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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

**Concluding observations of the Committee on
Economic, Social and Cultural Rights**

ECUADOR

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Ecuador on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.36) at its 15th, 16th and 17th meetings, held on 5 and 6 May 2004 (E/C.12/2004/SR.15-17), and adopted, at its 29th meeting held on 14 May 2004, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second report of the State party, which was in general prepared in conformity with the Committee's guidelines. The Committee regrets, however, the late submission of the written replies to the list of issues (E/C.12/Q/EQU/1), which impeded its availability in the other working languages of the Committee.

3. The Committee welcomes the open and constructive dialogue with the members of the high-level delegation of the State party.

B. Positive aspects

4. The Committee notes with appreciation that the new Constitution of Ecuador, adopted in 1998, declares that the State party is a multicultural and multiethnic State, and it incorporates a wide range of human rights, including a number of economic, social and cultural rights enshrined in the Covenant.

5. The Committee notes with satisfaction the adoption of the *Plan Nacional de Derechos Humanos del Ecuador* and it welcomes the establishment of the *Defensoría del Pueblo del Ecuador* in 1998 for the promotion and protection of human rights. The Committee also welcomes the important role the State party has played in the adoption of the Andean Charter of Human Rights.

6. The Committee takes note with satisfaction the ratification by the State party of the Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women, as well as the adoption of legislation and creation of institutions and plans to combat discrimination against women, such as the *Ley contra la Violencia a la Mujer y la Familia* of 1995, the *Ley de Amparo laboral de la Mujer* of 1997, the *Plan de Igualdad de Oportunidades* and the establishment of the *Consejo Nacional de Mujeres* (CONAMU) in 1997.

7. The Committee notes with appreciation the cooperation between the State party, and especially its working group of the Inter-Ministerial Public Committee on Human Rights in charge of the elaboration of reports to the United Nations human rights treaty bodies, and the United Nations country team in Ecuador and the Latin American regional office of the United Nations High Commissioner for Human Rights.

C. Factors and difficulties impeding the implementation of the Covenant

8. The Committee takes note that Ecuador has experienced recently a range of natural disasters such as the *El Niño* phenomenon, which have negatively affected the implementation of the rights guaranteed in the Covenant.

9. The Committee takes note that the structural adjustment policies in the State party have negatively affected the enjoyment of economic, social and cultural rights by the population, particularly the disadvantaged and marginalized groups of society. It especially notes the high percentage of the annual national budget (around 40 per cent) allocated to foreign debt servicing that seriously limits the resources available for the achievement of effective enjoyment of economic, social and cultural rights.

D. Principal subjects of concern

10. The Committee is concerned about the lack of independence of the judiciary and the alleged human rights abuses committed by the judiciary.

11. The Committee is concerned that, despite the legal framework in place and the growing influence of indigenous grassroots community groups, indigenous people continue to suffer discrimination, particularly with regard to employment, housing, health and education.

12. The Committee is concerned that, although the Constitution recognizes the rights of indigenous communities to hold property communally and to be consulted before natural resources are exploited in community territories, these rights have regrettably not been fully implemented in practice. The Committee is deeply concerned that natural extracting concessions have been granted to international companies without the full consent of the concerned communities. The Committee is also concerned about the negative health and environmental impacts of natural resource extracting companies' activities at the expense of the exercise of land and culture rights of the affected indigenous communities and the equilibrium of the ecosystem.

13. The Committee is deeply concerned about the de facto discrimination against the Afro-Ecuadorian population in all spheres of life. The Committee regrets that insufficient information was provided with regard to this particular group in the State party's report.

14. The Committee is deeply concerned about the high percentage of people with disabilities in the State party. While noting with appreciation the recent legislation that promotes the rights of people with disabilities, including access to education, employment, transportation, and communication, the Committee regrets that the State party has allocated few resources to ensure access to these services in practice.

15. The Committee expresses its concern about the de facto inequality that exists between men and women in Ecuadorian society despite legislative guarantees of equality, owing to the perpetuation of traditional stereotypes and the lack of implementation of legislative guarantees of equality. Such inequality is reflected in unequal wages for equal work, the high percentage of illiteracy amongst women particularly in rural areas, the low level of representation of women in public service and administration, and limited access to credit, professional work and skilled trades. The Committee is also concerned that insufficient resources are allocated to programmes that aim at eliminating gender-based discrimination.

16. The Committee is concerned about the high percentage of unemployment in the State party and the size of its informal economy.

17. The Committee is particularly concerned that the minimum wage is not sufficient to provide a decent living for workers and their families and that in practice such a minimum wage is not always paid.

18. The Committee is concerned about the insufficient enforcement of health and safety regulations for workers in the State party, particularly in small mines and in banana plantations, and about the high number of occupational accidents. The Committee is also concerned that labour inspections are not carried out regularly, especially in rural areas.

19. The Committee is concerned that the Labour Code in the State party limits the right to set up a trade union section or a business assembly designed to create a labour union section to a required minimum of 30 workers. The Committee is deeply concerned about the wide extent of temporary contracts and subcontracting, and of the obstacles these phenomena have created to workers' exercise of their trade unions rights. The Committee also regrets the limitations to the right to strike contained in the Ecuadorian Labour Code.

20. The Committee is concerned about the severe underfunding of the Ecuadorian Social Security Institute, which has a negative impact on the personal and material coverage provided by the social security system.
21. The Committee is concerned that only a limited percentage of the Ecuadorian population is entitled to social security benefits, especially to sickness and maternity insurance.
22. The Committee, while recognizing the efforts of the State party towards combating child labour, deplores the practice of child labour in the State party, especially in agriculture and domestic work.
23. The Committee is deeply concerned about the high incidence of sexual abuse, prostitution of girls and boys under the age of 18 in urban areas, exploitation of children and the lack of a comprehensive strategy to address these problems.
24. The Committee is concerned about trafficking in minors, especially indigenous minors.
25. The Committee is concerned that domestic violence is widespread and does not constitute a criminal offence in the State party. The Committee is also concerned by the narrow definition of rape as a criminal offence in the Ecuadorian Criminal Code.
26. The Committee is deeply concerned about the persistent and growing level of poverty in the State party, affecting primarily women, children, indigenous and Afro-Ecuadorian communities.
27. The Committee is concerned about the poor housing conditions, the considerable housing shortage and the absence of effective measures to provide social housing for low-income families and the disadvantaged and marginalized groups.
28. The Committee is concerned that, despite the constitutional guarantees of the right of the indigenous people to own property communally, the State party does not provide effective protection for the indigenous people against forced evictions from their ancestral lands.
29. The Committee is concerned about the low coverage, quality and insufficient financial resources available to the health system. The Committee notes that, despite improvements, the maternal mortality rate remains high. The Committee expresses concern about the increasingly high rate of teenage pregnancies.
30. The Committee is concerned about the enjoyment of the right to health by all people in the State party and particularly with regard to access to generic medicine.
31. The Committee is concerned about the high rate of illiteracy and school dropouts in the State party. The Committee is particularly concerned in this regard about the situation of young girls and of indigenous and Afro-Ecuadorian children.
32. The Committee is concerned that, despite the existence of schools and universities where indigenous languages are taught, major indigenous languages, particularly Quechua, are gradually disappearing.

E. Suggestions and recommendations

33. The Committee urges the State party to take immediate and appropriate measures to ensure the independence and integrity of the judiciary. It also requires the State party to provide detailed information in its next periodic report with regard to court cases that dealt with economic, social and cultural human rights.

34. The Committee recommends that the State party take effective and practical steps to ensure effective protection of indigenous people against discrimination in many fields, especially with regard to employment, housing, health and education. It also requests that the State party include in the next periodic report information on the impact of programmes aimed to ensure economic, social and cultural rights to indigenous people and data regarding any progress made in this respect.

35. The Committee strongly urges the State party to ensure that indigenous people participate in decisions affecting their lives. The Committee particularly requests that the State party consult and seek the consent of the indigenous people concerned prior to the implementation of natural resources-extracting projects and on public policy affecting them, in accordance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee strongly recommends that the State party implement legislative and administrative measures to avoid violations of environmental laws and rights by transnational companies.

36. The Committee urges the State party to undertake immediate steps to ensure equal opportunities for Afro-Ecuadorians, particularly with regard to employment, housing, health and education and to provide detailed information in its third periodic report on progress achieved.

37. The Committee urges the State party to conduct research on the possible reasons for the high disability rate and provide detailed information in its third periodic report with respect to such causes as well as the progress made to ensure the fulfilment of the economic, social and cultural rights of people with disabilities.

38. The Committee urges the State party to adopt all effective measures to ensure equality between men and women in all fields of life as provided for in article 2, paragraph 2 and article 3 of the Covenant, including through implementing the principle of equal pay for work of equal value as provided for in the Covenant, increasing the level or representation of women in public services and reducing the wage gap between men and women. The Committee requests the State party to provide detailed information on the progress made on gender discrimination issues in its third periodic report.

39. The Committee urges the State party to take effective steps to reduce the unemployment rate as well as the percentage of employment in its informal economy.

40. The Committee urges the State party to take the necessary measures in order to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is effectively enforced.

41. The Committee urges the State party to ensure that its existing legislation in respect of the occupational health and safety of workers is fully implemented and that the labour inspections system is strengthened. The Committee also urges the State party to adopt measures to protect workers from the occupational hazards resulting from the use of toxic and other dangerous substances in the banana-growing and small mines sectors.

42. The Committee urges the State party to take immediate necessary legislative or otherwise measures to ensure that all workers, including the subcontracted and temporary ones, can exercise their trade union rights.

43. The Committee urges the State party to settle the problem of the debt to the Social Security Institute so as to allow it to perform its task of ensuring adequate security coverage and payment of social benefits. The Committee also urges the State party to strengthen the role of social security inspections to combat fraud, for example by employers who do not pay social security contributions for their employees.

44. The Committee urges the State party to increase the coverage of the social security system, especially for self-employed workers and women.

45. The Committee calls upon the State party to provide in its next report information on the impact of the fund set up under the Programme for the Development of Ecuadorian Migrants and their Families in improving the living conditions of these families. The Committee also encourages the State party to implement the recommendations made by the Commission on Human Rights Special Rapporteur on the human rights of migrants in 2001.

46. The Committee urges the State party to take all effective measures to ensure that the Family Code is adopted and implemented without any further delay.

47. The Committee strongly urges the State party to take all possible measures, legislative and otherwise to address effectively the persistent problem of child labour, particularly in agriculture and domestic work.

48. The Committee urges the State party to address the issues of sexual abuse, prostitution of girls and boys and exploitation of children by adopting a comprehensive strategy to address these problems. The Committee requests the State party to provide information on the progress made in this regard in the next periodic report.

49. The Committee urges the State party to take all the appropriate measures to combat the problem of trafficking in minors, including collecting relevant data and statistics and conducting a thorough study on this issue. The Committee requests the State party to report back on the measures taken and progress made in this regard in its third periodic report.

50. The Committee urges the State party to take effective measures to combat domestic violence, including through the effective application of the existing laws and awareness-raising campaigns. It also strongly urges the State party to amend its Criminal Code with the view to redefining the crime of rape to reflect international standards and to protect women and children.

51. The Committee encourages the State party to intensify its efforts and activities to combat poverty, including the setting up of an antipoverty strategy to improve the living conditions of

the disadvantaged and marginalized groups and to provide information in the next periodic report on any progress made. In this regard, the Committee refers the State party to its statement adopted on 4 May 2001 on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

52. The Committee urges the State party to take all the appropriate measures to deal with the problem of homelessness, to ensure access to housing credit and subsidies for the low-income families, the disadvantaged and marginalized groups and to improve water and sanitation facilities of existing housing units.

53. The Committee calls upon the State party to ensure that indigenous people are effectively protected from forced evictions from their ancestral lands and that they are properly compensated, should such evictions take place. In this regard, the Committee brings to the State party's attention general comment No. 7 (Forced evictions) and requests that detailed information on this issue be included in its next periodic report.

54. The Committee urges the State party to allocate a higher percentage of GDP to the health sector. The Committee also recommends the State party to continue with its prevention and care efforts in the field of health by providing sexual and reproductive health services, particularly to women and young people.

55. The Committee strongly urges the State party to conduct an assessment of the effect of international trade rules on the right to health for all and to make extensive use of the flexibility clauses permitted in the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) in order to ensure access to generic medicine and more broadly the enjoyment of the right to health for everyone in Ecuador.

56. The Committee strongly recommends that the State party's obligations under the Covenant should be taken into account in all aspects of its negotiations with the international financial institutions and other regional trade agreements to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined.

57. The Committee urges the State party to take all possible measures to combat illiteracy, particularly amongst the most disadvantaged and marginalized groups. The Committee requests that the State party provide information in the next periodic report on the measures taken to this end and the results obtained.

58. The Committee urges the State party to take all possible measures to ensure that indigenous languages are better protected and that the teaching of these languages in schools is increased as an important part of the enjoyment of the right to culture of the indigenous people.

59. The Committee recommends that the State party take action to ensure that all the Covenant rights are effectively upheld and that concrete remedies, judicial or otherwise, are provided to those whose economic, social and cultural rights are infringed, especially in relation to the disadvantaged and marginalized groups. In this regard, the Committee draws the attention of the State party to its general comment No. 9 on the domestic application of the Covenant.

60. The Committee recommends that the State party provide the *Defensoría del Pueblo* with the appropriate and adequate means to continue to carry out its mandate, including protection of economic, social and cultural rights, in accordance with the Paris Principles (General Assembly resolution 48/134, annex).

61. The Committee recommends that the State party improve human rights training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

62. The Committee requests that the State party provide information on the implementation of the above concluding observations in its third periodic report. The Committee also requests the State party to disseminate the present concluding observations widely to all levels of the society and, in particular, among State officials, the judiciary and civil society organizations in general. The Committee particularly encourages the State party to involve non-governmental organizations and other members of the civil society in the preparation of its next periodic report.

63. The Committee requests the State party to submit its third periodic report by 30 June 2009.
