



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

ECUADOR

1. The Committee considered the third periodic report of Ecuador (CAT/C/39/Add. 6) at its 673rd and 675th meetings, held on 11 and 14 November 2005 (CAT/C/SR.673 and 675), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Ecuador, although it notes that the report was due in April 1997 and was submitted six years late. The Committee appreciates the constructive dialogue it had with a representative high-level delegation and expresses its appreciation for the frank and direct written replies to its questions.

3. Although the Committee recognizes that the State party made an effort to comply with the Committee's guidelines on the presentation of reports, it points out that the report is lacking in information on the practicalities of implementing the Convention and hopes that in future the State party will comply fully with its obligations under article 19 of the Convention.

B. Positive aspects

4. The Committee takes note with satisfaction of the adoption in 1998 of the new Constitution, which generally reinforces the protection of human rights. It particularly welcomes

the adoption in 2003 of the Children's and Youth Code and in 2005 of the Criminal Code Reform Act, which defines the sexual exploitation of minors as an offence. The definitive introduction of children's judges in the judiciary is also welcome.

5. The Committee welcomes the submission to the legislature of various bills, such as the preliminary draft of a bill on the administration of indigenous justice and bills on the enforcement of sentences, the system of public defenders and crimes against humanity.

6. The Committee welcomes the adoption of the National Human Rights Plan and its associated operational plans for different sectors, and the establishment of provincial subcommissions whose agendas reflect regional and local priorities. It especially welcomes the fact that prison issues are addressed in the Human Rights Operational Plan.

7. The Committee takes note of the fall in the number of complaints to the Commissioners for Women and the Family.

8. The Committee welcomes the open invitation extended by the State party to all special mechanisms of the Commission on Human Rights, and particularly welcomes the recent visit by the Special Rapporteur on the independence of judges and lawyers.

9. The Committee welcomes the establishment of the Human Rights Coordination Commission in 2002, an interdepartmental body in which civil society plays an active role in preparing the periodic reports that the State has to submit in order to comply with the international human rights treaties to which it is a party.

10. The Committee also welcomes the abolition of the Crime Investigation Office, which leaves the Public Prosecutor's Office responsible for investigating crimes both at the preliminary stage and in the course of criminal investigations.

11. The Committee welcomes the cooperation between the Standing Committee on the National Human Rights Plan and civil society in the preparation of training manuals for prison officers in detention centres.

12. The Committee also welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2003, the Rome Statute of the International Criminal Court in 2002 and the Inter-American Convention on Forced Disappearance of Persons in 2002.

C. Factors and difficulties impeding the implementation of the Convention

13. The Committee takes note of the political and constitutional crisis facing the State party. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Principal subjects of concern and recommendations

14. Although cruel, inhuman or degrading punishment is prohibited under the State party's domestic legislation, the Committee expresses concern that the State party has not brought the definition of the offence of torture in the Ecuadorian Criminal Code fully into line with articles 1 to 4 of the Convention.

The State party should take the necessary measures to ensure that all the acts of torture referred to in articles 1 to 4 of the Convention are considered offences under domestic criminal law and that appropriate punishments are handed down in each case, bearing in mind the serious nature of such offences. The Committee also recommends that the bill on crimes against humanity, which include torture, should be adopted as part of the process of implementing the Rome Statute.

15. While the Committee welcomes the adoption of the National Human Rights Plan and its associated operational plans for different sectors, which were drawn up with considerable input from civil society, it regrets that only one of the five civil-society organizations that originally contributed to the plans is still involved in the process of implementing them (art. 2).

The State party should promote the National Human Rights Plan by introducing effective operational mechanisms that permit civil-society organizations to participate in the implementation of the Plan.

16. The Committee takes note with concern of the allegations that at least 70 per cent of the prisoners in the Quito social rehabilitation centre for women and men were subjected during their detention to the excessive and unlawful use of force, including psychological and sexual torture, by criminal justice officials and the police (arts. 2 and 7).

The State party should take steps to eliminate impunity for those suspected of torturing and ill-treating these prisoners; conduct prompt, impartial and thorough investigations; try and, where appropriate, punish those responsible for torture and inhuman treatment with appropriate penalties; and properly compensate the victims. It should also introduce training programmes to resolve these problems.

17. The Committee is concerned about allegations of torture and ill-treatment of members of vulnerable groups, especially indigenous communities, sexual minorities and women, even though these groups are protected by domestic law. These allegations, which also concern the treatment of human rights defenders and domestic violence, have not been adequately investigated (arts. 2 and 12).

The State party should ensure that allegations of torture and ill-treatment of members of these groups are thoroughly investigated and those responsible brought to trial. The State party should also build up and strengthen the system of public defenders to protect these groups.

18. The Committee notes with concern the slowness and delays in the processing of court cases. In Pichincha alone, the Committee has learned, there are over 390,000 pending cases.

The State party should allocate resources to alleviate and eventually eliminate the veritable “traffic jam” in the country’s judicial system, and take steps to prevent such jams in the future.

19. The Committee notes with concern the practice of *detención en firme*, under which the court must, when issuing a committal order, order the detention of the accused allegedly in order to ensure his or her presence at the trial and avoid suspension of the proceedings (art. 2).

The State party should foster legislative improvements which will help to shorten periods of pretrial detention, including removal of the concept of *detención en firme* from the Code of Criminal Procedure. An appeal on the grounds that this form of detention is unconstitutional is awaiting consideration by the Constitutional Court, which is to be appointed in the future.

20. The Committee regrets the allegations that in deportation cases the rules of due process are not fully complied with, and that the functioning of the machinery to prevent individuals from being placed at risk through return to their countries of origin is not fully guaranteed. It also regrets the inadequacy of the machinery to enable the migration authorities to check whether an individual runs the risk of torture by returning to his or her country of origin (arts. 3 and 6).

The State party should adopt administrative measures in all the country’s police stations so as to guarantee respect for due process during deportation, especially the right to a defence, the presence of a diplomatic agent from the detainee’s country and, in the case of refugees, the mandatory presence of UNHCR personnel. The Committee also recommends the organization of training programmes on international refugee law with emphasis on the content and scope of the principle of non-refoulement for migration police officers and administrative officials handling deportation procedures throughout the country.

21. The Committee notes with concern the allegations that a large number of prisoners have been tortured while being held incommunicado. Some lawyers have claimed that they are prevented from talking with their clients in the offices of the judicial police, and even that visits to prisoners by independent private doctors have been prevented. It is also alleged that victims have been denied access to their own lawyers (arts. 4 and 6).

The State party should guarantee the application of fundamental legal safeguards applicable to persons held by the police, ensuring their right to notify a family member, the possibility of consulting a lawyer and a doctor of their choice, the right to obtain information on their rights and, in the case of minors, the right to the presence of their legal representatives during questioning.

22. The Committee regrets that the State party has not yet instituted a programme of training for judicial personnel, the Public Prosecutor’s Office, police and prison staff, including medical, psychiatric and psychological personnel, in the principles and rules for protection of human rights in the treatment of prisoners, as called for by the Inter-American Court of Human Rights in its judgement of 7 September 2004.

The State party should improve the quality of and enhance the human rights training of State security forces and bodies, and specifically concerning the requirements laid down by the Convention, making use of the resources of civil society (universities, non-governmental organizations, etc.). The State party should approve and rapidly put into effect the national human rights plan for the armed forces. The State party should also, in keeping with the judgement of the Inter-American Court of Human Rights in the *Tibi* case, set up an inter-agency committee to draw up and implement training programmes in human rights and the treatment of prisoners.

23. The Committee takes note with concern of the allegations that personnel of the security services routinely inflict torture and other inhuman or degrading treatment during criminal investigations in the offices of the judicial police (arts. 11 and 16).

The State party should ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, and that those responsible are brought to trial. The State party should ensure that appropriate premises are available to accommodate those detained during the investigation of an offence, with continuous supervision.

24. The Committee deeply deplores the situation in detention centres, and especially in social rehabilitation centres where prisoners' human rights are constantly violated. The overcrowding, corruption and poor physical conditions prevailing in prisons, and especially the lack of hygiene, proper food and appropriate medical care, constitute violations of rights which are protected under the Convention (art. 11).

The State party should adopt effective measures, including approval of the budgetary funds needed to improve physical conditions in detention centres, reduce the current overcrowding and properly meet the fundamental needs of all those deprived of their liberty, in particular through the presence of independent and qualified medical personnel to carry out periodic examinations of prisoners. The Committee also urges the sectoral subcommission on human rights in prisons to implement the operative plan on this subject, whose objectives include action to follow-up training courses and reports of human rights violations in the prison system which have been lodged by individuals.

25. The Committee reiterates its concern at the existence of military and police courts, whose activities are not limited to trying offences committed in the course of duty. This situation is not in keeping with the international treaties to which Ecuador is a party (arts. 12 and 13).

The State party should ensure that the ordinary courts fully exercise their competence, in keeping with its international obligations and the terms of transitional provision No. 26 of the Constitution, so as to ensure the full independence of the judiciary.

26. The Committee regrets that the State party's legislation does not provide for specific machinery to provide compensation and/or reparation and rehabilitation for victims of acts of torture (art. 14).

The State party should establish a specific regulatory framework to govern compensation for acts of torture, and should devise and implement programmes of all-round care and support for victims of torture.

27. The Committee notes with satisfaction that the State party has taken part in amicable international settlement processes, particularly within the inter-American system, with a view to resolving complaints of human rights violations (including torture). However, these processes have generally led only to compensation for the victims, without proper investigation of the complaints or punishment of those responsible (art. 14).

The State party should ensure that in cases of amicable settlement, in addition to compensation, the responsibility of those who may have violated human rights is properly investigated.

28. The Committee recommends that the State party should extensively disseminate the reports it submits to the Committee, and the conclusions and recommendations adopted by the Committee, through official websites, the mass media and non-governmental organizations.

29. The Committee urges the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30. The Committee requests the State party to inform it, within one year of the adoption of the present conclusions, of practical steps taken to follow-up the recommendations contained in paragraphs 17, 22, 24 and 25.

31. The Committee invites the State party to submit its next periodic report, which will be considered as the combined fourth, fifth and sixth periodic reports, by 28 April 2009 at the latest, the scheduled date for the submission of its sixth periodic report.
