



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

Forty-fifth session

Summary record of the first part (public)* of the 965th meeting

Held at the Palais Wilson, Geneva, on Monday, 8 November 2010, at 3 p.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Fourth, fifth and sixth periodic reports of Ecuador (CAT/C/ECU/4-6; CAT/C/ECU/Q/4)

1. *At the invitation of the Chairperson, the members of the delegation of Ecuador took places at the Committee table.*
2. **Ms. Moncada** (Ecuador), presenting Ecuador's periodic report, said that following the adoption of the new Constitution in 2008, her country had set about strengthening political and institutional democracy and had taken numerous steps towards eradicating torture and other cruel, inhuman or degrading treatment or punishment throughout the national territory. The Ecuadorian State had undertaken the onerous task of aligning its secondary legislation with the new Constitution to produce an effective tool intent on strengthening democracy and transparency, to root out the factors perpetuating torture and to combat impunity, abuse of power and corruption. To date, the progress achieved had consisted in improving access to justice; developing programmes aimed at eradicating torture; prosecuting its perpetrators; awarding compensation to its victims; and improving the situation of persons deprived of their liberty.
3. The Truth Commission, established by the Government in 2007 to investigate and gather information on the human rights violations committed by the police and armed forces between 1984 and 1988, had submitted its final report in June 2010. It contained a study of the serious human rights violations committed by State officials during that period, in particular violations of the right to life and physical integrity, and underscored civil, criminal and administrative responsibilities. The delegation of Ecuador had made the report and other documentation available to the members of the Committee. In order to follow up the findings of the Truth Commission, in October 2010 the authorities had commissioned a special unit of the Public Prosecutor's Office (Fiscalía General del Estado) to investigate the most serious cases of human rights violations that had been uncovered. Consequently, 118 case files had been transmitted to the judicial authorities since October 2010.
4. In its efforts to align its legislation with the country's new constitutional framework, Ecuador had reformed its Penal and Criminal Code and its Code of Criminal Procedure and amended the laws governing the Public Prosecution Service (Ministerio Público). Furthermore, Ecuador had established the Judicial Police as the only public body authorized to investigate criminal offences and had placed it under the direct oversight of the Prosecutor-General's Office. In August 2009, the Organic Code of the Judiciary came into force. The Code had paved the way for fundamental reforms for improving the functioning of the justice system and expediting legal proceedings. New courts were still being established and training programmes for judges had been launched.
5. In August 2010, the Ministry of the Interior had issued a decree for the reopening of cases of human rights violations that had been closed without a thorough investigation or in which new evidence could determine civil, criminal and administrative liability. It was pursuant to that decree that the Truth Commission had reopened several case files. As part of that process, several members of special police bodies had been arrested and prosecuted. In order to increase the armed forces' awareness of the principles of democracy and human rights, training programmes incorporating an ethnic and cultural dimension intent on preventing torture and human rights violations were being developed.
6. In a concerted effort, the Ministry of Health, the Ministry of Education and the National Directorate for Social Rehabilitation had done a great deal to help reintegrate persons deprived of their liberty. Production and vocational skills workshops had been set

up, penitentiary facilities had been refurbished and new detention centres incorporating facilities for minors had been built.

7. One could not forget the serious events that had taken place in Ecuador at the end of September 2010, illustrating the difficulties encountered in the fight against impunity. National Police officers had attempted to overthrow constitutional order, abducting the President of the Republic for several hours and causing altercations which had led to many injuries and deaths. The Ecuadorian authorities had begun investigating the events, while the Prosecutor-General's Office had prosecuted those responsible for the uprising and had already charged the instigators of and participants in the rebellion. As the population demanded, the whole truth about those incidents would come to light.

8. **The Chairperson** (First Country Rapporteur) expressed appreciation for the diversity of the Ecuadorian delegation. He commended the progress Ecuador had achieved in its legislation and, in particular, the amendment of the Constitution and the incorporation of constitutional rights into the secondary legislation. Following the grave concern expressed at the events of September 2010, the Committee had been relieved to learn that constitutional order had been re-established. The global community and, at the continental level, the member States of the Organization of American States had expressed their solidarity with the Ecuadorian people and had appreciated the satisfactory outcome of the events.

9. Pursuant to article 1 of the Convention, he would appreciate detailed information on the planned reform of the Criminal Code, which envisaged the criminalization of all acts of torture mentioned in articles 1 to 4. The terms used in article 187 of the current Criminal Code to describe torture were antiquated and inquisitorial, as they referred to "corporal torment". He would welcome details on whether the new definition would be comprehensive and would include psychological torture. Likewise, details on the penalties for the offence of torture under the new provisions would also be useful. Under the current Criminal Code, anyone subjecting a person who has been arrested or detained to physical torment could face from 3 to 6 years in prison, while, according to information before the Committee, a cattle rustler was liable to a term of between 1 and 5 years' imprisonment. Care needed to be taken to ensure that the new provisions made for greater respect for the principle of proportionality in sentencing. The Committee would like to receive information on any possible impediments to development of the Criminal Code in that direction and to its alignment with the provisions of the Constitution.

10. He would like to know whether article 88 of the Constitution, which guaranteed the opposability of constitutional rights, had ever been invoked before the courts, including in cases where international norms had been violated. While drug trafficking, an endemic problem in the region, needed to be fought tooth and nail, fundamental rights must also be respected. Nevertheless, it had been reported that those rights, particularly the right to not be subjected to torture or ill-treatment, were not always respected in the case of persons arrested for drug-trafficking offences. He would like to hear the delegation's views on the subject. There was no disputing the fact that significant legislative provisions had been adopted to establish a framework for custody proceedings and to guarantee detainees certain rights, but they also needed to be enforced. He would be particularly interested to learn whether the statutory period of 24 hours prior to arraignment was respected in practice and whether the number of persons detained without trial had decreased since the reform.

11. Additional information on the implementation of the interim measures prescribed by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights would be desirable. Full redress could only follow the trial and sentencing of the perpetrators; however, the scourge of impunity remained prevalent in the State party and one should ascertain whether the Government was paying it all due attention. In paragraph

63 of its report, the State party mentioned the formulation of a new national security bill. He would like an update on the progress achieved in that connection and to know whether the absolute nature of the prohibition on torture and other cruel, inhuman or degrading treatment, including in emergency situations, was expressly laid out therein.

12. In the report on its country visit to Ecuador in 2006 (A/HRC/4/40/Add.2, para. 25), the Working Group on Arbitrary Detention had said that the Office of the Ombudsman (Defensoría del Pueblo) employed only 32 lawyers, while the country had 323 prosecutors. It would be useful to know whether more resources had been allocated to that institution since 2006 to allow it to fully discharge its functions.

13. He had noted with interest that a card setting out the rights of detainees had been prepared for police officers, who were obliged to read them out to all arrested persons (periodic report, para. 84). However, a non-governmental source had reported that police officers often ignored that obligation. He would like to know whether those police officers had been prosecuted and whether steps had been taken to oversee the implementation of that relatively recent measure. The State party mentioned in its report (para. 86) that the Ministry of Justice and Human Rights had organized courses for 2,420 police officers between July and December 2008. It would be useful to know whether the card setting out the rights of detainees had featured in that training. He also requested clarification on the implementation of basic safeguards for minors detained by the police, his understanding being that detainees had access to counsel only once they had been charged, while they should have access from the time of the first police interview.

14. He also requested additional information on the extensive registration system implemented by the State party in 2008 to deal with the influx of Colombian nationals in need of international protection and to process their asylum applications more quickly. He would like to know how many people had availed themselves of that procedure to date and which rights they were guaranteed. With reference to expulsion, he wished to know whether the decisions taken to expel individuals could be appealed and whether expellees benefited from the guarantees of due process, in particular the right to be assisted by counsel. He also wished to make certain that the risk of torture was assessed prior to any expulsion decision. According to the information submitted by the State party in its report, the obligation of non-refoulement was established in the procedural manual for migration services staff; it would be useful to have a copy of the manual. The Committee had received information on several violent or suspicious deaths of refugees in the Colombian border province of Sucumbíos. The delegation might provide additional information on that issue and indicate whether the situation was receiving attention from the Government and the measures adopted to remedy it.

15. As he understood it, any attempt to commit an act of torture, or complicity in such an act, constituted an offence under the State party's criminal law, but he sought confirmation. Non-governmental organizations had drawn the Committee's attention to the failure to investigate several cases of persons who had disappeared or died after having been arrested and tortured by the police. Furthermore, following his recent country visit to Ecuador, the Special Rapporteur on extrajudicial, summary or arbitrary executions had said that the province of Sucumbíos was the scene of numerous abuses, particularly sexual violence against female Colombian refugees, which were attributable to law enforcement officials and the Ecuadorian armed forces, and had recommended the establishment of an independent body to investigate those violations. It would be useful to know the Ecuadorian Government's view on the situation, and the steps it had taken to stem the violence in the province.

16. **Mr. Mariño Menéndez** (Second Country Rapporteur), referring to the events of September 2010, asked whether the exercise of certain constitutional rights had been

suspended during the state of emergency and, if so, whether the Human Rights Committee or any of the bodies of the inter-American human rights system had been notified.

17. Article 344 of the Constitution stipulated that the law, customs and ancestral practices of indigenous people be taken into consideration by the judicial authorities for the purpose of implementing the Constitution and the international instruments concerning indigenous people. The issue was how to ensure the compatibility of customary law and international human rights obligations and whether the application of international norms was guaranteed if they conflicted with customary law, in particular when authorized practices under that law amounted to cruel, inhuman or degrading treatment under international norms. Work had already begun on a bill on coordination and cooperation between indigenous and ordinary justice systems. The delegation might say where the bill now stood and whether it contained provisions guaranteeing the applicability of international norms to indigenous people.

18. The climate of extreme violence in the Colombian border provinces was a matter of great concern and exposed Colombian nationals who fled their country to seek refuge in Ecuador to every kind of violation. He would therefore like to know whether cooperation had been established with the Colombian consular authorities. He would also like clarification of the provisions governing the status of asylum-seekers, including their right to work, and whether it was true that Colombian asylum-seekers in Ecuador were required to append an extract of their judicial record to their asylum application. Some immigrants chose to go underground rather than apply for asylum in case their application was denied and they faced expulsion. They were particularly vulnerable, especially children, many of whom were often exploited. He would like to know whether specific surveillance mechanisms were in place to protect migrant children from forced labour and any form of exploitation. He would also like to know whether training programmes relating to respect for the fundamental rights of asylum-seekers and applicants for refugee status were available to police officers and members of the armed forces.

19. It would be interesting to know whether specialized staff were posted to schools in order to address victims' complaints as part of the implementation of the National Plan for the Eradication of Gender Violence in the educational system and whether the preventive measures adopted by the State party had met with success.

20. He drew attention to the case of *Paola Guzmán v. Ecuador*, which was still being heard by the Inter-American Commission on Human Rights and in which the victim, who had been systematically raped by the vice-principal of her school and whose child she was carrying, had taken her own life. Believing that type of case to be quite common in the State party, he wished to know why there were so few prosecutions.

21. He would appreciate further information on the activities of the Offices of Commissioners for Women and the Family (Comisarías de la mujer y de la familia), which were responsible for domestic violence issues, particularly on the results it had already obtained and on possible plans to restructure them.

22. The delegation could also state whether the Ecuadorian Government had taken steps to protect the women in the Colombian border zone, many of whom were subjected to serious acts of violence, at the hands not only of members of Colombian paramilitary groups, but also of Colombian law enforcement officials.

23. Noting that the Public Prosecutor's Office regularly assigned investigations to the Judicial Police, he would like to know whether forensic doctors worked completely independently of the Judicial Police and whether the State party had set up a sufficient number of police crime laboratories throughout the country. Recalling the three distinct stages of deprivation of liberty: arrest, custody and interrogation, he wished to know whether the same officials were responsible for each of those stages and, in particular,

whether the detention police officers also interviewed the detainees and lastly, the role of the Public Prosecutor's Office throughout the process.

24. Further, he would like more specific information on the role played by the Department of Human Rights and International Humanitarian Law established under the Ministry of National Defence.

25. The delegation of Ecuador was also invited to describe the situation inside prisons and other "social rehabilitation centres" as well as to provide information on the "therapeutic communities" established in penitentiary facilities. The delegation might also provide information on the activities organized by the various institutions and indicate whether their primary objective was to help detainees acquire certain skills with a view to their reintegration into society at the end of their sentence.

26. The delegation might also say whether the State party used solitary confinement and, if so, in what conditions, aware as it was that the Committee deemed the practice to be inhuman treatment.

27. It would be interesting to know whether the Truth Commission, which had fulfilled its mandate, would be replaced by a body independent of the police force, which would be tasked with ensuring that law enforcement officials respected international norms with a view to eradicating torture and inhuman treatment, as recommended by Mr. Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions. The fact that several deaths of detainees held in penitentiary facilities had not given rise to legal action begged the question of whether the entities tasked with investigating the actions of police officers were truly independent and what progress the State party had made in the fight against impunity.

28. Additional information on peasant defence networks would be welcome. It would be especially interesting to learn the legal status of those groups, whether they were responsible for maintaining public order and did so by forceful means and whether they respected the legal norms in force.

29. Noting with regret that human rights defenders and those persons wishing to uncover the truth in general were still being targeted, he requested more detailed information on the circumstances surrounding the deaths of Ivan Muela, a union activist who had died on 21 January 2010, and of Germán Antonio Ramírez Herrera, a forensic doctor specializing in torture, who had been collaborating with the Special Rapporteur on extrajudicial, summary or arbitrary executions and with the International Rehabilitation Council for Torture Victims when he had been abducted on 6 July 2010 and murdered. The delegation might further indicate whether those cases had been investigated.

30. **Ms. Sveaass** strongly encouraged the State party to prohibit corporal punishment both in the home and in alternative care settings. She endorsed the strengthening of the judicial guarantees applicable to involuntary hospitalization, coercive measures and restraints to which disabled people placed in rehabilitation or health centres in particular were subjected.

31. Also referring to the case of *Paola Guzmán v. Ecuador* and to the report of the Centre for Reproductive Rights, she strongly condemned the unacceptable practice of teachers and other supervisory staff in educational establishments who demanded sexual favours of teenage girls in exchange for educational support. She would like to know how the State party intended to eradicate that practice.

32. There had been a marked increase in the number of rapes and sex offences committed in recent years, which should have resulted in a greater number of complaints. Oddly enough, the number of prosecutions and sentences had remained low, and she would like to learn what factors contributed to that situation. As a law on the rehabilitation of

victims of such acts was currently in force, she would welcome more detailed information on the concrete steps taken to enforce it.

33. As to the case of *Germán Antonio Ramírez Herrera*, she would like to know what steps had been taken to shed light on his murder, it being essential to guarantee the protection of medical staff participating in the fight against torture.

34. **Mr. Bruni** noted that pre-indictment detention had been abolished and that the State party had taken several steps to prevent overcrowding in prisons, such as non-custodial penalties. In the concluding observations adopted following its consideration of the fifth and sixth periodic reports of Ecuador in November 2009 (CCPR/C/ECU/CO/5), the Human Rights Committee had expressed concern at the high rate of overcrowding in prisons, which gave the impression that the steps taken had not been effective.

35. Regarding paragraph 85 of the report under consideration, it would be interesting to know whether the duty doctor responsible for examining all detainees prior to their placement in a penitentiary facility or in a cell was employed by the Ministry of the Interior, the Ministry of Justice or the Ministry of Health.

36. He would also like to know whether the complaint of alleged mistreatment of detainees in the Varones de Esmeraldas social rehabilitation centre, mentioned in paragraph 146 (d) of the report, had resulted in a conviction and, if so, what sentence had been handed down. He was surprised by the small number of ill-treatment complaints filed, while, according to the Foundation for the Rehabilitation of Victims of Violence, which had investigated the situation of the 166 detainees in the Quito men's social rehabilitation centre in 2008–2009, 41 per cent of inmates claimed to have been victims of torture or ill-treatment over that period. The delegation could perhaps provide additional information on that subject.

37. Finally, regarding article 148 of the report, he would like to know whether the Ombudsman's periodic visits to the social rehabilitation centres were planned in advance or whether they were unannounced. He would welcome more detailed information on the content of the recommendations made by the Ombudsman following his visits, as well as on the follow-up given to the recommendations by the competent authorities.

38. He would like up-to-date information on the protection the State party afforded the Sarayacu community. There had been reports that the indigenous community had never received police protection, even when intruders had tried to appropriate their ancestral land. Expressing his satisfaction that Ecuador had ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in July 2010, he wished to know whether the delegation of Ecuador had any idea of the composition of the future national prevention mechanism and whether civil society would be consulted when it was being set up.

39. **Ms. Gaer** said that according to the 2009 report of the U.S. Department of State, perpetrators of acts of torture were prosecuted for "violation of the right to life" rather than for "torture offences" and were generally fined, not imprisoned. She wondered why torture offences were thus classified and why the sentences passed were so lenient. She would also like to know how cases of torture and ill-treatment could be resolved through a friendly settlement, as indicated in paragraph 211 of the report under consideration. She wished to know what progress had been made in the development of a strategy for re-opening torture cases where the perpetrators had gone unpunished (para. 215 of the report). With reference to tables 7 to 9 of the report, she noted that there had been a sharp increase in the number of rapes, from 941 in 2001 to 2,570 in 2003. That being so, she asked why, paradoxically, the number of convictions remained very low. She would also like to know whether rapists were fined or imprisoned. She would appreciate more detailed information on the follow-up given to the urgent appeal made to the Ecuadorian State by the Special Rapporteur on the

situation of human rights defenders to take concrete measures to protect the rights and liberties of the activist Ester Landetta.

40. She wished to know what steps the authorities had taken to tackle the problem of mob lynching, which, according to numerous sources, was relatively widespread and undermined the rule of law. She would like to hear the delegation's opinion as to why citizens tended to take the law into their own hands. She would also like information on the murders committed by police officers, as well as on the prosecution and sentencing of those involved. In conclusion, taking up the issue of sexual violence against schoolgirls, she wished to know how many official complaints were lodged with the police annually and how many people had been convicted, particularly over the period following the adoption of the National Plan for the Eradication of Gender Violence.

41. **Ms. Belmir**, turning her attention to the malfunctions of the Ecuadorian justice system, said she would like to hear the delegation's views on the subject. While it was partly explained by the disproportion between the number of magistrates and the number of cases, and the fact that the Judicial Police had not received adequate training, there were likely other factors to be examined. In any event, there was widespread abuse and the police seemed to do what they wanted with detainees. In the light of such evidence, large-scale reform of the justice sector was called for. She also shared the concerns expressed by Ms. Sveass and Ms. Gaer and was appalled at the sexual abuse of schoolgirls.

42. **The Chairperson** (First Country Rapporteur) requested the delegation of Ecuador to provide detailed information on the numerous initiatives that the State party had planned to undertake in 2009. For instance, paragraph 248 of the report stated that the Subsecretariat for Human Rights planned to prepare a diagnosis of indigenous law as well as a bill on indigenous people; paragraph 180 stated that the military courts would continue to operate until the legislative reforms had been carried out; in paragraph 110, the State party noted that the Ministry of Foreign Affairs intended to enhance the training provided to the National Police officers serving in border areas. He would like to know whether those initiatives and the others mentioned in the report had been introduced.

43. **Ms. Moncada** (Ecuador) said that the adoption of the new Ecuadorian Constitution in 2008 had signalled the start of the long process of promoting and defending human rights in Ecuador. Admittedly, there was still much ground to be covered but, at the next meeting, the delegation of Ecuador would endeavour to show Committee members the progress it had achieved in the space of two short years.

44. *The delegation of Ecuador withdrew.*

The first part (public) of the meeting rose at 5.05 p.m.