



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

Distr.
GENERAL

CAT/C/SR.673
21 November 2005

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD (PARTIAL)* OF THE 673rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 11 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Ecuador (CAT/C/39/Add.6; CAT/C/35/L/ECU)

1. At the invitation of the Chairperson, the members of the delegation of Ecuador took places at the Committee table.
2. Mr. FAIDUTTI (Ecuador), introducing the third periodic report of Ecuador (CAT/C/39/Add.6), said that, in the framework of the National Human Rights Plan, special emphasis was placed on the promotion of the fundamental rights of prisoners in cooperation with civil society and prisoners themselves. Given Ecuador's great geographical and ethnic diversity, efforts were made to ensure that the Plan reached out to all regions and all sectors of society. Measures to promote the fundamental rights of prisoners included the formulation of a sentence code; the forthcoming publication of a handbook on codes of conduct for prison staff; and human rights training programmes for staff of social rehabilitation centres, supervisory staff and judicial personnel. Furthermore, the Government had established a Human Rights Coordination Commission that worked in close cooperation with civil society.
3. Legislation had also been adopted to combat violence against women and intrafamily violence, which provided for the remedy of amparo and described the penalties applicable to such offences. The new provisions stipulated heavier penalties for domestic and sexual violence and codified the offences of trafficking and sexual exploitation. Ecuadorian legislation provided for the administration of indigenous justice within the national system of justice. Agreements had been reached with victims of human rights violations with a view to awarding fair compensation, within available resources and in conformity with the relevant international instruments.
4. Mr. ROBERTS (Ecuador) said that, within the framework of the National Human Rights Plan, a specific action plan had been developed to improve the treatment of detainees which was implemented with the participation of civil society and prisoners. In that framework, a new sentence code had been developed with a view to reducing overcrowding and improving prison conditions. The Standing Committee for Follow-Up to the National Plan would shortly publish a handbook on a code of conduct for staff of social rehabilitation centres.
5. As to compensation, Ecuador had been one of the first countries to sign amicable settlement agreements for cases involving human rights violations that had been submitted to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Details of those agreements could be found on the websites of the Inter-American Commission on Human Rights and the Office of the Public Prosecutor.
6. The Ecuadorian Constitution gave indigenous authorities jurisdiction to settle intra-community disputes on the basis of customary law. A draft bill on the administration of indigenous justice articulating that constitutional principle was currently before the National Congress. All disputes involving indigenous peoples that did not pertain to indigenous affairs fell under the jurisdiction of the regular courts.

7. The new Code of Criminal Procedure specified the circumstances under which the court could order pretrial detention: to assure the integrity of the judicial process; in cases where the offence committed was publicly actionable; in cases where the court found substantial evidence that a defendant had committed or been an accessory to a crime; and in cases where the offence was punishable by at least one year's imprisonment.

8. The Convention against Torture had been directly invoked in court proceedings on several occasions, in particular in connection with cases brought by human rights organizations or lawyers specializing in human rights.

9. Attempts to commit an offence were punishable under Ecuadorian legislation. The Criminal Code provided that anyone who perpetrated acts likely to result in the commission of an offence was held responsible for an attempt to commit an offence if the act was not committed or not proven. Attempted crimes were subject to a penalty of one third to two thirds that imposed had the crime been actually committed.

10. The Government cooperated with associations of relatives of detainees and prisoners to identify persons who could not afford a lawyer to ensure that they had access to legal counsel. Pursuant to the Constitution, the State must appoint public defenders for indigenous communities, workers, women and abandoned minors or child victims of violence, and any other persons without financial means. The Code of Criminal Procedure articulated the right of the defendant to appoint a defence lawyer; otherwise, a court-appointed lawyer was provided.

11. The human rights training programme for members of the Ecuadorian armed forces mentioned in the report had brought about significant changes in the perception of human rights and torture within the military. Victims of human rights violations, both members of the armed forces and civilians, had been encouraged to lodge complaints. Human rights-related issues had been incorporated into education curricula for military personnel and civilian staff of the armed forces. With the assistance of the World Bank, seminars and lectures on human rights had been held specifically for public sector staff. In October 2005, Ecuador had hosted the first international human rights seminar for public sector staff.

12. Since 1998, persons newly admitted to the pretrial detention centre in Quito had been examined for signs of torture or ill-treatment by a team of doctors, psychologists and social workers. It was prohibited to place in detention persons who had been subjected to ill-treatment. The issue of ill-treatment during police investigations and violations resulting from prison overcrowding or poor sanitary conditions had been addressed.

13. Mr. FADUTTI (Ecuador) said that to address the persistent problem of bribery of prison guards, prisoners had established a system of financial self-management. In addition, provision had been made for the establishment of a school for prison guards, where they would receive training in ethics, among other subjects. Once the training was completed, those guards would replace existing staff. Ethical training was also expected to address the problem of guards selling drugs to inmates.

14. In addition to court orders, the release of prisoners could be sought by way of habeas corpus and amparo. The Office of the Ombudsman could invoke such remedy on behalf of persons who had been wrongly detained; there was no need for a private defence counsel for

the purpose. Statistics on such cases could be found in the written replies. Representatives of the Office of the Ombudsman undertook regular visits to prisons to identify cases of wrongful detention or human rights violations. The amparo remedy was also available in cases of abuse of power or judicial misconduct; action could be taken either by the injured party or by third persons. Those legal and institutional reforms had contributed to a significant reduction in the incidence of torture and ill-treatment in places of detention and rehabilitation.

15. The new sentence code provided for medical examination of detainees upon arrival in prison and for the preparation of a preliminary report. Prisoners had the right to be examined by a doctor of their choice.

16. The Office of the Public Prosecutor was responsible for instituting criminal proceedings with respect to publicly actionable offences, including torture. Members of the police and the armed forces accused of having committed an offence during the discharge of their duties, including torture and other cruel, inhuman or degrading treatment, were tried by police and military courts. Disciplinary sanctions were imposed in parallel with criminal proceedings. In some cases, suspects could be dismissed from office prior to the establishment of their guilt.

17. Persons arrested in Pichincha canton were taken to local police units and transferred to Quito within a few hours of their arrest. The Government had received no reports of ill-treatment in those police stations.

18. According to 2004 statistics of the National Social Rehabilitation Council, of the 35 deaths in custody, 10 had resulted from trauma, 6 from illness and 2 from drug overdose; the remainder were attributable to other causes. Measures taken to reduce prison overcrowding, and thus illness or violence resulting from that situation, included the conclusion of bilateral and multilateral agreements to facilitate the transfer of foreigners sentenced in Ecuador to serve their sentences in their country of origin.

19. Mr. ROBERTS (Ecuador) said that, in the case of Joffre Aroca Palma, the State had sought to reach an amicable settlement agreement within the framework of the Inter-American Commission on Human Rights. Unfortunately, Mr. Aroca Palma's relatives had been unwilling to cooperate.

20. The Code of Criminal Procedure prohibited the use of evidence obtained under duress. Training curricula for personnel of the criminal justice system informed participants of the inadmissibility of such evidence; its use nullified the outcome of the trial. Training for criminal justice personnel covered codes of conduct, and members of the National Police received training in the application of the law, upholding public order and the use of firearms. The armed forces were only involved in containing demonstrations or civil unrest in cases where State security was under threat.

21. The ratification of the Optional Protocol to the Convention against Torture was currently being debated in the National Congress. Existing arrangements, namely periodic monitoring visits by representatives of the Office of the Ombudsman, had contributed to improving health conditions in prisons and reducing ill-treatment of inmates.

22. In December 2002, Ecuador had extended an open, standing invitation to all United Nations special procedures to mandate-holders to visit Ecuador.

23. Adequate, up-to-date and effective legal instruments must be developed to combat international terrorism, and Ecuador had supported all relevant international resolutions to that end. The international community's fight against terrorism could only be successful if the root causes of the phenomenon were addressed. Radical changes must be made to the current international order, which generated global poverty and caused conflict. Terrorism constituted a crime against humanity and should be imprescriptible. The Ecuadorian Criminal Code codified the offence of terrorism, and an inter-institutional committee and an ad hoc subcommittee had been set up to prepare a bill to criminalize terrorism financing. The draft had been submitted to the President for approval and subsequent submission to the National Congress.

24. Mr. FAIDUTTI (Ecuador) said that Ecuador had made considerable efforts to bring its legislation into line with the international human rights treaties it had ratified. Under the Constitution of Ecuador, international instruments that did not run counter to the provisions of the Constitution took precedence over domestic law. The Government strove to ensure the observance of human rights and to guarantee a dignified and fulfilling life for the people living in Ecuador, but did not always have sufficient resources to do so.

25. Before his career as a diplomat he had been a lawyer in Ecuador and had witnessed the great strides made, including the introduction of legislative reform, the work of the Ombudsman and the exposure of human rights violations by the press and NGOs with a view to eliminating all human rights abuses, including torture. Ecuador was fully committed to complying with the obligations of international treaties such as the Convention because it firmly believed in the values they upheld.

26. Mr. GROSSMAN (Country Rapporteur), after expressing appreciation of the report, said that he would address articles 1 to 9 of the Convention.

27. With regard to the definition of torture, he noted that article 187 of the Criminal Code as amended by Act No. 47 mentioned only "physical torture", whereas article 1 of the Convention covered mental suffering too. Article 187 contained a further limitation by referring to punishment for the torture of "a person arrested or detained". Since the State party had asserted that on the basis of its jurisprudence the provision could be interpreted as including mental suffering, details of relevant cases and sentences would be appreciated. According to paragraph 8 of the report, article 23 of the Constitution was sufficiently broad in scope and yet specific enough to encompass all elements of article 1 of the Convention. He would stress, however, that a constitutional provision was not sufficient; the classification of torture as a criminal offence in line with the definition contained in the Convention was required.

28. According to paragraph 10 of the report, the Rome Statute of the International Criminal Court was part of Ecuadorian law because it had been ratified by the State party, but he wondered whether the Statute's provisions could be invoked directly in the courts.

29. In that connection, he stressed the importance of providing the judiciary with the necessary resources so as to ensure the proper administration of justice and thus compliance with international obligations. The budgetary allocations for the administration of justice were very

low (1.79 per cent of the national budget in 2004), which resulted in long delays for the consideration of many cases. In the Pichincha province alone, more than 90,000 cases were pending. Were there any plans to increase funds for the judiciary?

30. In the Americas one in four women was the victim of domestic violence. He therefore enquired whether there had been any improvement in the situation in Ecuador since the adoption of the Domestic Violence and Violence against Women Act, 1995. For instance, had there been any increase in the number of prosecutions? Was there any legal provision protecting the members of sexual minorities against violence? Was there any special training for police officers on such matters?

31. In its reply to the question in paragraph 6 of the list of issues concerning the justice system of the indigenous peoples, the State party asserted that the relevant judicial functions could be exercised provided that they were not contrary to the Constitution and domestic legislation. Was there any monitoring or review mechanism to ensure that decisions by indigenous bodies complied with international law? Also, what qualifications and training were legal personnel who worked with the indigenous communities required to have? Were they given training on the indigenous languages and culture? Was adequate funding allocated for such purposes?

32. In connection with the question in paragraph 7 of the list of issues, he asked whether, notwithstanding the existence of constitutional provisions establishing the different jurisdictions, there was any conflict of jurisdiction concerning human rights violations committed by policemen and whether they should be tried in administrative or ordinary courts. Was there any tension between the police force and the judiciary on that account? Reports had been received from NGOs of such persons being released before any trial in the ordinary courts could take place. Some of them who were accused of murder had been allowed to leave the country. Had Interpol been alerted to the situation?

33. Was enforced disappearance a criminal offence under Ecuadorian legislation pursuant to the Declaration on the Protection of All Persons from Enforced Disappearance? Enforced disappearance caused great emotional distress to the relatives of the victims and was considered a form of cruel or inhuman treatment with respect to them under the inter-American human rights system.

34. Paragraphs 22 and 23 of the report referred to constitutional provisions relating to pretrial detention and the time limits for it, but the written replies referred to an exception known as “detención en firme” intended to expedite the initiation of proceedings. He would welcome some clarification as to how that exception could be reconciled with the constitutional provisions.

35. He enquired whether current legislation concerning the Ombudsman and related matters would be reviewed and sought further information on legislation relating to prison sentences. Many complaints had been received concerning prison conditions, alleging that inmates were subjected to many abuses including crucifixion. Was there any legislation to combat such abuses?

36. The State party had acknowledged that the conduct of the police and armed forces and the administration was not always in keeping with the provisions of the Convention and that impunity prevailed. How did the State party intend to ensure that its obligations under the Convention were upheld?

37. He stressed the importance of legislative reform so as to bring domestic law into line with international treaties. It would obviate the need to have recourse to amicable settlements before the Inter-American Commission on Human Rights, for the type of incident that had occurred in the Putumayo canton. Such settlements were not fully satisfactory in that only compensation was provided and no proper investigation was conducted leading to the conviction of the guilty parties. Investigation and punishment were the best means of promoting respect for human rights, since they helped to prevent the recurrence of violations.

38. The Ecumenical Human Rights Committee had reported over 100 cases of torture during detention or investigation procedures with more than 2,000 people who had been physically assaulted by the judicial police or prison warders. Allegations of torture resulting in death had also been made. In many of those cases the prosecutors had failed to conduct investigations and the cases had been referred to the police administrative tribunals. Generally speaking, when the latter were involved the penalties imposed were not adequate.

39. Turning to article 3, he asked what mechanisms existed to protect deportees against the risk of torture in the country of destination. Were there any relevant constitutional guarantees, and, if so, did they apply to legal and illegal residents? Were there any training programmes on the rights of aliens, refugees and asylum-seekers? Between 2000 and 2003 there had been a considerable increase in the number of applications for asylum, from around 400 to more than 11,000. Such a situation raised a variety of social, economic and political issues. Was a proper register of such applications kept so as to uphold the principles of equitable treatment and non-refoulement?

40. With reference to article 4, he said that in its reply to the question in paragraph 13 of the list of issues the State party had stated that an investigation was under way into the death in prison of Rodrigo Ron. What was the outcome of the administrative proceeding taken against the governor of the prison in question? Had any progress been made in establishing the identity of the persons involved? The Committee would welcome any up-to-date information on that case and on the other cases currently at the centre of public attention concerning Carlos Javier Paredes, Elían Elint López and Luis Alberto Shinín Laso.

41. With regard to article 6, he asked whether there was a list of police and army officers who had been dismissed for having committed offences under the Convention. Also, had any convictions been made for attempted torture?

42. In reply to the question in paragraph 4 of the list of issues, information had been provided on cases of torture and ill-treatment brought before the courts in 2004. Was there any information available for previous years, which would enable the Committee to see what trends were emerging? It was also stated that the Ombudsman kept a record of complaints of human rights violations, but had no disaggregated data on the types of violations in question. Were there any plans to compile such data in the future?

43. He sought clarification of the statement in the written replies (para. 61) to the question in paragraph 12 of the list of issues that all cells in temporary detention and social rehabilitation centres would be closed.

44. The State party should indicate whether a more flexible approach might be taken in future to the legislation on so-called “detención en firme”, particularly as it had exacerbated the problem of overcrowding in prisons.

45. Given that most of the civil society organizations that had participated in formulating the National Human Rights Plan had reportedly ceased to participate in its implementation, further details of measures to increase cooperation with civil society should be provided.

46. Updated information on efforts to ensure prompt and impartial investigation of cases in which law enforcement officials had been accused of human rights violations would be useful. In particular, the State party should clarify whether it was preparing any draft legislation to that effect.

47. It would be useful to learn when the investigations and proceedings against the officers guilty of the murder of Joffre Aroca Palma had begun. What stage had been reached in those proceedings? Had the officers involved been suspended from their duties?

48. The CHAIRPERSON (Alternate Country Rapporteur) asked whether the human rights training programme for members of the armed forces continued to be implemented. It would be useful to know whether there were sufficient resources for the training programme for all staff working with people who had been deprived of their liberty, and whether that programme would continue beyond the original deadline.

49. The State party should clarify whether there was a publicly available register of all detentions that were carried out without a court order, and whether all the details of such detentions were included in that register.

50. The meaning of the term “under State supervision”, with reference to detention centres that were administered by private non-profit-making institutions (CAT/C/39/Add.6, para. 147), required clarification.

51. He requested statistics on the number of police officers who had been tried for violations of the Convention under the police justice system, in which the prosecutors and judges were themselves members of the security forces. The State party should indicate what sentences had been handed down in those cases.

52. Additional information on inspections of prisons and rehabilitation centres should be supplied. Was there a register of such visits and, if so, was it publicly available? If prison officials were accused of committing acts of torture or ill-treatment, were they suspended from duty? It would be useful to know whether legal assistance was available to all detainees and convicted prisoners.

53. It would be enlightening to have the comments of the delegation on reports that local governments in Quito and Guayaquil applied a policy of refusing habeas corpus. The reporting State should provide additional information on the fact that some court decisions had appeared to place the burden of proof on the plaintiff.
54. He wished to know whether the State party planned to establish a public defender for refugees and asylum-seekers.
55. The reporting State should clarify whether the lack of an adequate system to compensate victims of torture was due solely to scarce resources. It would be useful to know whether the compensation agreed in the amicable settlements reached under the auspices of the Inter-American Commission on Human Rights had been received.
56. He asked what percentage of the State party's judges were women.
57. Ms. GAER asked what facilities were provided for women prisoners who were not housed in separate women's prisons. Were women in mixed prisons guarded by male or by female staff?
58. She requested further details on the paramilitary group mentioned in paragraphs 49 to 51 of the periodic report. It would be useful to know what legislative and practical measures had been implemented to prevent actions of the type described in those paragraphs. The State party should indicate what steps had been taken to ensure that people were not detained, ill-treated or assaulted on the grounds of their sexual orientation.
59. She wished to know how many police officers had been dismissed, and for how long, in the 65 cases of human rights violations in Guayaquil mentioned in paragraph 52 of the periodic report. Had any of the persons released from prison as a result of "legal mitigation measures" (CAT/C/39/Add.6, para. 153) committed torture-related offences? If so, further details of those cases should be provided.
60. The reporting State should indicate whether sexual abuse and trafficking in women for sexual slavery had been criminalized. Was the legislation prohibiting violence against women now being implemented? If so, details of the number of convictions under that law should be provided.
61. Mr. ROBERTS (Ecuador) said that, to the best of his knowledge, the cases mentioned in paragraphs 49 to 51 of the report had involved criminal gangs. He was not aware of any paramilitary groups in Ecuador.
62. Compensation had been paid in all the cases overseen by the Inter-American Commission on Human Rights.
63. The Inter-American Court of Human Rights had reviewed the Suárez Rosero case. Compensation had been cancelled and proceedings instituted against those responsible. The case had been delayed because the accused had failed to appear before the Supreme Court. Investigations were ongoing in the Benavides Cevallos case.

The discussion covered in the summary record ended at 12.25 p.m.