



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

Distr.: Restricted
7 December 2010
English
Original: Spanish

Committee against Torture

Forty-fifth session

1–19 November 2010

Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Ecuador

1. The Committee against Torture considered the combined fourth to sixth reports of Ecuador (CAT/C/ECU/4-6) at its 965th and 966th meetings (CAT/C/SR.965 and 966), held on 8 and 9 November 2010. At its 978th and 979th meetings (CAT/C/SR.978 and 979), held on 18 November 2010, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by Ecuador of the combined fourth to sixth periodic reports in reply to the list of issues prior to the submission of reports (CAT/C/ECU/Q/4).

3. The Committee appreciates the fact that the State party has accepted this new procedure for the presentation of periodic reports, which facilitates cooperation between the State party and the Committee. It also thanks the State party for including information on the various measures adopted in response to the concerns expressed in the previous concluding observations of the Committee (CAT/C/ECU/CO/3), as well as its replies to the letter of 11 May 2009 sent by the Rapporteur on follow-up to concluding observations.

4. The Committee also appreciates the frank and open discussions it has enjoyed with the State party's delegation and the additional information the latter provided during consideration of the report.

B. Positive aspects

5. The Committee notes with satisfaction that since the consideration of its third periodic report the State party has ratified the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (20 July 2010);

(b) International Convention for the Protection of All Persons from Enforced Disappearance (20 October 2009);

(c) Convention on the Rights of Persons with Disabilities and its Optional Protocol (3 April 2008).

6. The Committee takes note of the efforts made by the State party to review its legislation in order to meet the recommendations of the Committee and improve its implementation of the conventions, including:

(a) The entry into force, on 20 October 2008, of the new Constitution of the Republic of Ecuador, which establishes the general framework for the protection of human rights, mainly in its Title II (Rights), the observance of which is strengthened by article 11.3 on the direct and immediate applicability of the rights and guarantees established in the Constitution and in international human rights instruments. The Committee welcomes in particular the provisions on:

(i) The prohibition of torture, enforced disappearance and cruel, inhuman and degrading treatment or punishment (art. 66.3 (c));

(ii) The inadmissibility of evidence obtained in violation of fundamental rights (art. 76.4);

(iii) The incorporation of new legal procedures for the protection of human rights, such as protective action (art. 88), habeas corpus (art. 89) and special protection measures (art. 94);

(iv) The trial of members of the armed forces and the national police by the judiciary (art. 160);

(v) The establishment of the Office of the Ombudsman as an independent judicial organ responsible for providing free legal aid to persons who cannot afford the services of a counsel (art. 191).

(b) Ruling No. 0002-2005-TC of the Constitutional Tribunal (now the Constitutional Court), published in Official Gazette No. 382-S of 23 October 2006, declaring the *detención en firme* procedure unconstitutional;

(c) Ruling No. 0042-2007-TC of the Constitutional Tribunal, published in Official Gazette No. 371 of 1 July 2008, declaring articles 145 and 147 of the National Security Act, which allow the trial of civilians by military courts for acts committed during states of emergency, unconstitutional; and the interpretative statement No. 001-08-SI-CC of the new Constitutional Court, published in Official Gazette No. 479 of 2 December 2008, confirming that the former military and police courts ceased to exist when the 2008 Constitution took effect.

7. The Committee welcomes the efforts made by the State party to alter its policies and procedures in order to ensure greater protection for human rights and apply the Convention, in particular:

(a) The adoption, on 8 May 2008, of Ecuador's Refugee Policy, in which it undertakes to meet the commitments assumed under the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, the 1984 Cartagena Declaration and the 2004 Mexico Declaration and Plan of Action;

(b) The adoption in 2006 of the national plan to combat human trafficking, illegal trafficking of migrants, exploitation for sexual work or other purposes and prostitution of women, children and adolescents, child pornography and the corruption of minors;

(c) The approval of the Criminal Code Reform Act (Act No. 2005-2, Official Gazette No. 45 of 23 June 2005), which defines and punishes the offence of sexual exploitation of minors;

(d) The publication, on 7 June 2010, of the final report of the Truth Commission, giving the results of its investigations into the human rights violations that have occurred in Ecuador, mainly during the period between 1984 and 1988.

8. The Committee is pleased to note that the State party has admitted tens of thousands of refugees and asylum-seekers, mostly Colombians fleeing from the armed conflict in their country. The State party estimates that there are some 135,000 persons in need of international protection who are present in the country, and had granted refugee status to over 45,000 by 26 November 2009.

9. The Committee is grateful that the State party maintains an open invitation to all special procedure mandate holders of the Human Rights Council. Since consideration of the State party's previous report, Ecuador has received the visits of seven special rapporteurs and working groups of the Council.

C. Principal subjects of concern and recommendations

Definition and offence of torture

10. While noting that the 2008 Constitution, in article 66, paragraph 3 (c), prohibits torture and cruel, inhuman and degrading treatment or punishment, the Committee regrets that the offence of torture as defined in article 1 of the Convention (arts. 1 and 4) has not yet been entered in the State party's Criminal Code.

The Committee reiterates its earlier recommendation (CAT/C/ECU/CO/3, para. 14) that the State party should ensure that torture is considered an offence in its domestic law and should adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are made punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.

Guarantees of due process

11. The Committee welcomes the measures adopted by the State party to ensure compliance with due process in accordance with article 77 of the Constitution. The rules adopted include the right for all detainees to obtain immediate access to a counsel and to undergo a medical examination, to contact a family member or any person of their choice, to be informed of their rights at the time of their arrest, and to appear before a judge within the time prescribed by law. In this respect, the Committee is concerned at the State party's statement in its report (para. 85) that "before being taken to a prison facility or police cell, arrested persons are seen by the duty doctor or whoever is standing in for the duty doctor at a health clinic operated by the National Police or Office of the Public Prosecutor". The Committee notes the reference by the State party's delegation to the shortage of independent forensic experts (arts. 2 and 11).

The State party should guarantee the right of persons held in police custody to have access to an independent medical examination.

Protection of forensic physicians and other human rights defenders

12. The Committee is appalled at and most vehemently condemns the murder on 6 July 2010 of Dr. Germán Antonio Ramírez Herrera, forensic expert specializing in the investigation of cases of torture and summary executions. According to reports, Dr.

Ramírez Herrera received threats after documenting cases of torture and ill-treatment in the Quevedo Social Rehabilitation Centre. The Committee would also request that the State party afford adequate protection to the members of the national network of forensic experts and for all human rights defenders engaged in combating torture and impunity in Ecuador (arts. 2, 12, 13 and 16).

The State party should:

(a) Inform the Committee of the results of the investigations conducted into the murder of Dr. Ramírez Herrera as soon as the proceedings of the case have been made public;

(b) Initiate a programme for the protection of professionals who through their investigations are able to throw light on the facts of alleged cases of torture and ill-treatment.

Non-refoulement and access to a fair and expeditious asylum procedure

13. The Committee welcomes the efforts made by the State party to respond adequately to the considerable number of persons in need of international protection present within the country (see paragraph 8 above). It appreciates in particular the launch of initiatives such as the Extended Register, which gave rapid access to procedures undertaken for the determination of refugee status for tens of thousands of Colombians in the most remote border areas. The Committee notes with concern, however, the content of Executive Decree No. 1471 of 3 December 2008, establishing as a requirement for the entry of Colombian citizens to Ecuadorian territory the presentation of a certificate of good conduct or “criminal record”, issued by the Department of National Security (DAS), the intelligence agency which comes under the authority of the executive branch of the Colombian Government. The discriminatory nature of this requirement has been pointed out by the Office of the Ombudsman, as well as by several international organizations, and was partially amended by Executive Decree No. 1522 of 7 January 2009, which excluded from the requirement minors, refugees legally recognized by Ecuador, air crews, governmental or local authorities, diplomats and members of international organizations. The Committee considers that obliging asylum-seekers to meet this requirement would force many persons in need of international protection to place their security at risk (art. 3).

Considering the considerable increase in the number of asylum-seekers in Ecuador in recent years, the Committee recommends that the State party:

(a) Pursue its efforts in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR) to identify and protect refugees and asylum-seekers;

(b) Examine the conformity of the current legislation on asylum and immigration with the norms and principles of international human rights law, in particular the principle of non-discrimination. The State party should consider withdrawing the requirement for the submission of “criminal records” with asylum applications, which in the opinion of the Committee violates the principles of non-refoulement and confidentiality with respect to the rights of refugees.

Abuse and refoulement of asylum-seekers and refugees

14. The Committee notes with great concern the deterioration in the situation on the northern border with Colombia stemming from the domestic conflict in that neighbouring country and the presence of groups involved in organized crime, as a result of which the State party has stepped up its military presence in the area. While it appreciates the serious difficulties the State party has to deal with in order to preserve public order in provinces on

the border, the Committee is deeply concerned about the reports received of continual abuses and acts of violence against the civilian population, and in particular asylum-seekers and refugees of Colombian nationality, committed by illegal armed groups and members of the Ecuadorian and Colombian security forces (arts. 1–3, 10 and 16).

The Committee recommends that the State party:

(a) Adopt the necessary measures to guarantee the physical integrity of the civilian population in the provinces on the border with Colombia, including the refugees and asylum-seekers under its jurisdiction;

(b) Ensure that investigations are carried out into the murders and abuses committed in this region and that the perpetrators of such acts are brought before the courts;

(c) Continue mandatory in-service training programmes on human rights, asylum and migration for members of the State party's armed and security forces, and give priority to those police and military personnel serving or due to serve in border areas;

(d) Conduct a periodic review of the contents of the Guide to Human Rights and Human Mobility for members of the State party's armed and security forces.

15. The Committee notes with deep concern the wealth of documentation received about acts of abuse and sexual assaults on female refugees and asylum-seekers, allegedly committed by members of the State security forces and the Ecuadorian armed forces. The Committee has received information on women and girls, most of whom are of Colombian nationality, who are sexually assaulted or compelled to have sexual relations under threat of expulsion. The Committee draws the attention of the State party to recent cases in which Colombian asylum-seekers were returned in June 2010 and the summary expulsion of another in October 2010 before a decision had been handed down on his appeal (arts. 1–4 and 16).

The State party should:

(a) Ensure that thorough investigations are carried out into abuses committed against refugees and asylum-seekers, and in particular women and girls;

(b) Ensure that such acts do not go unpunished and that the appropriate criminal, civil and administrative liabilities are determined;

(c) Take the measures necessary to ensure that persons under its jurisdiction are fairly treated at all stages of the asylum procedure, and in particular that they receive an effective, impartial and independent review of the decision to expel, return or deport them;

(d) Ensure compliance with and proper application by the police commissioner (the provincial police authority) and provincial migration police chiefs of the protocol applicable to deportation procedures and, failing this, hand down the appropriate penalties;

(e) Take the legislative or other measures necessary to facilitate the integration of refugees and asylum-seekers;

(f) Strengthen campaigns to raise awareness of the conflict in Colombia and the situation of persons who come to Ecuador in search of refuge, as well as awareness-raising measures that could help eliminate discriminatory or xenophobic attitudes.

Impunity for acts of torture and ill-treatment

16. The Committee notes with concern that, according to the information provided by the State party in its periodic report (para. 181), the Internal Affairs Unit of the National Police has apparently submitted to the ordinary and police courts only 59 of the 299 complaints of alleged ill-treatment, torture or physical assault brought to its attention between May 2005 and December 2008. In addition, the State party's periodic report indicates (paras. 164–166) that between 2003 and 2008 “only two trials for offences against individual freedom and torture have resulted in convictions”. The Committee is also concerned that, according to the information provided by the State party's delegation, during the current year only five specific complaints have been lodged concerning ill-treatment in the State party's prison system, all of them relating to centres for youth offenders. The Committee considers that these data contrast with the persistent reports and wealth of documentation received from other sources concerning cases of torture and ill-treatment of persons deprived of their liberty. At the same time, the Committee notes with interest Ministerial Decision No. 1435, issued by the Ministry of the Interior on 9 June 2010, instructing the Internal Affairs Unit that “even if the procedural deadline for investigation has expired, all cases involving human rights violations which are found to have been closed or filed without a proper investigation and/or those in which new elements come to light which potentially reveal civil, criminal or administrative liability on the part of members of the police forces shall be reopened and submitted to the appropriate authorities” (arts. 2, 12, 13 and 16).

The Committee recommends that the State party:

- (a) Take appropriate measures to ensure that a prompt and impartial investigation is made into all complaints of torture or ill-treatment. In particular, such investigations should be the responsibility of an independent body, not under the authority of the police;**
- (b) Review the effectiveness of the internal complaints system available to detainees and consider establishing an independent complaints system for all persons deprived of their liberty;**
- (c) Duly bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, sentence them to penalties that are consistent with the seriousness of their acts;**
- (d) Provide the victims with proper compensation and focus its efforts on their fullest possible rehabilitation.**

The Truth Commission

17. The Committee takes note with satisfaction of the final report of the Truth Commission (see paragraph 7 (d) above), and in particular of the conclusions and recommendations reached after investigations into 118 cases of human rights violations committed in Ecuador between 1984 and 2008, several of which were collective in nature, and which concerned a total of 456 recognized victims. The final report confirms that 269 persons were unlawfully deprived of their liberty; 365 were tortured; 86 were sexually assaulted; 17 were victims of enforced disappearance; 68 were summarily executed; and 26 others were victims of “attempts on their life”. On 8 June 2010, the Truth Commission presented, with the support of the Ombudsman and in compliance with article 6 of Executive Decree No. 305 of 3 May 2007, a proposal concerning mechanisms to follow up on its recommendations, set forth in the “bill to provide reparation for victims and ensure the prosecution of serious human rights violations and crimes against humanity committed in Ecuador between 4 October 1983 and 31 December 2008”. The Committee also takes note of the establishment, by the Office of the Public Prosecutor, of a special unit to

exercise jurisdiction over the 118 cases investigated by the Truth Commission as a prior step to their trial (arts. 2, 4, 12, 14 and 16).

The Committee requests the State party to submit full information on:

(a) **The response to the 115 recommendations made in the final report of the Truth Commission concerning satisfaction, restitution, rehabilitation, compensation and assurances of non-repetition;**

(b) **The outcome of the examination by the National Assembly's Commission on Justice and Structure of the State and the subsequent proceedings for the adoption of the bill for reparation of victims proposed by the Truth Commission;**

(c) **The outcome of any investigations and criminal trials, including the sentences handed down, that may result from the information submitted by the Truth Commission to the Office of the Public Prosecutor.**

Violence against children, abuse and sexual violence against minors

18. The Committee expresses its deepest concern about the numerous and consistent reports received describing the scale of the problem of abuse and sexual violence against minors in educational establishments in Ecuador. While it takes note of the existence of a plan to eradicate sexual offences in educational establishments, the Committee considers that there has not yet been an adequate institutional response by the State party, and that this is one reason why victims frequently prefer not to report instances of abuse. The Committee is particularly concerned about the information on cases in which the victims have allegedly identified their aggressor among the teaching staff. In this regard, the Committee is closely following the proceedings of the *Paola Guzmán v. Ecuador* case, which was accepted for consideration by the Inter-American Commission on Human Rights on 17 October 2008 (Report No. 76/18) after an examination of the complaint lodged by the plaintiffs concerning alleged violations of articles 4, 5, 8, 19, 24 and 25 of the American Convention on Human Rights. The Committee is also concerned that corporal punishment is legal within the home (arts. 1, 2, 4 and 16).

The Committee urges the State party, in view of the seriousness of the acts concerned, to:

(a) **Step up its efforts to eradicate abuse and sexual violence against minors in schools;**

(b) **Take all measures necessary to investigate, bring to trial and punish the perpetrators of such acts;**

(c) **Make available resources to eliminate the persistent pattern of abuse and sexual violence against minors in educational establishments;**

(d) **Make complaints mechanisms available to victims and their families in educational establishments and other institutions;**

(e) **Strengthen awareness-raising and in-service training programmes on the subject for teaching staff;**

(f) **Guarantee that victims have full access to health services specialized in family planning and the prevention and diagnosis of sexually transmitted diseases. In addition, the State party should redouble its efforts to provide victims with redress, including fair and adequate compensation, and the fullest possible rehabilitation;**

(g) **Establish a consultative mechanism that involves civil society, including parents' associations;**

- (h) **Expressly prohibit corporal punishment of children in the home.**

Lynchings and the actions of the peasant defence networks

19. While noting that the delegation of the State party has made it plain that the Ecuadorian State does not promote, support or back the activities of the “peasant defence networks”, the Committee is concerned at reports that such networks are active in the maintenance of security in rural areas and that some of their members have perpetrated abuses. It condemns the recent lynchings in the provinces of Pichincha, Los Ríos, Guayas, Azuay, Cotopaxi and Chimborazo (arts. 2 and 16).

The State party should:

- (a) **Take all necessary steps to improve civilian security in rural areas, ensuring that State security forces and bodies have a presence throughout the country;**
- (b) **Ensure that incidents are investigated and that those responsible are brought to justice.**

Indigenous justice

20. The Committee takes note of the information from the State party on the preparation of a draft bill on cooperation and coordination between the indigenous and ordinary justice systems, setting out, in articles 4 and 19, the principle of reviews for constitutionality. It is nevertheless concerned that neither the periodic report nor the answers given by the delegation of the State party give sufficient information on how conflicts of jurisdiction between the two systems will be resolved (arts. 2 and 16).

The State party must take the steps necessary to ensure that conflicts of jurisdiction between the ordinary and indigenous justice systems are resolved through a procedure laid down by law that guarantees respect for fundamental rights and liberties, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

Training

21. The Committee takes note of the information in the report of the State party (paras. 82 to 88) on training schemes for members of the national police but regrets that so little information is available on the evaluation of those schemes and their effectiveness in reducing the incidence of torture and ill-treatment. The State party indicates in its report (para. 206) that the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans, in cooperation with international non-governmental organizations, carried out a project between February 2007 and 2008 on the implementation of the Istanbul Protocol. According to information received by the Committee, this is a project of the International Rehabilitation Council for Torture Victims (IRCT) designed and run by the Foundation for the Integral Rehabilitation of Victims of Violence (PRIVA), with European Union funds, which the Permanent Commission has backed (para. 10).

The State party should:

- (a) **Continue to provide training programmes so as to ensure that all public servants, in particular members of the police forces and other security workers, are fully aware of the provisions of the Convention, that [breaches] are not tolerated but investigated, and that the perpetrators are brought to trial;**
- (b) **Assess the effectiveness and impact of training schemes and education on the incidence of torture and ill-treatment;**

(c) Continue to support training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Conditions in detention

22. The Committee takes note of the information provided by the State party on the marked reduction in the numbers of people behind bars and on steps taken to deal with the problem of prison overcrowding, notably the introduction of a new inmate benefit calculation system with the reform of the Sentencing Implementation Code. It notes the reprieves granted in 2008 to 2,228 persons detained for being in possession of small quantities of narcotic or psychotropic drugs, and of 13 detainees in the terminal phases of illness. It also notes that since 2006 additional budgetary allocations have been made for the construction, expansion and outfitting of penitentiaries and remand facilities. The Committee is nevertheless concerned at the high levels of occupancy recorded at most detention facilities, mainly as a result of the slow processing of court cases, and reiterates its concern at persistent reports of poor health and hygiene conditions, a lack of staff, inadequate health-care services and a shortage of drinking water and food (art. 11).

The State party should:

(a) Make greater efforts to alleviate overcrowding in prisons, in particular by resorting to alternatives to custodial sentences, in order to reach its stated objective of resolving the problem of prison overcrowding within 18 months;

(b) Continue to put into effect plans to improve and expand the prison infrastructure;

(c) Take steps to improve staffing levels generally and increase the number of prison officials in particular;

(d) Augment the health-care resources available in penitentiary institutions and ensure that the medical assistance given to detainees is of high quality.

Free legal assistance

23. The Committee notes the positive impact of efforts by the Public Defence Service to reduce the numbers of people held in pretrial detention – 501 on 31 August 2010. As stipulated in article 191 of the Constitution, the Public Defence Service “shall have human and material resources and working conditions equivalent to those of the Office of the Public Prosecutor” (arts. 2 and 11).

The State party should assign to the Public Defence Service the human, financial and material resources it needs to accomplish its objectives in order to extend the scope of its efforts and make the system more efficient.

Redress, including compensation and rehabilitation

24. The Committee takes note of Decree No. 1317 of 9 September 2008 making the Ministry of Justice and Human Rights responsible for “coordinating the execution of sentences, precautionary measures, provisional measures, amicable settlements, recommendations and resolutions originating in the inter-American human rights system and in the universal system of human rights”. It regrets, however, the slowness of the State party in giving full effect to the amicable settlements and decisions reached in the inter-American human rights system and the shortage of information about the redress and compensation, including rehabilitation, awarded to victims of human rights violations.

The State party should ensure that the appropriate steps are taken to provide the victims of torture and ill-treatment with redress, including fair and adequate compensation, and the fullest possible rehabilitation.

In its next periodic report, the State party is asked to provide the Committee with statistics and full details of cases in which victims have obtained full redress, including investigation and punishment of the perpetrators, compensation and rehabilitation.

Optional Protocol and national preventive mechanism

25. The Committee takes note of the legal and constitutional proceedings which will give rise to the establishment or designation of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment in conformity with the Optional Protocol to the Convention.

The State party should accelerate the designation of the national preventive mechanism and ensure it has the resources it needs to pursue its mandate independently and effectively throughout the country.

26. The Committee also recommends that the State party include in its next periodic report information on compliance with obligations incumbent under the Convention on Ecuadorian armed forces deployed abroad.

27. The State party is urged to disseminate widely the report it has submitted to the Committee, and the Committee's concluding observations, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 14, 15, 18 and 22 of the present document.

29. The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit a core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the inter-committee meeting of human rights treaty bodies, and to observe the page limit of 80 pages for such core documents. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

30. The State party is invited to submit its seventh periodic report by 19 November 2014 at the latest.
