



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### **Concluding observations of the Committee on the third periodic report of Ecuador as approved by the Committee at its forty-ninth session (14–30 November 2012)**

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Ecuador on its implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/ECU/3) at its 34th and 35th meetings, held on 14 and 15 November 2012 (E/C.12/2012/SR.34 and 35), and adopted the following concluding observations at its 58th meeting, held on 30 November 2012.

#### **A. Introduction**

2. The Committee welcomes the third periodic report of Ecuador and its written replies to the list of issues. The Committee wishes to thank the State party's delegation, headed by the Minister for the Coordination of Social Development, for its active engagement in the dialogue with the Committee.

#### **B. Positive aspects**

3. The Committee welcomes the ratification by the State party of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (annex to General Assembly resolution 63/117) and commends it upon being the first State to do so.

4. It also takes note of the State party's ratification of a number of other international instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance.

5. The Committee welcomes the improvements that have occurred in the State party's social indicators for human development and poverty reduction, as well as the increases that have been made in budgetary allocations for economic and social expenditure, since it adopted its concluding observations on the second periodic report of Ecuador in 2004 (E/C.12/1/Add.100).

6. The Committee wishes to highlight the passage of the new Constitution of Ecuador in 2008, which establishes the direct applicability of the human rights set forth in the Constitution and in international human rights instruments, the principle of non-discrimination in the exercise of human rights and the enforceability of human rights by judicial mechanisms such as constitutional protection actions.

7. The Committee notes the advances made in the development of a legislative framework designed to ensure the enjoyment of a number of the rights set forth in the Covenant:

(a) The Food Sovereignty Act, published in the supplement to *Registro Oficial* No. 583 of 5 May 2009;

(b) The Higher Education Act, published in *Registro Oficial* No. 298 of 12 October 2010;

(c) The Disabilities Act, published in the supplement to *Registro Oficial* No. 796 of 25 September 2012;

(d) The Labour Rights Protection Act, published in the second supplement to *Registro Oficial* No. 797 of 26 September 2012.

8. The Committee takes note with appreciation of the information provided to it regarding the direct application of the Covenant and the use of the Committee's jurisprudence, its general comment No. 4, on the right to adequate housing (art. 11, para. 1, of the Covenant) and its general comment No. 15, on the right to water (arts. 11 and 12 of the Covenant) as references for judicial interpretations of the law in Case No. 1207-10-EP, Decision 148-12-SEP-CC (extraordinary action for injunction in respect of the right to housing); Case No. 1586-2008-RA (constitutional action of *amparo* in respect of the right to work); and Case No. 0907-2008-RA (constitutional action of *amparo* in respect of the right to education).

### C. Principal subjects of concern and recommendations

9. The Committee reiterates its concern about the failure to undertake consultations as a basis for obtaining the prior, freely given and informed consent of indigenous peoples and nationalities for natural resource development projects that affect them. It is particularly concerned by the fact that Executive Decree No. 1247 of August 2012 was issued without having consulted indigenous peoples and nationalities and that this decree stipulates that any agreements which may be reached must be based on pre-existing public policy measures. The Committee is concerned that the objectives of the State party's efforts to disseminate information, establish permanent consultative offices and organize tours through areas surrounding proposed mining and hydrocarbons development project sites are confined to the socialization of these projects and that these activities fail to engender an intercultural dialogue that would serve as a basis for obtaining the consent of indigenous peoples and nationalities and respecting their right to be consulted.

**The Committee urges the State party to engage in consultations regarding mining and hydrocarbon resource exploration and development that allow the peoples and nationalities concerned to freely decide whether or not to give their consent for a given project and that provide sufficient opportunities and time for deliberation and decision-making, as well as for the implementation of cultural safeguards and compensatory remedies. These consultations should be conducted in accordance with the community consultation procedures that have been developed and with the resulting decisions. The Committee recommends that the State party consider suspending the implementation of Executive Decree No. 1247 of 2012 and that it**

instead work with indigenous peoples to design legislative measures to govern the exercise of the right to be consulted and that it then hold prior consultations on the proposed legislation. The Committee urges the State party to comply with the ruling of the Inter-American Court of Human Rights of 27 June 2012 in the case of *Kichwa de Sarayaku v. Ecuador*.

10. The Committee is concerned about the criminal investigations and convictions of social and indigenous leaders who took part in public demonstrations protesting the bills submitted by the executive to the legislature concerning water management and development projects that would have an impact on natural reserves such as that of Lake Kimsakocha. The Committee is concerned that the State party does not have sufficient mechanisms for consensus-building around natural-resource development activities that would provide a way of reconciling them with the world view of indigenous peoples and nationalities.

**The Committee recommends that the State party establish robust safeguards for the rights to freedom of assembly and to participate in peaceful demonstrations and that it regulate the use of force by law enforcement officers in connection with public demonstrations. It also recommends that the scope for the applicability of the criminal offences of sabotage and terrorism be clarified and that their application be restricted in the context of public demonstrations. Independent investigative commissions could issue recommendations as to the appropriateness of instituting criminal proceedings in response to public protests.**

11. The Committee is concerned that, although the inequality of income distribution in the State party has diminished, it remains very marked, as is reflected in the country's Gini coefficient of 49.0. The Committee regrets that the State party has not furnished sufficient up-to-date demographic statistics disaggregated by sex, ethnicity, geographic area, and economic and social status.

**The Committee recommends that the State party establish policy objectives, benchmarks and indicators focusing on the elimination of existing inequalities, particularly those associated with indigenous persons and Afro-Ecuadorians. The Committee recommends that the State party continue to develop public policy indicators, with technical assistance from the Human Rights Adviser from the Office of the United Nations High Commissioner for Human Rights, for use in gauging the effectiveness of public policies in reducing inequality.**

12. The Committee is concerned by the fact that only 35 per cent of all persons with disabilities are part of the economically active population. It is also concerned about the lack of information on measures aimed at eliminating the various forms of discrimination still faced by persons with disabilities. In addition, it is concerned that existing social programmes, such as those that supply prostheses and those that provide special allowances for family members of persons with intellectual or psychosocial disabilities, fall short of what would be needed to ensure the recognition of persons with disabilities as rights-holders.

**The Committee recommends that the State party persevere in its efforts to attain its employment policy goals relating to diversity and to the skills of persons with disabilities and that it ensure that reasonable accommodations are made in the workplace. It encourages the State party to develop public policies that reflect a recognition of the rights of persons with disabilities that is broader in scope than a simple acknowledgement of their right to social assistance measures. The Committee recommends that the State party provide the Ombudsman's Office (Defensoría del Pueblo) with the necessary resources to monitor the observance of the rights of**

**persons with disabilities and that it build the capacity of local agencies to apply the Disabilities Act of 2012.**

13. The Committee is concerned about the situation in which migrants and asylum seekers find themselves as a result of the implementation of Decree No. 1182 of May 2012 and about its negative impact in terms of the recognition of refugee status. The Committee is concerned by the obstacles that hinder Colombian nationals present in the State party from enjoying their economic, social and cultural rights.

**The Committee recommends that the State party establish a monitoring mechanism with a view to ensuring that asylum seekers and persons with refugee status in the State party can effectively avail themselves of their economic, social and cultural rights. The Committee encourages the public authorities to draw upon the advisory assistance and technical capabilities of international agencies such as the Office of the United Nations High Commissioner for Refugees and of civil society organizations.**

14. The Committee takes note of the information provided by the State party regarding public policies such as the Equal Opportunities Plan, gender-based public budgets and the merit system provided for in the Civil Service Act. Nonetheless, the Committee is concerned by the existence of gender stereotypes that cast women as being of an inferior status within the family and in society at large and that are preventing women from exercising all their rights on an equal footing with men.

**The Committee recommends that the State party adopt the legislative and other measures required to mainstream the principle of gender equality into public policies relating to economic, social and cultural rights. The Committee also recommends that action be taken to do away with stereotypes and gender roles that discriminate against women within the family and in society at large.**

15. The Committee notes with concern that, although the State party's unemployment rate has dropped to 4 per cent, approximately 40 per cent of the population is engaged in activities within the informal sector of the economy.

**The Committee recommends that the State party continue its efforts to reduce unemployment and implement measures to eliminate informal employment. It recommends that the State party develop mechanisms for monitoring the implementation of the Labour Rights Protection Act and the Act in Support of Retailers, Self-employed Persons and Microentrepreneurs in order to ensure that working conditions for all persons in the State party are fair and decent.**

16. The Committee is concerned by the dismissal without cause of at least 11,000 public-sector workers as a consequence of the implementation of Executive Decree No. 813 of 2011. The Committee notes with concern that civil servants who were dismissed have been stigmatized and that many of them have been compelled to take early retirement. The Committee observes with concern that the dismissals were without cause and were carried out without ensuring that the persons concerned had the benefit of due process.

**The Committee recommends that the State party streamline its procedures for compensating all civil servants who have been summarily dismissed and develop placement and training programmes for workers who have been discharged. The Committee recommends that the State party put an end to the practice of dismissing persons without cause.**

17. The Committee notes with concern that, despite the percentage increase in the minimum wage in the State party, which is now sufficient to cover 92 per cent of the cost of the family food basket, the level of the minimum wage differs from one occupational group to another and the law sets a lower minimum wage for domestic workers. The Committee is concerned by the fact that the labour-force participation rate for women is 47.1 per cent

while it is 77.1 per cent for men, that women spend more hours working in the home in rural areas and that differences between men's and women's pay levels persist.

**The Committee urges the State party to establish the same minimum wage for all occupational groups and to continue to phase in increases in the minimum wage. It also recommends that the State party take the necessary steps to increase the female employment rate and to ensure that women receive an equitable wage for equal work and equal pay for work of equal value. In addition, the Committee recommends that the State party put in place oversight mechanisms to ensure that working conditions are fair in all sectors of the economy.**

18. The Committee reiterates its concern about health and safety conditions in the workplace and, in particular, about working conditions in the sectors employing the largest numbers of workers, such as agriculture, mining and industrial activities. The Committee is concerned that working conditions in agricultural plantations constitute contemporary forms of slavery, as stated by the Special Rapporteur on contemporary forms of slavery. The Committee is concerned that there are not enough labour inspectors or monitoring and oversight mechanisms.

**The Committee recommends that the State party strengthen its mechanisms for inspecting and monitoring health and safety conditions in the workplace and, in particular, that it increase the number of labour inspectors and the frequency of their inspections, especially in the sectors employing the largest number of workers, such as agriculture, mining and industrial activities.**

19. The Committee is concerned about the presence of restrictions on the exercise of the right to form trade unions as established in article 8 of the Covenant, the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It is particularly disturbed by the fact that nearly 2,000 workers belonging to the Petroecuador union were dismissed and that their trade union rights were not respected.

**The Committee recommends that the State party take steps to ensure that the right to form trade unions is respected. It urges the State party to ensure that trade union rights are upheld and to proscribe any process that would lead to the dismissal of unionized workers.**

20. The Committee is concerned that the State party has not yet achieved universal social security coverage. It is also concerned about disparities in coverage rates, noting that although 22 per cent of the total population is covered, the coverage rate is only 12 per cent for indigenous women and 18 per cent for Afro-Ecuadorian women.

**The Committee recommends that, as a matter of urgency, the State party develop a plan for guaranteeing universal social security coverage and establishing specific mechanisms for giving indigenous women and Afro-Ecuadorian women access to social programmes. The Committee recommends that the State party bear in mind the guidelines set out in its general comment No. 19, on the right to social security (art. 9 of the Covenant), as it works towards the full realization of the right to social security.**

21. The Committee is deeply concerned about the sexual violence and exploitation to which girls and women are being subjected. It is particularly concerned about the sexual abuse committed in schools and the limited results yielded by judicial investigations whose purpose is to identify the responsible parties and lead to the imposition of the corresponding criminal sanctions. The Committee is also concerned that disaggregated information on the age and sex of victims and on whether they live in rural or urban areas has not been forthcoming from the State party. The Committee takes note of the State party's

announcement regarding the agreement that is to be signed by the Ministry of Education and the Attorney General's Office under which criminal investigations into suspected cases of sexual violence will be initiated ex officio.

**The Committee recommends that the State party step up its efforts to combat gender-based violence through prevention programmes and mechanisms for the protection of women, giving due consideration to the input that can be provided by women and women's organizations. It urges the State party to assign priority to investigations into cases of sexual violence and abuse in schools, to allocate the necessary budgetary funds for centres that deal with various forms of violence, exploitation and abuse, and to develop prevention programmes and programmes to provide mental health and psychosocial services for victims. The Committee recommends that the State party take steps to ensure that perpetrators of sexual violence are never again allowed to engage in activities involving children or adolescents. The Committee requests the State party to include statistics in its next periodic report that are disaggregated by age, sex and geographic location of the victims of such violence.**

22. While noting that progress has been made in reducing the number of child workers and that the minimum legal working age has been raised to 15 years, the Committee reiterates its concern about the persistence of child labour in the State party. In particular, it notes with concern that the poverty of rural households and limited access to a secondary education increase the risk of child labour.

**The Committee encourages the State party to redouble its efforts to combat the problem of child labour by means of an emergency plan that will incorporate suitable mechanisms for tracking its results in different regions and in the various sectors of the economy. It urges the State party to conduct systematic labour inspections and to implement public policies aimed at reducing the vulnerability of children and young people in rural and urban areas and promoting full access to secondary school.**

23. The Committee observes that, while the national poverty rate fell to 36.2 per cent in 2011, poverty in some areas, such as the Amazon basin and along the coast, is rising at a considerable pace. The Committee is concerned that the Human Development Voucher, which is intended for persons living in extreme poverty, is not available to all persons in that category and that local authorities are unable to provide sufficient protection for the right of persons living in extreme poverty, especially in rural areas, to an adequate standard of living.

**The Committee recommends that, in its implementation of anti-poverty programmes, the State party devote due attention to the differentials and shortfalls existing in urban and rural areas. The Committee recommends that the State party continue to strive to fulfil its commitments with respect to the Millennium Development Goals and that it consider taking advantage of the technical advisory services that the United Nations Development Programme can provide to assist it to analyse and report on its progress towards the targets associated with the Goals. The Committee urges the State party to establish channels for providing the public with information on the coverage of the Human Development Voucher Programme and to facilitate oversight by the general public of the distribution of vouchers and their impact on recipients' living conditions.**

24. The Committee notes with deep concern that child malnutrition remains a problem in the State party, with the rate of child malnutrition standing at 26 per cent despite the efforts made to reduce it. Malnutrition is most common among indigenous children, who have twice as high a rate of chronic malnutrition as non-indigenous children do. The rate is as high as 50 per cent in areas such as the Andean highlands, where vitamin A and iron deficiencies are prevalent.

The Committee recommends that the State party work with civil society to draw up municipal maps showing the location of population sectors subject to food and nutritional insecurity and that it compile disaggregated information for use in setting priorities for the development of measures to combat malnutrition and mechanisms for monitoring progress towards the achievement of proposed targets. The Committee recommends that the State party expand upon the existing legal framework for the protection of the right to food and that it supplement the Food Sovereignty Organization Act with provisions designed to safeguard food sovereignty.

25. The Committee is concerned about the environmental impacts of mining and agribusiness projects and, in particular, about their effects on people's ability to exercise their right to water in rural areas.

**The Committee recommends that the State party establish environmental protection measures and that, within the framework of mining and agribusiness projects, it adopt specific measures to protect people's right to water.**

26. The Committee is concerned about corporate land purchases and their impact on landownership by campesinos. It is also concerned about living conditions in high-risk zones in which the supply of basic services is not guaranteed and about the effects of what the State party has referred to as "land trafficking".

**The Committee recommends that the State party develop land titling plans in order to safeguard campesinos' ownership of their land and establish mechanisms for preventing forced sales in rural areas. The State party should ensure that the resettlement of families located in high-risk areas is carried out in a way that upholds their right to due process and that the families concerned are fully informed about the conditions of their resettlement. The Committee recommends that the State party put in place mechanisms for monitoring evictions and resettlement processes and their impact on such families' right to housing, bearing in mind the Committee's general comments No. 4 and No. 7 on the right to adequate housing and forced evictions (art. 11, para. 1, of the Covenant).**

27. The Committee is concerned about the insufficiency of health-care services, including maternal health services, in rural areas and notes that this is particularly a problem in the case of indigenous women.

**The Committee recommends that the State party persevere in its efforts to provide maternal and child health services while devoting special attention to the coverage and accessibility of such services in rural areas and zones inhabited by indigenous peoples.**

28. The Committee is concerned about the pregnancy rate among adolescents in the State party, which, at 82.8 per 1,000 women, is one of the highest of all the Latin American countries in the high human development category. The Committee is concerned by the extremely low coverage rate (12 per cent) of family planning services and by the existence of restrictions on access to emergency contraceptives, which is prejudicial to women's enjoyment of their right to sexual and reproductive health.

**The Committee recommends that, based on a human rights perspective, the State party make the necessary efforts, within the framework of the National Intersectoral Strategy for Family Planning (ENIPLA) and other suitable programmes, to prevent teen pregnancies. The Committee urges the State party to do away with barriers to access to emergency contraceptives and, in particular, to remove restrictions on the free distribution of such contraceptives, to develop strategies for overcoming culturally based prejudices against their provision to women and to carry out campaigns on women's right to have access to such contraceptives.**

29. The Committee notes with concern that, under article 447 of the Criminal Code of Ecuador, the only cases in which an abortion is not an offence is when it is performed because the mother's life or health is endangered or when a woman with mental or psychosocial disabilities has been raped.

**The Committee recommends that the State party amend its Criminal Code so as to establish that abortion is not an offence if the pregnancy is the result of rape, regardless of whether or not the woman in question has a disability, or if the existence of congenital anomalies has been established. The Committee urges the State party to expunge the terms *idiota* ("idiot") and *demente* ("insane") in reference to women with mental and/or psychosocial disabilities from its Criminal Code.**

30. The Committee is concerned by the absence of sufficient, disaggregated, up-to-date mental and psychosocial health statistics in the State party. The Committee is also concerned by the rate of HIV/AIDS in the State party and especially by shortcomings in the delivery of antiretroviral drugs and health services, in particular to lesbian, gay, bisexual and transgender persons.

**The Committee recommends that, in implementing its health strategy, the State party include mental health as a high-priority issue and establish regular, independent monitoring mechanisms. The Committee requests the State party to provide information on the progress made in the field of mental and psychosocial health in its next periodic report. The Committee recommends that the State party establish guidelines for ensuring that lesbian, gay, bisexual and transgender persons have access to health services, including sexual and reproductive health services, on a non-discriminatory basis.**

31. The Committee is concerned by the persistence of illiteracy and its prevalence among the indigenous population despite the progress that has been made in eliminating schools fees in the primary education cycle. The Committee is concerned about the existence of factors that limit students' access to secondary and higher education and that make it more difficult for students, once they are in school, to remain there. This is particularly the case for indigenous, Afro-Ecuadorian and Montubio adolescents and young persons.

**The Committee recommends that the State party continue its efforts to implement its literacy plan and to ensure that it covers rural areas, zones inhabited by indigenous peoples and different age groups. The Committee encourages the State party to develop targeted programmes aimed at helping to ensure that students do not drop out of school and addressing the reasons why they do so. It recommends that the State party ensure the broad-ranging involvement of the public and private education sectors, including parents and guardians, teachers' unions and social movements, in the implementation of State policies.**

32. The Committee is concerned about the psychosocial and physical ill-treatment of adolescents and young people within the education system.

**The Committee urges the State party to take effective measures within the education system to prevent the physical and psychological ill-treatment of adolescents and young people and to promote a culture of respect for human rights.**

33. The Committee is concerned that some of the indigenous languages used in the State party may be disappearing. It is also concerned by the fact that not enough informational material has been translated into the various indigenous languages.

**The Committee urges the State party to adopt measures, as a matter of urgency, to preserve indigenous languages. It also urges the State party to increase its efforts to translate informational material into the main indigenous languages and to develop**



**mechanisms for fostering their use at the local level with the help of, inter alia, audiovisual media, books and stories.**

34. The Committee is concerned about the fact that, despite the State party's efforts to expand Internet access, the use of cyberspace and access to it remain limited.

**The Committee recommends that the State party continue working to expand Internet access and that it redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet.**

35. The Committee is concerned that, despite the State party's efforts to combat piracy and intellectual property abuses, the sale and purchase of pirated products are commonplace.

**The Committee recommends that the State party redouble its efforts to combat piracy and intellectual property offences. The Committee also recommends that the State party reinforce its national anti-piracy plan by entering into more agreements with corporate licensees.**

36. The Committee requests the State party to disseminate these concluding observations widely among the members of society, including indigenous peoples and nationalities, at all levels and that it inform the Committee of the steps that it has taken to act upon them in its next periodic report.

37. The Committee requests the State party to submit its fourth periodic report by 30 November 2017 and notes that the report should be prepared in accordance with the revised reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant (E/C.12/2008/2).

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