



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2559th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 9 August 2017, at 10 a.m.

Chair: Ms. Crickley

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined twenty-third and twenty-fourth periodic reports of Ecuador (continued)
(CERD/C/ECU/23-24; CERD/C/ECU/Q/23-24)

1. *At the invitation of the Chair, the delegation of Ecuador took places at the Committee table.*

2. **Ms. Alvarado** (Ecuador) said that the recent reduction in poverty in Ecuador could be viewed from several different perspectives. A reduction in income-based poverty of 23 per cent had been recorded for the period from 2007 to 2016. The poverty rate of the indigenous, Montubio and Afro-Ecuadorian peoples was higher than the national average, and that of the mixed-race and white population was lower than the national average. Extreme poverty had been reduced by half for the population as a whole between 2007 and 2016, from 16 to 8 per cent. The rate for indigenous peoples, who were the most vulnerable, had declined from 40 to 25 per cent. The rate for the Montubio and Afro-Ecuadorian peoples had stood at about 10 per cent in 2016 and the rate for the mixed-race and white population at about 7 per cent.

3. If poverty was measured in terms of deprivation of basic needs, such as education, health care, clothing, housing, nutrition or employment, a nationwide reduction in poverty from 46 to 32 per cent had been recorded. The rate for the indigenous peoples had declined from 79 to 56 per cent, for the Montubios from 77 to 57 per cent, and for Afro-Ecuadorians from 64 to 37 per cent.

4. Multidimensional poverty was measured in terms of limited access to education, employment, social security, health care, water, food, decent housing and a healthy environment. An overall reduction in multidimensional poverty had been recorded from 46 per cent in 2009 to 35 per cent in 2016.

5. As the culture of indigenous peoples was based largely on oral traditions, their diversity should be respected and their neglect of reading and writing should not be viewed as a sign of backwardness. However, it was important to facilitate their access to education. The overall illiteracy rate had declined from 7.9 to 5.6 per cent between 2007 and 2016 and the rate for indigenous peoples had declined from 26.5 to 16.8 per cent. During the same period, the average period of school attendance had increased from 9.1 to 10.1 years. The corresponding figure in 2016 for the indigenous and Montubio peoples was 7 years, for Afro-Ecuadorians 9 years, and for the mixed-race and white population about 12 years. In 2007, basic education had been completed by only 2 out of every 10 indigenous or Montubio adolescents by the age of 16. That figure had doubled by 2016 and vigorous action was being taken to encourage an ever larger proportion of young people to complete basic education. The secondary-school enrolment rate had increased from an average of 5 out of 10 young people in 2006 to almost 7 out of 10 in 2016. The rate for indigenous, Montubio and Afro-Ecuadorian young people had risen from 3 out of 10 in 2006 to 6 out of 10 in 2016.

6. The overall housing shortage had declined from 21 per cent in 2009 to 12 per cent in 2016. The shortage in the case of indigenous peoples had declined from 46 to 23 per cent, in the case of Montubios from 40 to 28 per cent, and in the case of Afro-Ecuadorians from 21 to 16 per cent.

7. The proportion of the economically active population with social security coverage had increased from 26 per cent in 2007 to 42 per cent in 2016. The proportion in the case of indigenous peoples had risen from 15.9 to 21 per cent, in the case of Afro-Ecuadorians from 22 to 37 per cent, and in the case of Montubios from 23.8 to just over 40 per cent.

8. Public investment in education, public health, social welfare and infrastructure had doubled in the past 10 years, and there had been a fourfold increase in per capita investment in the social sector. With regard to fiscal policy, the State relied on direct taxation rather than indirect taxation that might have an unfair impact on economically vulnerable members of the population.

9. The Ministry of Public Health had developed an automated registry of consultations and mobile clinics. The ethnic self-identification variable enabled health-care services to cater to specific needs. The authorities were implementing a comprehensive family, community and intercultural health-care programme. They had conducted research and produced publications on traditional medicine, standards and indicators for monitoring low-risk births, a nutritional guide for indigenous peoples, Montubios and Afro-Ecuadorians which took into account their staple food products, and regulations governing the intercultural approach to be adopted in health-care centres.

10. Ecuador played a pioneering role in protecting indigenous peoples living in voluntary isolation. In 1999 the State had declared their territories to be protected conservation zones where extractive activities were prohibited. Executive Decree No. 2187 of 2007 had demarcated the Tagaeri-Taromenane Protected Zone, which comprised an area of almost 760,000 hectares. The National Policy Plan for Free Peoples Living in Voluntary Isolation established guiding principles governing relevant actions by the State and Ecuadorian citizens. In addition, the Ministry of the Environment implemented a plan aimed at providing physical and cultural protection for indigenous peoples living in voluntary isolation, protecting their ancestral lands and forests, and monitoring the Protected Zone and the buffer zone on its boundaries.

11. A framework agreement on inter-institutional cooperation had been signed a few months previously between the Ministry of Justice, Human Rights and Religious Affairs, the Ministry of the Environment and the Ministry of National Defence to strengthen surveillance mechanisms in protected zones in order to support the self-determination of the inhabitants and to counter all potential external threats. The three ministries were also implementing a plan of action aimed at countering illicit activities, establishing checkpoints, arranging coordination meetings with the neighbouring State of Peru and training local armed forces. As Minister of Justice, she had submitted a complaint concerning illegal logging, hunting and fishing to the Attorney General's Office together with a request for a prompt investigation.

12. **Mr. Paredes** (Ecuador) said that article 3 (1) of the 2008 Constitution guaranteed the right to water. It was an inalienable right and a strategic national heritage that could not be privatized. Although some communities had virtually no access to water, certain commercial entities sought to monopolize the water supply. The Government, which had transformed the political and judicial landscape since 2007, had recognized in the 2008 Constitution the unique concept of the "rights of nature", particularly in a context of climate change. Whole areas of the country would be prone to drought in the years ahead. It was therefore essential to end marginalization and to create an inclusive society based on the rule of law. The use of water should be legally authorized and controlled with a view to guaranteeing environmental sustainability.

13. To that end, Ecuador had developed a National Water Plan covering the period up to 2035, which was based on three objectives. The first was to ensure continuous access to quality water for all. The second was to arrange for the integrated management of river basins. As many were shared with neighbouring countries, binational plans for cross-border management had been developed with Colombia and Peru. The third objective was water risk management and adjustments to address climate change. Three strategies had been drawn up to implement the plan: a national drinking water and sanitation strategy; a national water quality strategy; and a national sewage management strategy. The river basin councils played a vital role in safeguarding the interests of all communities. They were composed of the Ecuadorian National Water Secretariat (SENAGUA), the Intercultural and Plurinational Water Council, competent executive, provincial, municipal and parochial bodies, and the Water Regulation and Control Agency (ARCA).

14. **Mr. Collaguazo** (Ecuador), while acknowledging the need to draw attention to areas of concern, said that it was also important to recognize the significant progress made by the Government over the past decade. In fact, in recent years, the biggest threat faced by the indigenous communities, nationalities and peoples of Ecuador had been the destruction of the Amazon rainforest, large areas of which had been devastated not by the State but by a multinational company. The resulting pollution had poisoned the water supply of the

indigenous communities living there, causing major health problems that, in some cases, had even led to death.

15. Fourteen indigenous nationalities had been identified in Ecuador, each one with its own specific language, traditions and world view. Those nationalities were further divided into different indigenous groups that, while sharing a common language, were characterized by different dialects, customs or attire. For example, 18 distinct indigenous groups formed part of the Kichwa indigenous nationality. The Afro-Ecuadorian and Montubio peoples, while not indigenous to Ecuador, came under the category of indigenous nationalities and peoples and enjoyed the same constitutional rights. The Afrodescendent community amounted to 7.2 per cent of the total population and included persons who self-identified as Afro-Ecuadorian, black or mulatto. A number of organizations representing the indigenous nationalities and peoples were active across the country and sought to help implement and harmonize public policies. The National Council for Equality of Peoples and Nationalities, in particular, was responsible for mainstreaming the rights of the indigenous populations, developing policies and ensuring that actions taken by the Government respected their constitutional rights.

The meeting was suspended at 10.55 a.m. and resumed at 11.10 a.m.

16. **Ms. Iñiguez** (Ecuador) said that Ecuador had a long record of promoting and supporting international initiatives to combat racial discrimination and uphold the rights of indigenous peoples. For example, it had actively promoted the adoption of General Assembly resolution 71/178, on the rights of indigenous peoples, declaring 2019 as the International Year of Indigenous Languages. The objective was to draw attention to the vast number of endangered languages, in particular indigenous languages, and to raise awareness of the urgent need to preserve, promote and revitalize them. In that connection, 70 diplomatic posts were now occupied by representatives of the indigenous, Afro-Ecuadorian and Montubio communities, underscoring the country's commitment to equal representation. The Government was also a strong proponent of an international tax justice agenda, which it considered critical to achieving the 2030 Agenda for Sustainable Development, and had taken measures to foster tax equity in Ecuador.

17. The Human Mobility Act had been acclaimed by a number of international organizations. The Act sought to recognize human mobility as a basic human right and contained several fundamental and innovative principles such as universal citizenship — a new paradigm in human rights that aimed to promote the free movement of people, unhindered by borders — equality before the law and non-discrimination, all of which were essential to combating xenophobia and racial discrimination. As such, all persons in Ecuador, including those who had exercised their right to mobility, were entitled to access to education, housing and health-care services. As part of its efforts to achieve its vision of universal citizenship, the Government was actively promoting the principle in regional and international forums, such as the Southern Common Market (MERCOSUR), and in bilateral and multilateral agreements with neighbouring countries. Policies were being implemented and awareness-raising measures taken to eradicate irregular migration in Ecuador by ensuring that all migrants in the territory could be registered. For example, a 2015 awareness-raising campaign had been aimed at regularizing the situation of Haitian and Dominican nationals. Efforts had also been made to provide help and support to Ecuadorians abroad.

18. Around 200,000 applications for asylum had been received in Ecuador, 60,000 of which had so far been accepted. Refugees and asylum seekers were able to move around the country freely, live among the general population and gain access to basic public services on an equal footing with Ecuadorian nationals. There were no refugee camps or migrant centres in Ecuador.

19. **Mr. Velasco** (Ecuador) said that measures had been taken to strengthen the indigenous justice system and place it on an equal footing with the formal system. Article 171 of the Constitution recognized the judicial functions exercised by indigenous communities, peoples and nationalities; enshrined women's right to participate and take decisions; ensured coordination between the indigenous and the ordinary courts; and guaranteed respect for the decisions of the indigenous judicial system, so long as they were

in accordance with constitutional principles. The indigenous authorities in each community were responsible for creating their own laws and regulations and for administering justice in line with their diverse ancestral traditions. The State had decided against establishing a framework for indigenous justice, since it would be impossible to take into account the subtle distinctions between the communities, their traditions and their world views. In 2014, a landmark decision by the Constitutional Court had determined the limits, powers and competencies of the ordinary and indigenous justice systems. The Court had ruled that the indigenous justice system had jurisdiction to hear and resolve any internal conflicts arising between its members within their territory. The decisions of the indigenous courts could be challenged in the ordinary courts only if one of the fundamental rights enshrined in the Constitution had been violated. Moreover, the Code of the Judiciary contained a chapter on indigenous justice that included provisions on respect for the diversity and equality of the indigenous system and the prohibition of double jeopardy. The Government recognized the need to publicize decisions taken by the indigenous authorities in order to foster greater awareness and understanding of the indigenous system of justice among the wider population.

20. **Mr. Murillo Martínez** (Country Rapporteur) said that he would like to learn more about the situation of indigenous people living in areas affected by major extractive activities. Many of them were facing legal action as a result of their participation in social protests or the actions of third parties. He was concerned at reports that the judicial branch lacked independence and that the right to peaceful protest had been criminalized, leading to a disproportionate number of prosecutions of indigenous persons and restrictions of their rights and freedoms. He wondered what action the new Government intended to take in that regard and, in particular, whether greater use of pardons might be considered.

21. He would welcome updated information on the implementation of the 2012 decision of the Inter-American Court of Human Rights in favour of the Kichwa indigenous people of Sarayaku, which had upheld their right to prior, free and informed consultation on the exploitation of their natural resources. It would also be helpful to hear an account of the Ecuadorian system of land ownership, since reports suggested that 82 per cent of farmers did not own their land, the legacy of highly concentrated land ownership and *huasipungo*, the historical practice of giving small plots of land to indigenous persons in lieu of monetary payment for work on the owner's estate.

22. **Mr. Collaguazo** (Ecuador) said that, whereas a 1994 law had provided for the end of collective land ownership by indigenous communities and the subsequent division of that land, the 2008 Constitution stipulated that ancestral lands could not be sold or divided. *Huasipungo* was a thing of the past: there was no evidence that the practice persisted in Ecuador. On the contrary, over the past 10 years the Government had issued deeds for the individual and collective ownership of several hundred thousand hectares of land by indigenous peoples, which had the knock-on effect of enabling them to access credit and technical assistance. The Government was determined to press ahead with that initiative, and to overcome any internal divisions in relation to it. It was aiming to issue a further 5,000 deeds in the first 100 days of its new term.

23. **Mr. Velasco** (Ecuador) said that the Government itself had asked the Inter-American Court of Human Rights to hold the 2016 public hearing on compliance with an earlier judgment ordering Ecuador to take measures in favour of the Kichwa people of Sarayaku. It had provided the Court with a full explanation of all the steps it had taken to enforce that judgment, including a wealth of information on prior and informed consultation with indigenous peoples. Indeed, Ecuador's record of enforcing the Court's decisions was among the best of any country, and its ongoing efforts to enforce other decisions were regularly monitored. The Court had remarked that the Constitution of Ecuador was one of the first in the region to recognize the right of indigenous peoples to prior, free and informed consultation on extractive activities.

24. **Ms. Alvarado** (Ecuador) said that the Constitution provided for the protection and indivisibility of ancestral lands and prohibited extractive activities in areas inhabited by peoples living in voluntary isolation. Some 760,000 hectares of land had been reserved for those peoples, a figure which very few other countries could match.

25. Protests were not criminalized. Cases that had been taken to court related not to demonstrations, but to destruction of property and violence against individuals.

26. **Mr. Calí Tzay**, noting that the Organic Act on Water Resources and Water Use and Management prohibited the privatization of water, said it also specified that the executive could grant mandatory licences for the exploitation of water. Therefore, he wished to know what checks and balances there were to prevent, for example, the President from granting an exploitation licence to a private entity.

27. He would welcome comments from the delegation on the treatment of indigenous people by the courts. The Ombudsman's Office had reportedly expressed concern at the way the judicial system dealt with vulnerable citizens, including indigenous leaders who had participated in protests. The sentences handed down to such persons appeared to be disproportionate: in October 2016, for example, three leaders of the Saraguro indigenous group had been given four-year prison sentences for interrupting public services, while police officers who were found to have profited from organized crime to the tune of thousands of dollars had been sentenced to only eight months in prison.

28. Lastly, the Committee had previously expressed concern at the alleged rejection by the courts of racial discrimination cases brought by, in particular, Afro-Ecuadorian and Montubio citizens. Could the State party provide an update on how the courts currently dealt with such cases?

29. **Ms. Alvarado** (Ecuador) said that sanctions for racial discrimination were more severe if perpetrated or ordered by public officials. While the justice system lacked resources and could undoubtedly be improved, trust in judges had been restored and justice was being served more swiftly. Since 2012, several hundred complaints of alleged racial discrimination and hate crime had been brought before the courts. Almost all of those had been resolved. A plan was being implemented to remove the barriers to justice traditionally faced by Afro-Ecuadorian and Montubio persons. Efforts were also being made to combat institutional racism. For example, in 2016, a member of the armed forces had been found guilty of a racially motivated hate crime for discriminating against an Afro-Ecuadorian cadet during training. The victim had received a formal public apology from the perpetrator and financial damages.

30. If the President were to privatize water, he would be breaking the law. Access to water was enshrined in the Constitution as a fundamental human right.

31. **Mr. Marugán** said that article 40 of the Convention, which stated that no human being could be considered illegal, was a shining example to the rest of the world. However, in practice, many people who could not produce certain documents apparently struggled to access health care, education and other services. For instance, according to reports, more than 90 per cent of children were enrolled in school, but the figure was closer to 80 per cent for children from migrant and vulnerable population groups. Given the apparent lack of any legal provision to deal with statelessness, he wondered what measures the State party was taking to address such issues. He wished to have more information on the situation of women who had been granted refugee status, who were reportedly working under more onerous and precarious conditions and for less pay than Ecuadorian women. Additionally, he would be grateful for information on the steps taken by the State party to prevent the alleged bullying of Afro-Ecuadorian children. He wondered whether there had been any prosecutions for human trafficking or whether, in such cases, judgments had been handed down for other crimes instead. Were cases of human trafficking fully investigated? Notwithstanding the improvements made to the asylum system, he wished to know if the State party collaborated with NGOs on asylum matters. He would also appreciate clarification on the status of Cuban migrants, more than 100 of whom had been deported in 2016 according to the Inter-American Commission on Human Rights. Lastly, he would be grateful for information on conditions at the Hotel Carrión temporary shelter in light of reports that migrants could not freely enter the shelter, that NGOs could not enter at all, and that the maximum stay there was three months.

32. **Ms. Iñiguez** (Ecuador) said that the legitimacy of the country's policy on human mobility was not diminished by the lack of cultural change in some areas. The Government recognized the need for a change of culture among government officials, and training and

awareness-raising efforts were already under way. Ministerial protocols had been developed for dealing with migrants and refugees in the key areas of education, health, employment and housing. The Government had made an important commitment to providing housing for migrants and refugees, and was drawing up plans to address their particular vulnerabilities. It was also drafting a new, gender-sensitive plan to tackle human trafficking.

33. Concerns about bullying in schools had recently led to the launch of a comprehensive campaign that included topics such as xenophobia and discrimination. The Government was also drawing up plans to foster a culture of peace and non-discrimination in schools.

34. Requests for information about deportations had been submitted to the Government by the Inter-American Commission on Human Rights and several United Nations bodies; he wished to shed some light on the events in question and to correct inaccurate information. A case had arisen in July 2016 in which Cuban citizens had held demonstrations demanding that the Government facilitate their onward travel to the United States. The Government had been unable to comply with that request. There had been no mass expulsion; rather, a case-by-case procedure had been initiated in accordance with the law and due process and, as a result, undocumented Cubans had been returned to their country. In fact, the Cuban embassy in Quito had issued a press release stating that, since the citizens in question had departed from Cuba legally and had not been persecuted for their political ideas, they were free to return there if they so desired. The Cubans had been held at the Hotel Carrión, a temporary reception centre for migrants. The centre had been capable of providing services for 60 residents, although it had only operated at about a third of its capacity. It had been closed down in February 2017, after the entry into force of the Human Mobility Act, which set out clear rules on deportation.

35. **Mr. Avtonomov** said he hoped that the Government would include information in its next periodic report about the National Rural Lands and Technological Infrastructure Information and Management System, which he understood was a programme that stored and processed information on the rural environment. He was interested to know whether the system was used to ensure the proper allocation of indigenous lands, given the importance of using modern technologies to protect human rights.

36. **Mr. Khalaf** said that, although he was grateful for the information provided on the issues concerning land title, he specifically wished to know on what legal basis people without land deeds had been evicted from ancestral lands. Moreover, while welcoming the State party's explanation of how the ordinary and indigenous justice systems were coordinated, and noting that the Constitutional Court had intervened in the *La Cocha* case to delimit their respective jurisdictions, he asked whether the State party intended to take legal measures to institutionalize the coordination of the ordinary and indigenous justice systems. Lastly, noting that international conventions had primacy in the State party's legal system, he asked whether that primacy, in particular in relation to the Convention, was invoked in indigenous courts.

37. **Mr. Marugán** said that he was concerned about indigenous peoples such as the Awá living near the border with Colombia. In light of reports that 41 victims of the armed conflict in Colombia had been identified and over 200 individuals might have been affected, he asked whether the Government would recognize the victims of armed conflict who crossed the border as persons in need of international protection.

38. **Mr. Velasco** (Ecuador) said he wished to clarify that, in the *La Cocha* case, the Constitutional Court had ruled that the ordinary justice system could not interfere in indigenous justice. However, indigenous courts were bound to respect the rights enshrined in the Constitution, which recognized the primacy of international human rights treaties in the legal order. Consequently, indigenous courts could not violate the fundamental rights set forth in the Convention.

39. Concerning the question of eviction from ancestral lands, he preferred not to go into the details of the case raised by Mr. Khalaf, which had been referred to the Inter-American Commission on Human Rights. However, he wished to stress that the Constitution prohibited evictions from lands recognized as ancestral territories and that the eviction in

question had been carried out in accordance with a court ruling on an invasion of non-ancestral lands that had been privately owned for more than 50 years.

40. **Ms. Iñiguez** (Ecuador), responding to a question raised in the previous meeting, said that the State had no records of any formal complaints against the public authorities alleging discrimination, exclusion or marginalization of members of the Roma community. The Government stood ready to take the necessary measures to protect human rights if any such practices were identified.

41. **Ms. Alvarado** (Ecuador) said that indigenous marriages were respected and valued, but such recognition should not be confused with the civil validity of marriages. The State had made great progress in adopting secular institutions that were separate from religious or spiritual beliefs; marriages were a civil contract and therefore were decoupled from the ancestral traditions and rituals practised by indigenous peoples.

42. Although statelessness was not a serious structural problem in Ecuador, the Government recognized the need to provide international protection for stateless persons. Persons in need of such protection had to apply to have their status recognized by the Office of the Deputy Minister for Human Mobility at the Ministry of Foreign Affairs and Human Mobility, which would then issue a one-year passport and a humanitarian visa. The Office of the Deputy Minister was legally obliged to facilitate the naturalization of such persons.

43. She reiterated that the State had not engaged in expulsions or forced relocations. On the contrary, it welcomed persons of different nationalities and sought to create a space free of conflict where they could live peacefully. She was proud that Ecuador was the first country to recognize the principle of universal citizenship, thus meeting its obligations to all citizens of the world.

44. As for the question of stereotyping in the media, she said that a watchdog had been established under the Organic Act on Communication to identify discriminatory content in the media. The Government was aware that the media could nurture a world view in which stereotypes, discrimination and hatred might become acceptable, and it was therefore taking steps to raise awareness and improve standards in television programming. Strategies and activities were being developed to overcome historical manifestations of discrimination and racism and were yielding results. The introduction of intercultural television and radio content informing audiences about the traditions, rituals and experiences of indigenous peoples was a particularly significant development.

45. **Mr. Murillo Martínez** said that he appreciated all the statistical data provided by the State party, although he would have welcomed more information on the situation of the Roma communities. It was clear that, during the past decade, Ecuador had undergone an unprecedented citizens' revolution that, by every indicator, had led to great social progress. Although some challenges remained — such as eradicating extreme poverty — the introduction of universal citizenship and the establishment of the plurinational character of the State were significant advances. He also commended the State party for its affirmative action in favour of Afrodescendants and indigenous peoples and its policies on water sovereignty. The consolidation of a plurinational State was intimately related to the sustainability of social progress and would need to overcome considerable internal and external political tensions; nevertheless, he was optimistic that Ecuador was equal to the challenge.

46. **Ms. Alvarado** (Ecuador) said that poverty and lack of opportunity, which disproportionately affected indigenous and Afro-Ecuadorian communities, could not be combated or eliminated through social policies alone. To overcome those challenges also required economic policies. For that reason, her Government had spearheaded international efforts to eliminate tax havens, which were used to conceal wealth earned in countries such as Ecuador. Given that taxes on that wealth could have been used to improve access to education, health and housing, her Government believed that tax havens were not just a threat to democracy but also to the human rights of the weakest in society.

47. **The Chair** said that the discussion had been useful in deepening the Committee's understanding of the situation in Ecuador and the Government's efforts to implement the

Convention. She acknowledged that both social and economic policies were necessary to create the conditions for the elimination of racial discrimination. On a personal note, she wished Ecuador and its partners every success in their campaign for global tax justice.

The meeting rose at 1 p.m.