero-American Social Security Congress held in Buenos Aires in 1975, as an additional social insurance benefit in the light of the expanded definition set out by that Congress, according to which "social security includes everything relating to human welfare".

22. In Ecuador, such benefits have been provided from the very inception of social insurance in 1928 with a view to solving the housing problems of participants in the scheme and, at the same time, making a profit from the capital lent out, thus helping to improve the traditional benefits, particularly disability and old-age pensions and death benefits. In addition, public employees, municipal workers, bank employees, employees in the private sector and workers who render services or perform work under a work contract are protected against all of the contingencies mentioned above.

23. Furthermore, self-employed workers and professionals, craftsmen, domestic servants, the secular clergy, coffee graders, fishermen, construction workers, church workers, the administrative staff of agricultural enterprises and, under a special arrangement, independent rural workers living in rural communes are protected against some, or most, of these contingencies.

24. In Ecuador, only agricultural workers, with the exception of those who, as noted above, are covered by the special Rural Social Insurance Scheme, are not protected. This lack of coverage for agricultural workers is due to the great difficulties associated with the occasional, seasonal and low-income nature of their work. Nevertheless, serious studies are being carried out with a view to extending social insurance coverage to this important segment of the population.

25. There are two kinds of health benefits in Ecuador: medical benefits (medical care) and economic benefits (cash payments).
26. The former include medical, surgical, hospital, rehabilitative and preventive care, comprehensive dental care, comprehensive pharmaceutical coverage, and the provision and repair of prosthetic devices. These benefits are provided to all insured individuals, including participants in the rural scheme.
27. Economic benefits are paid when a person covered by the general insurance scheme becomes sick (public employees, bank employees, municipal workers, employees in the private sector and labourers). Such persons receive a money payment amounting to 75 per cent of their average wage or salary in the last three months of contributory service for the first 10 weeks during which they are unable to work and amounting to 66 per cent for subsequent weeks up to a total of 26 weeks, at which time, if the insured is still unable to work, he comes under disability insurance and a pension is paid. In such cases, the period of subsidized contribution is taken to be the period of actual participation.
28. Both medical and economic benefits are provided to participants who have contributed to the scheme for at least six months, at least two of which precede the onset of illness.
29. The victims of industrial accidents and occupational diseases are not eligible for this benefit. These two risks are covered by Occupational Risk Insurance. In addition, participants are entitled to health insurance coverage for six months following the cessation of work. Pensioners are also covered by health insurance under a special arrangement.
30. As regards maternity benefits, participants, including female agricultural workers, are entitled to obstetric, pre-natal, delivery and post-partum care, a cash benefit during the three weeks preceding and four weeks following delivery, a layette, one hour off from work each day to nurse the child and medical care for the child during its first year.
31. These benefits are provided to participants who have contributed for at least six months in the year preceding childbirth. There is no waiting period for female agricultural workers; they are covered from the day on which they become participants in the Rural Social Insurance Scheme.
32. In order to be entitled to disability benefits, the participant must have contributed for at least 60 months and be incapacitated for work by reason of disease or some other physical or mental condition.
33. The disability pension is paid to the participant from the day on which application is made and subject to medical examination. If the disabled individual has been receiving sickness benefits, the pension is paid with effect from the day on which the sickness benefits are discontinued. The pension is equal to 75 per cent of the highest average wage or salary received by the insured person.

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34. When the disabled individual regains his working capacity, his benefits are gradually reduced as follows: first month, by 15 per cent; second month, by 30 per cent; third month, by 45 per cent; fourth month, by 60 per cent; fifth month, by 75 per cent; sixth month, by 90 per cent. After the seventh month, the benefits are discontinued entirely.

35. In addition to the disability benefit, the disabled person is eligible for the following benefits: preventive and therapeutic medical care and rehabilitation for work. A disability prevention service also exists.

36. As a general rule, old-age benefits are provided for insured persons 55 years of age and over who have completed 30 years of service. However, the following formula is used to determine eligibility for retirement:

60 years of age - 25 years of service

65 years of age - 15 years of service

66 years of age - 14 years of service

67 years of age - 13 years of service

68 years of age - 12 years of service

69 years of age - 11 years of service

70 years of age - 10 years of service

Any age - 35 years of service.

37. Another requirement for pension benefit eligibility is the cessation of employment of any kind regulated by law. The amount of the basic pension is equal to 75 per cent of the average remuneration in the five best years of work, to which 1.25 per cent is added for each additional year of work up to 100 per cent of the average remuneration. Retired persons who rejoin the compulsory social insurance scheme may receive both retirement benefits and earnings from employment. When they abandon the new employment, they are entitled to an increase in pension benefits.

38. Under old-age insurance there is also another kind of pension known as the "special reduced" pension, which may be chosen by insured persons who are at least 45 years of age and have 25 years of service. This pension is equal to 45 to 75 per cent of average earnings in the five best years.

39. As regards survivors' benefits, widows' and widowers' pensions are provided under the Ecuadorian social insurance scheme. Those eligible include widows of pensioners, widows of a participant who has completed at least five years of service, and disabled widowers who were dependent on a deceased participant, except when there are children from their marriage.

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40. Eligibility is subject to the following exclusions:

(a) Where the marriage was contracted when the insured person was 60 years of age or older;

(b) Where the marriage was contracted when the deceased was receiving a disability pension, except when there are children from the marriage;

(c) Where, at the time of death, the spouses were separated for more than 10 years;

(d) Where a court decision declares the widower or widow to have been guilty of or an accomplice in the death of his or her spouse;

(e) Where the widow remarries.

41. The widow's or widower's benefit is equal to 40 per cent of the disability or old-age benefit which the deceased was receiving or of the final salary of the deceased. Where there is no widow or children, the benefit may be paid to the dependent mother of the deceased. Where there is no surviving dependent mother, the benefit may be paid to a father who is incapacitated for work and was dependent on the deceased. In these cases, the benefit is equal to 20 per cent.

42. In addition, where there is no surviving mother or father, a survivor's benefit in the amount of 10 per cent is paid to brother(s) or sister(s) of the deceased who are under 18 years of age or incapacitated for work. In general, the amount of the survivor's benefit cannot exceed the amount of the pension received by the deceased.

43. Male children under the age of 18, under 25 if they are students or of any age if they are disabled, are entitled to the orphan's benefit. In addition, daughters who are unmarried, widowed or divorced are eligible, irrespective of age, provided that they were dependent on the deceased and have no other means of support.

44. The amount of the orphan's benefit is 20 per cent of the pension or remuneration received by the deceased, except in the case of orphans who have lost both father and mother; these children receive 40 per cent. There is no discrimination with respect to illegitimate or adopted children.

45. There are two categories of benefits provided in respect of industrial accidents and occupational diseases, namely medical benefits and economic benefits. The benefits for occupational diseases are provided on the same basis as ordinary sickness benefits. However, the victim is entitled to the money payment as from the day following the onset of disability and the benefits can be extended to up to one year. The amount of the payment is 75 per cent of average earnings in the last year of contributions for the first 10 weeks and 66 per cent for the remaining period. If the industrial accident or occupational disease results in an impairment of capacity to work, the insured person is entitled to a benefit calculated on the basis of an internationally recognized type of disability table.

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46. In the event of severe disability, the benefit is 80 per cent of the earnings which the victim would have received. A rehabilitation service exists for the victims of industrial accidents and occupational diseases. The insured person is entitled to immediate medical care in a hospital and is required to notify the social insurance scheme within 72 hours in order to be reimbursed for the expenses.

47. In Ecuador, unemployment insurance as it is known in various other countries does not exist; there is instead a special arrangement which reflects conditions peculiar to the country. This is the "Seguro de Cesantía", which operates in the following manner: if an insured person has worked for at least two years without interruption and ceases to work entirely, he is entitled to receive a one-time lump sum settlement calculated by multiplying his earnings by a variable reflecting his length of service.

48. The Ecuadorian social insurance scheme provides a series of family benefits designed to promote the well-being of participants, e.g. loans for housing and other purposes, study grants for employees, scholarships for handicapped children, special retirement benefits for workers in the graphic industries, assistance for funeral and burial expenses, mortgage life insurance, pawnbroking, a workers' training centre, and commissaries.

49. The benefits provided by the Ecuadorian social insurance scheme are financed from personal contributions in the amount of 9 per cent of wages or salaries, employers' contributions in the amount of 9.5 per cent of wages and salaries, a State contribution equal to 40 per cent of the benefits paid out by the Ecuadorian Institute of Social Security, profits from investments, a fixed yearly sum of 15,600,000 sucres for the Rural Insurance Scheme, which can be increased if the annual budget so requires, and fines, claims and estates of intestates.

50. The social security provisions described above serve to give effect to the requirements laid down in the present Political Constitution of the Republic of Ecuador, which, in article 149, states as follows:

"Social welfare and assistance are indispensable services of the State.
They include primarily:

1. Social insurance, the purpose of which is to protect the insured individual and his family in case of sickness, maternity, disability, old age, widowhood, orphanhood, unemployment and other contingencies; it shall be extended to the maximum number of inhabitants of the country. It shall be financed with reasonable contributions from the State, employers and insured persons.

Social insurance is an inalienable right of workers, including public employees.

Insurance is compulsory for occupational risks and shall be provided at the expense of the employer and under the supervision of the State.

Social insurance shall be administered by autonomous institutions, the managing bodies of which shall include representatives of the State, employers and the insured persons, in the manner prescribed by law.

The social insurance funds or reserves shall not be used for any purpose other than that for which they were constituted."

51. The Government of Ecuador will be pleased to expand on this report and/or promptly answer any questions which the Secretary-General or the Economic and Social Council may raise in connexion with it.

For the Minister, the Director-General for Political Affairs:

(Signed) Hernán Veintimilla Salcedo

List of reference materials appended to the report*

1. Social Insurance Rules and Regulations
(incorporating amendments adopted prior to 31 October 1969).
Volume 1, third edition.
2. Statute of the Social Insurance Medical Department,
in effect since 6 August 1959
(incorporating amendments adopted prior to 30 June 1968).
3. Usted y el IEISS (You and the IEISS)
(National Department of Health Education).
4. Prestaciones del Instituto Ecuatoriano de Seguridad Social
(ABC del Afiliado) No. 10 (Benefits provided by the Ecuadorian Institute of
Social Security - Basic Facts for Participants).
5. Boletín (Bulletin).
Rules, Resolutions and Case Law.
No. 21, January-June 1976.
6. Labour Code
(with latest amendments),
1977.
7. Compulsory Social Insurance Act.

* These reference materials are available for consultation in the files of the Secretariat in their original language as received from Ecuador.