

## COMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Communication of the Ombudsman

### Case: Marcia Trujillo, voluntary affiliate of IESS.

The Ombudsman of Ecuador is pleased to submit this communication to the Committee on Economic, Social, and Cultural Rights, pursuant to Art. 2 of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights.<sup>1</sup>

The following individuals wrote the present communication: Ramiro Rivadeneira Silva, Ombudsman of Ecuador, Patricio Benelcázar Alarcón, Deputy of Human Rights and Nature, José Luis Guerra Mayorga, Tutelary Director-General, and Rodrigo Varela Torres, National Director of the Rights of Good Living (*Buen Vivir*), who present this communication to the Committee on Economic, Social, and Cultural Rights (hereinafter, the CESCR) against the State of the Republic of Ecuador.

This communication is related to the violation of Art. 9 of the International Covenant on Economic, Social, and Cultural Rights (hereinafter, the ICESCR), as a result of the violation of the right to social security of MARCIA CECILIA TRUJILLO CALERO, a citizen of Ecuador, born in ...., with the national identification number 170364547-1, unemployed and resident of the city of Quito. Pasaje Solano E4 222 Av. 12 de octubre.

### I. ADMISSIBILITY

1. The present case fulfills the admissibility requirements established in Art. 3 of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights for the following reasons:

- a. First, the communication is being submitted “within one year after the exhaustion of domestic remedies”.<sup>2</sup> Marcia Trujillo submitted her petition for retirement to an irregular administrative process. Upon its finalization, the District Court for Contentious Administrative Proceedings issued its decision on September 22, 2010.<sup>3</sup> Four years later, on April 17, 2014, the Specialized Chamber of Contentious Administrative Proceedings issued its judgment.<sup>4</sup> Finally, the Constitutional Court rejected the exceptional action of protection on July 17, 2014.<sup>5</sup>
- b. Second, the case has not been submitted to examination under another procedure of international investigation or settlement.
- c. Third, annulment decisions of the National Court of Justice are subject only to reviews of the legality of the decisions,<sup>6</sup> and the exceptional action of the Constitutional Court is limited to the guarantee of constitutional rights by judicial systems. It does not analyze the evidence submitted by the parties,<sup>7</sup> and are exceptional in nature.

2. Based on the aforementioned, it follows that in the present case submitted to the CESCR in

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<sup>1</sup> Ratified by Ecuador June 11, 2010.

<sup>2</sup> Art. 3.2(a) of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights.

<sup>3</sup> District Court No. 1 for Contentious Administrative Proceedings. Decision of the First Chamber. September 22, 2010.

<sup>4</sup> National Court of Justice. Specialized Chamber of Contentious Administrative Proceedings. Judge Dr. Martiza Pérez. April 17, 2014.

<sup>5</sup> Constitutional Court, Case No. 0835-14-EP, July 17, 2014.

<sup>6</sup> Organic Code of the Function of the Judiciary:

“Art. 10 (...) Annulments and revision do not constitute another instance or level of proceedings, but rather are exceptional resources to review the legality of decisions and judicial error in lower level court decisions.”

<sup>7</sup> Organic Code of the Function of Jurisdictional Guarantees and Constitutional Control: Art. 58. Object. The purpose of the exceptional action for protection .

this communication “all available domestic remedies have been exhausted”.<sup>8</sup>

3. Additionally, although the communication references events that began in 1989, these events have a continuous effect, and continued after the entry into force of the Optional Protocol to the ICESCR on May 5, 2013. Specifically, to date, Marcia Trujillo has not had access to a pension as part of her right to social security.

4. With respect to this point, recall the pronouncements of the Human Rights Committee to the effect that due to *ratione temporis* “it could not consider alleged violations of the Covenant that occurred before the entry into force of the Optional Protocol for the State party, unless these violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant.”<sup>9</sup> On the same topic, in comparative law, we find that the Constitutional Court of Colombia has stated that there is a violation of the right to social security because “it is permanent over time”,<sup>10</sup> while the Constitutional Tribunal of Peru indicated the following in a case that found a violation of the right to social security due to the lack of access to a pension:

“affectations with respect to a pension have the quality of a continuous violation, as they occur monthly, which is why it is not possible to reject claims or demands on issues regarding pensions based on statutes of limitations.”<sup>11</sup>

5. Such state practice is applicable in the present case, and therefore the CESCR has jurisdiction, to the extent that, although the events that affected Marcia Trujillo began prior to the entry into force of the Optional Protocol, the lack of access to a pension constitutes a continuous violation that affects her to the present day, and therefore the Committee is authorized to act *ratione temporis* regarding a current violation of the right to social security.

6. In conclusion, as it is a case regarding the violation of a right guaranteed by the Covenant, in which domestic resources have been exhausted, as the communication has been submitted within the established deadline of one year after domestic resources have been exhausted, and since it refers to a continuous violation of the right to social security, this communication should be considered admissible.

## II. THE FACTS OF THE CASE

7. Marcia Trujillo is a 62-year-old woman of limited economic resources and poor health who does not receive a retirement pension. However, she has been demanding her right to a pension for the past 14 years.

8. In 2001, she consulted the offices of the Ecuadorian Institute of Social Security (EISS) whether she could retire under the “Special Reduced Retirement” regime. The officials informed her verbally that this was possible, as she fulfilled the requirements of having made more than 300 contributions and reaching 45 years of age, and should therefore quit her job in order to be able to retire.<sup>12</sup> She consulted officials of the EISS regarding the possibility of retiring on several occasions, because she did not want to leave her job without being certain that she would have

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<sup>8</sup> Art. 3.1, Optional Protocol of the International Covenant on Economic, Social, and Cultural Rights.

<sup>9</sup> Human Rights Committee. 100 Period of sessions. October 11-29, 2010. Communication No. 1633/2007, para. 6.2. See also, Human Rights Committee, 86 Period of sessions. March 13-31, 2015. Communication No. 1159/2003, para. 6.3.

<sup>10</sup> Constitutional Court of Colombia, Decision T-586/11, July 27, 2011.

<sup>11</sup> Constitutional Tribunal of Peru, Decision of July 8, 2005, Exp. No. 1417-2005-aa/TC.

<sup>12</sup> IESS Codified Statute, Art. 121: “The insured who resigns and does not return to any social security regime within six months following his or her resignation, will have the right, without the need to prove invalidity, to a special retirement, provided that he or she has credited at least 300 monthly contributions and is at least 45 years of age”.

access to a retirement pension. On each of these occasions, the officials of the offices of this Institution confirmed that she had met the requirements to do so. On March 1, 2001, Marcia Trujillo filled out a retirement form and quit her job.

9. After formally requesting her retirement, on June 20, 2003, the IESS rejected her request for retirement, as, according to its criteria, she had credited only 238 of the 300 contributions required.<sup>13</sup> The Institution stated that part of her contributions (between August, 1989 and February 1995) were improper and could not be considered as contributions. However, the Institution did not inform Trujillo of the denial of her request until May 10, 2007, as demonstrated by the documentation presented with this communication.

10. The IESS based its rejection of Trujillo's retirement request on the fact that in 1989, she was a voluntary affiliate, meaning that she made contributions to her social security in spite of not having a labor relationship with an employer. In accordance with the norms then in force, voluntary affiliates that fell behind in their payments more than six months could not continue contributing to social security.<sup>14</sup> Marcia Trujillo did not pay her contributions as a voluntary affiliate during eight months, and therefore, the IESS does not consider valid the later contributions Marcia Trujillo made during five years and five months (until February 1995, when she again entered into a labor relationship).

11. On May 10, 2007, the IESS notified Marcia Trujillo of the resolution it adopted in 2003, who immediately appealed this resolution. However, the National Commission of IESS Appeals again denied her request for retirement.<sup>15</sup> Upon exhausting the administrative route, the petitioner went before the contentious administrative proceedings court,<sup>16</sup> and later to the National Court of Justice.<sup>17</sup> Both courts based their decisions on the fact that the IESS had recognized 238 contributions, and therefore considered that they were insufficient for Marcia Trujillo to have the right to retirement. Neither the contentious administrative proceedings court nor the National Court of Justice analyzed the legal consequences of the failure to be opportunely notified, nor of being an older person without the right to receive a retirement pension.

12. The Constitutional Court also failed to analyze these legal consequences: thus, on July 17, 2014, the Court rejected the petition because it noted that – in an exceptional action for protection – evidence may not be considered as Trujillo's defense was requesting.<sup>18</sup>

13. Below, we will refer to the consequences that the repeated failure to notify had with respect to the contributions that the IESS determined were invalid.

*a. The repeated failure to notify regarding the invalid contributions.*

14. In this case, it is important that the IESS did not notify Marcia Trujillo that her contributions were invalid due to the consecutive eight-month delay in payments in 1989. The Institution continued to receive 65 contributions during more than five years. In 1995, the petitioner returned to work and changed her contribution regime. In this year, the IESS also failed to inform her that her previous contributions were invalid.

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<sup>13</sup> IESS, Agreement No. 2002-1992, June 20, 2003.

<sup>14</sup> IESS Codified Statute, Art. 158: "Voluntary Continuation shall automatically terminate if the insured fails to pay contributions during six consecutive months, or if he or she reenters any obligatory social security regimes".

<sup>15</sup> National Commission of Appeals of the Ecuadorian Institute of Social Security. Agreement No. 07 0268, June 21, 2007.

<sup>16</sup> District Court No. 1 in Administrative Contentious Proceedings. Decision of the First Chamber. September 22, 2010.

<sup>17</sup> National Court of Justice. Specialized Chamber in Administrative Contentious Proceedings. Judge Dr. Martiza Pérez. April 17, 2014.

<sup>18</sup> Constitutional Court. Case No. 0835-14-EP, July 17, 2014.

15. Only in 2003 did the IESS establish that her contributions were invalid, but delayed notifying Trujillo of its Agreement, and only in 2007 did Marcia Trujillo learn that her contributions in 1989 and the following four years were invalid. In response to why it waited four years to notify her of the 2003 Agreement, the IESS made the excuse that “Ms. TRUJILLO CALERO MARCIA CECILIA has not approached the Institute to determine the status of the proceeding.”<sup>19</sup>

*b. “Housewives” are voluntary affiliates.*

16. Social security in Ecuador has been structured around the work relationship. Employers have the obligation to affiliate their employees, and, together with the State, the social security system is financed between these three actors. However, there are non-remunerated domestic workers (women who carry out cleaning and care activities in their homes, without an employer) who do not enter into this scheme and usually make use of “voluntary affiliation” (this applies to those who do not have an employer).

17. Marcia Trujillo decided to voluntarily affiliate in the social security system in 1989 because she had three children (who were six, nine, and eleven years old at that time), for whom she cared. Between 1989 and 1995, her daily activities included, among others, caring for her children, preparing food, helping her children with their homework, cleaning the home, and washing their clothes. Therefore, Marcia Trujillo worked as an unpaid domestic worker, and thus, opted for the only option she had to obtain a retirement pension, which is “voluntary affiliation,” as she had no employer.<sup>20</sup>

18. This voluntary affiliation had serious disadvantages compared to affiliates that have employers. The voluntary affiliate 1) must pay both the contributions of the affiliate and the employer;<sup>21</sup> 2) must have previous contributions of at least three years;<sup>22</sup> 3) must pass a medical exam;<sup>23</sup> 4) does not have the right to “monetary subsidies for common illness, maternity, workplace accidents, professional illnesses, nor unemployment insurance”;<sup>24</sup> and 5) in the case of failure to pay during six consecutive months, the affiliate loses his or her status as a voluntary affiliate.<sup>25</sup>

19. It was due to the final restriction on voluntary affiliation that Marcia Trujillo lost her affiliation of five years of work for falling behind on her contributions. However, it must be considered that to the extent that she later did not receive any pension, she actually lost 29 years of contributions to social security.

*c. Current situation of Marcia Trujillo*

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<sup>19</sup> Pinchincha Provincial Sub-directorate of the Pensions System. Ledo. Sixto Taipicaña. Communication No. 22301700-357. Addressed to the President of the Pichincha Provincial Commission of Benefits and Controversies, titled “Clarification of the delay in notification of Agreement 2002-1992 of 2003-06-20.”

<sup>20</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979.

<sup>21</sup> Law of Obligatory Social Security. September 8, 1988. In its article 150, the law establishes “the affiliate will pay personal and employer contributions, based on the income that he or she actually receives, and, in no case, based on a value below the minimum wage. The IESS may verify the true amount of the voluntary affiliate’s income.

<sup>22</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 1

<sup>23</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 2.

<sup>24</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 5.

<sup>25</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 18.

20. Currently, Marcia Trujillo's situation is the following: she is divorced, cannot obtain employment, and the passage of time has affected her health. Additionally, she has been diagnosed with diabetes, high blood pressure, hearing loss, a malformation in the bones of her feet that require surgery, and she has sporadic memory loss. Her monthly medical expenses amount to 96 dollars, and she receives an average of 200 dollars monthly in support from one of her children. She lives in poverty and feels psychologically affected by the uncertainty regarding her retirement:

*I can't accept losing even a month of contributions and even less my retirement. It is not fair that because of a mistake the Institution made, which I was not informed of, meaning I wasn't given the opportunity of due process, that I have to lose a lifetime of contributions. It's been several years that I've been in the air, without a job, without health insurance, and without a pension because of the IESS' mistake.*

21. Ultimately, Marcia Trujillo is in a situation of vulnerability due to the economic and health conditions described in the paragraph above, and which is worsened by not receiving a retirement pension because the IESS declared her contributions invalid.

### III. LEGAL ANALYSIS

22. The right to social security (Art. 9 ICESCR) is "of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights."<sup>26</sup> The criterion of the CESCR is that social security must provide protection, among other circumstances, in a person's old age.<sup>27</sup> In the case of Ms. Marcia Trujillo, effects on her dignity as a result of the violation of the right to social security may be viewed from three different perspectives.

- a) First, a condition of the guarantee of this right is that it be accessible. It will be highlighted that individuals must be able to access information regarding the requirements to receive social benefits, and access an administrative process that fulfills due process guarantees. This access was denied due to the failure to notify Ms. Trujillo during the administrative processes she followed.
- b) Second, the right to social security must be guaranteed without discrimination based on gender. The petitioner is part of a generation of women who dedicated the majority of their lives to non-remunerated domestic work, and who face greater obstacles than men in accessing their right to social security. It is precisely due to one of these restrictions that Ms. Trujillo's contributions were declared invalid and she currently does not have the right to receive a retirement pension.
- c) Third, the State has not established a non-contributive pension for those persons who for one reason or another could not contribute to social security. This gap leaves older persons completely unprotected. In the case of Ms. Trujillo, in spite of contributing for 29 years to her social security, she does not have a minimal pension.

*1. The failure to guarantee access to information as a violation of the right to social security.*

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<sup>26</sup> Committee on Economic, Social, and Cultural Rights. 39 Period of Sessions, Geneva, November 5 – 23, 2007. General Comment No. 19 on the right to social security (article 9). Para. 1.

<sup>27</sup> Committee on Economic, Social, and Cultural Rights. 39 Period of Sessions, Geneva, November 5 – 23, 2007. General Comment No. 19 on the right to social security (article 9). Para. 2.

23. For the right to social security to be considered effective, it must be accessible. To this end, the Committee has indicated that the conditions to access social security protection “must be reasonable, proportionate and transparent”<sup>28</sup> Additionally, people must be able to “seek, receive and impart information on all social security entitlements in a clear and transparent manner.”<sup>29</sup>

24. The aforementioned argument is related to the Recommendation of the International Labor Organization (ILO) to States that social security conform to principles of “adequacy and predictability of benefits”.<sup>30</sup> Therefore, it is imperative that there be a “transparent, accountable and sound financial management and administration”.<sup>31</sup> Along this same line, the ILO recommends that there be “efficiency and accessibility of complaint and appeal procedures”.<sup>32</sup>

25. Thus, the ILO, with respect to social security, recommends that “[i]mpartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant.”<sup>33</sup>

26. In sum, according to the criteria established by the ILO, for the right to social security to be considered accessible, two situations must exist: 1) the conditions to access the right must be transparent, and 2) individuals receive information about how to access these rights. When these two conditions are met, individuals may exercise their right to retirement to receive a pension, as they will have informed criteria regarding the requirements they must meet in their specific case to receive retirement pensions. Similarly, they will have informed knowledge regarding the amount they will receive in the case of retirement pensions, such that there will not be uncertainty regarding how to exercise their right.

27. Specifically, we note the obligation of the State to implement complaint and appeals procedures with respect for basic due process guarantees (impartiality, transparency, effectiveness, simplicity, promptness, accessibility) that must be fulfilled to facilitate this economic right to social benefits.

28. In the current case, there was not a transparent process to provide Marcia Trujillo information, which is why she was not informed that her contributions were not accumulating during the time in which she stopped paying them (the eight consecutive months that she did not make contributions to voluntary social security). It is even more serious that the IESS kept silent on this topic for more than five years, and not even when she did make valid contributions (in March 1995) did the Institute inform Ms. Trujillo that her previous contributions were invalid, of which they informed her on May 10, 2007. This situation reveals the opacity and lack of transparency that existed in the provision of information to the petitioner.

29. This situation is serious because the lack of information from the IESS meant that the benefit (in this case, the pension) was not effectively predictable for the petitioner. Marcia Trujillo had the reasonable expectation that in her old age she would receive a pension as a result of the

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<sup>28</sup> Committee on Economic, Social, and Cultural Rights. 39 Period of Sessions, Geneva, November 5 – 23, 2007. General Comment No. 19 on the right to social security (article 9). Para. 24.

<sup>29</sup> Committee on Economic, Social, and Cultural Rights. 39 Period of Sessions, Geneva, November 5 – 23, 2007. General Comment No. 19 on the right to social security (article 9). Para. 26.

<sup>30</sup> ILO. R202 – Social Protection Floors Recommendation, 2012 (No. 202). Recommendation concerning National Floors of Social Protection. 101st ILC Session (June 14, 2012). Art. 3. Has received the Submission of Ecuador.

<sup>31</sup> ILO. R202 – Social Protection Floors Recommendation, 2012 (No. 202). Recommendation concerning National Floors of Social Protection. 101st ILC Session (June 14, 2012). Art. 3. Has received the Submission of Ecuador.

<sup>32</sup> ILO. R202 – Social Protection Floors Recommendation, 2012 (No. 202). Recommendation concerning National Floors of Social Protection. 101st ILC Session (June 14, 2012). Art. 3. Has received the Submission of Ecuador.

<sup>33</sup> ILO. R202 – Social Protection Floors Recommendation, 2012 (No. 202). Recommendation concerning National Floors of Social Protection. 101st ILC Session (June 14, 2012). Art. 7. Has received the Submission of Ecuador.

contributions she had made throughout 29 years. However, upon reaching the age of retirement, in 2007, the State, through the IESS, denied her retirement for the failure to comply with a regulatory norm adopted 18 years previously. During those years, the affiliate did not have access to the criteria regarding what requirements she still needed to fulfill to obtain her retirement pension.

30. Finally, the Committee may observe that the administrative procedures of the IESS were not efficient, prompt, or effective. This is evidenced by the fact that two years passed between the request for retirement, on March 1, 2001, and its denial on June 20, 2003.<sup>34</sup> This situation describes a procedure that is not prompt. Additionally, the IESS did not notify the petitioner of its decision immediately, but only did so on May 10, 2007, which demonstrates that this is not an effective or efficient process to guarantee the right to retirement in its economic benefit and health insurance components. This is even more evident as Marcia Trujillo's health is affected and her possibilities of finding work, as she ages, reduce as time goes on.

31. Thus, the time taken to adopt a decision regarding Marcia Trujillo's right to retirement reveals that the State does not have prompt, efficient, and effective administrative procedures to guarantee the right to social security. Therefore, the Committee should consider that the IESS, in not providing information in a timely manner, placed the petitioner in a situation of uncertainty that created unpredictability regarding her benefits. This means that the lack of information from the State affected the right to social security of Marcia Trujillo.

32. The lack of information from the State led to Marcia Trujillo to continue to make contributions in order to obtain her retirement pension, and thus, she made 305 contributions. This doubtless demonstrates her desire to fulfill the requirements she believed were necessary (to the extent that she was informed) to obtain a retirement pension in her old age.

## *2. Gender discrimination in the effective enjoyment of the right to social security.*

33. The Covenant indicates that the right to social security must be guaranteed "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>35</sup>

34. With respect to gender discrimination, the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) has indicated that beyond the norms that explicitly discriminate against women because they provide fewer rights to women than to men, there are other apparently neutral laws that in their application and effects cause "women's disadvantage or exclusion."<sup>36</sup> This means that under the Convention, States have the obligation to guarantee "substantive equality" that considers the effects of norms in practice.<sup>37</sup>

35. In this case, the norms regarding social security (Law of Obligatory Social Security of 1988 and Resolution 356) that were applied to Marcia Trujillo, do not explicitly make distinctions regarding the rights of men and women. However, this norm establishes a social security scheme based on labor relationships in which the State, the employer, and the employee each make contributions to the Ecuadorian Institute of Social Security, and a specific, but not small, group of the population is excluded from the scheme: non-remunerated domestic workers, generally

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<sup>34</sup> IESS. Agreement No. 2002-1992 R1, June 20, 2003.

<sup>35</sup> ICESCR, Art. 2.2.

<sup>36</sup> CEDAW. General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women Economic consequences of marriage, family relations and their dissolution. February 26, 2013. CEDAW/C/GC/29. Para. 8.

<sup>37</sup> CEDAW. General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women Economic consequences of marriage, family relations and their dissolution. February 26, 2013. CEDAW/C/GC/29. Para. 8.

called “housewives,” as well as other independent professionals who do not have the type of dependent relationship that labor law requires.

36. The legal option that those who make up the group of domestic workers that includes Marcia Trujillo is the voluntary affiliation regime. This regime has various restrictions, as it is a scheme developed for independent professionals (such as doctors or lawyers). Among these restrictions are that the voluntary affiliate: 1) must pay both the contributions of the affiliate and the employer;<sup>38</sup> 2) must have previous contributions of at least three years;<sup>39</sup> 3) must pass a medical exam;<sup>40</sup> 4) does not have the right to “monetary subsidies for common illness, maternity, workplace accidents, professional illnesses, nor unemployment insurance”;<sup>41</sup> and 5) in the case of failure to pay during six consecutive months, the affiliate loses his or her status as a voluntary affiliate.<sup>42</sup>

37. Thus, unpaid domestic workers must make contributions in spite of not having a salary, which places them in a position of disadvantage with respect to other professionals who do have salaries, which in the majority of cases are stable, which allows them to make contributions, contribute during three previous years, undertake a medical exam, assume the costs of illness, maternity, workplace accidents, professional illness, and, above all, not fall behind in payments to avoid losing their status as voluntary affiliates. Because Marcia Trujillo could not make her contributions for six consecutive months, the State, through the IESS, annulled more than six years of pension contributions that she made.

38. It is thus demonstrated that Marcia Trujillo was in a position of disadvantage with respect to other professional individuals, in particular men, who have the possibility to pay pensions. Thus, the annulment of Marcia Trujillo’s contributions is based on regulations that discriminate against women who undertake domestic work, and therefore constitute a violation of the PIESCR.

39. It has also been demonstrated that the State has not implemented an effective mechanism to guarantee a minimum pension to older individuals who are in the situation of Marcia Trujillo: in spite of contributing for 29 years, she is not guaranteed a minimum pension and does not receive health care benefits, as a result of the situation described in the facts of this communication.

#### IV. PETITIONS

40. With the arguments delineated in the communication, we request that the CESCR admit this communication and declare the violation of the right to social security (Art. 9 of the ICESCR) of MARCIA CECILIA TRUJILLO CALERO for the lack of information and opportune notification regarding the contributions that she made. We therefore respectfully request that the Committee request:

1. That the Republic of Ecuador implement an administrative process that meets due process guarantees and ensures timely access to information so that older persons know the requirements for receiving social benefits and learn beforehand whether they fulfill the requirements to obtain a retirement pension.

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<sup>38</sup> Law of Obligatory Social Security. September 8, 1988. In its article 150, the law establishes “the affiliate will pay personal and employer contributions, based on the income that he or she actually receives, and, in no case, based on a value below the minimum wage. The IESS may verify the true amount of the voluntary affiliate’s income.

<sup>39</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 1

<sup>40</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 2.

<sup>41</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 5.

<sup>42</sup> High Council of the Ecuadorian Institute of Social Security. Resolution No. 356, Regulations for the Voluntary Continuation of Social Security. October 30, 1979. Art. 18.



2. That the Republic of Ecuador recognize that it denied timely access to information to Marcia Trujillo by failing to notify her of the resolutions of administrative processes undertaken in the Ecuadorian Institute of Social Security.
3. That the Republic of Ecuador implement a norm that guarantees the right to social security without discrimination based on the gender of the individuals carrying out non-remunerated work activities, such as in the present case.
4. That the Republic of Ecuador recognize that the norm that it applied in the case of Marcia Trujillo resulted in discrimination based on gender, and therefore declare as valid her contributions and guarantee her right to receive a retirement pension in conditions of equality and non-discrimination as a women who was voluntarily affiliated to the IESS.
5. That the Republic of Ecuador implement a non-contributive based pension so that those individuals who cannot continuously contribute to social security, as in the present case, are guaranteed a minimum retirement pension, and that recognizes the health benefits to which voluntary affiliates have the right under the principle of equity, and which does not discriminate based on the gender of the individual in relation to those affiliated who have a dependent relationship.

## **V. SIGNATURES**