

## ECUADOR

### CAT A/46/46 (1991)

118. The Committee considered the initial report of Ecuador (CAT/C/7/Add.7) at its 61<sup>st</sup> meeting, held on 14 November 1990 (CAT/C/SR.61).

119. The report was introduced by the representative of the State party, who stressed that human rights education, training and information for law enforcement officials and members of the military were being provided by the Ecuadorian Government and various national institutions to combat torture and to ensure that human rights were properly perceived as being essential to the maintenance of social stability. He drew particular attention to the establishment in his country, with the participation of the Catholic Church and the Latin American Association for Human Rights, of a high-level, inter-agency commission to monitor police procedures and investigate complaints of human rights violations. A Special Commission of Inquiry, composed of lawmakers from all political parties represented in Congress and which had broad investigatory, administrative and educational functions in connection with complaints of human rights violations, had also been established.

120. Members of the Committee welcomed the efforts being made in Ecuador to promote human rights and, more specifically, to eliminate the practice of torture. However, they regretted that the report provided insufficient information on the measures Ecuador had actually taken to give effect to its undertakings under the Convention. Moreover, the report did not comply with the general guidelines established by the Committee for the preparation of initial reports of States parties and did not provide the text of national legislative provisions relevant to the implementation of the Convention.

121. With regard to the general legal framework in which the Convention was implemented in Ecuador, members of the Committee observed that clear and comprehensive information was necessary on how international instruments were incorporated into Ecuadorian law and on whether Ecuadorian legislation contained provisions of wider application than those contained in the Convention. In addition, detailed information was necessary on the structure of the judiciary in Ecuador, the procedures existing in the country permitting applications for redress, the functioning and impact of the Tribunal of Constitutional Guarantees, the organization and scope of educational and information activities relating to the fight against torture and on the mandate and functioning of the Special Commission of Inquiry. Members of the Committee also wished to know whether the provisions of the Convention could be applied directly; whether remedies or rehabilitation programmes existed, and what the actual situation was with regard to the practical implementation of the Convention and in respect of the difficulties affecting the fulfilment of Ecuador's obligations thereunder.

122. In that connection, members of the Committee noted that they had received information on allegations of torture in Ecuador from various non-governmental organizations and requested detailed

information especially on events that had occurred in January and March 1990, in connection with which a prison governor had publicly denounced the Criminal Investigation Department for torturing prisoners. They also asked what remedial action had been taken by the Ecuadorian Government to improve the situation.

123. Referring to specific articles of the Convention, members of the Committee wished to know whether the definition of torture contained in article 1 of the Convention was fully covered in Ecuadorian law and whether acts of torture were identified and dealt with in Ecuador's Penal Code and Code of Criminal Procedure, as required by article 4 of the Convention.

124. In connection with article 2 of the Convention, members of the Committee stated that the adoption by States parties of measures to prevent acts of torture were extremely important. Questions relating to authority to arrest, the duration of pre-trial detention, the rules governing incommunicado detention, the guarantee of medical examinations and, in general, issues of a practical, procedural and functional nature should therefore have been reported on in far greater detail. The relationship in such matters between the authority of police officers and that of magistrates or judges also needed to be clarified.

125. Clarification was also requested as to whether the Aliens Act and the Regulations on Aliens satisfied the requirements of article 3 of the Convention and whether the provisions of title I, article 5, of the Ecuadorian Penal Code and article 3 of the Ecuadorian Code of Criminal Procedure satisfied the requirements of article 5 of the Convention.

126. In addition, members of the Committee observed that more detailed information with regard to articles 6 to 15 of the Convention was necessary to understand how their provisions were actually implemented. They stressed the need to receive, in particular, factual information on important issues such as specific cases of torture; their frequency; the kind of officials involved; the number of complaints made, investigations undertaken and sentences handed down, with examples; cases in which compensation had been paid and the amount thereof; as well as information on the implementation of the principles of non-refoulement and universal jurisdiction.

#### Concluding Observations

127. In conclusion, and in view of the large number of questions raised, the Committee, pursuant to rule 67, paragraph 2, of its rules of procedure, requested the Government of Ecuador to submit to the Committee an additional report containing the information requested in accordance with the requirements of the Convention and the Committee's general guidelines. It also invited the Government of Ecuador to submit its additional report by the end of February 1991 in time for it to be considered at the sixth session of the Committee in April 1991.

128. The representative of Ecuador finally stated that he had taken note of the comments made by the Committee on his country's initial report and that his Government would be able to supply an additional report in accordance with the Committee's guidelines in time for the Committee's sixth session.

## CAT A/47/44 (1992)

60. The Committee considered the additional report of Ecuador (CAT/C/7/Add.11 and 13) at its 89<sup>th</sup> and 90<sup>th</sup> meetings, on 12 November 1991 (CAT/C/SR.89 and 90).

61. The report was introduced by the representative of the State party who focused on recent events in the country. Mention was made in particular of the establishment by decree on 13 July 1990 of an international commission to look into the matter of the disappearance on 8 January 1988 of the Restrepo Arizmende brothers, aged 17 and 14. The Commission had submitted a report on 2 September 1991 to the President of Ecuador which had concluded, *inter alia*, that the brothers had disappeared while in the hands of members of the National Police, that there had been negligence in police investigations and deliberate attempts by members of the police to cover up offences related to the case; and that the brothers were no longer alive. The Commission recommended that legal proceedings should be instituted against persons suspected of having committed offences in connection with the case and that the family of the victims should receive compensation. In addition, it recommended that necessary measures should be adopted to prevent similar cases from occurring in future as well as to guarantee an investigation of other cases of disappearance and torture and that the Ecuadorian authorities should continue to cooperate fully with the competent United Nations human rights bodies.

62. The international commission's report had also shown that in the Criminal Investigation Service (SIC), torture, arbitrary arrests and the use of cruel, inhuman and degrading treatment had been routine practices. On 2 September 1991, the President had adopted a number of measures which included the abolition of the SIC and the allocation of important financial resources to the Judicial Police for equipment, recruitment and training purposes. Under Decree No. 2694, the mandate of the international commission had been broadened so that it could hear complaints and received information concerning human rights cases. Since September 1991, the Commission had received 31 complaints, of which three related to accusations of torture. The Government had also established the Office of Under-Secretary for Justice, whose task was to ensure that complaints of human rights abuses and constitutional guarantees were taken into account.

63. Additionally, agreements had been concluded with non-governmental organizations such as the Ecuadorian Red Cross and the Latin American Association for Human Rights providing for monitoring the procedures followed in criminal investigation centres by groups of experts with a view to safeguarding the physical and mental condition of persons under investigation; provisions had been made to ensure that individuals had access to an ombudsman paid by the State; and the investigatory commissioners from the Ministry of the Interior had been replaced by justice of the peace.

64. Members of the Committee welcomed the oral introduction by the representative of the reporting State and the additional report submitted by the Government of Ecuador. Clarification was, however, sought as to whether the Supreme Court considered that the provisions of international treaties were directly applicable to Ecuadorian domestic law and whether a legislative text establishing the independence of the judiciary existed in Ecuador. Members also wished to know how the competence of the various bodies in charge of investigations was defined; how habeas

corpus worked in practice and whether it applied to detentions ordered by a judge; whether legal practice had established a distinction between amparo and habeas corpus; how the future institution of ombudsman would operate; and whether any offences were still liable to the death penalty. In addition, more information was requested regarding the provision of legal aid, the powers and working methods of the Ad Hoc Human Rights Committee of the National Congress in verifying reports of human rights violations, and concerning the appointment of magistrates.

65. Members of the Committee welcomed the disbanding of the SIC but wished to know where former members of the service were currently employed and whether the Judicial Police replacing the SIC were under the supervision of the courts. They noted that the rationalization of torture was unacceptable and that the use of extreme methods by public officials could never be justified. Torture should be prohibited whatever the stage of development of a country and whatever the nature of the offence being investigated. Members also requested details concerning the action that was being taken by Ecuador in respect of certain alleged instances of torture that had been reported by non-governmental organizations or which were being considered by the Special Rapporteur of the Commission on Human Rights on questions relating to torture.

66. With regard to specific articles of the Covenant, members of the Committee asked whether, in the absence of an explicit legislative definition of torture and bearing in mind the requirement in article 4 of the Convention that acts of torture had to be specific offences under criminal law if they were to be punishable, the provisions of the Penal Code covered all the situations of torture referred to in article 1 of the Convention.

67. With regard to article 2 of the Convention, members of the Committee pointed to the incompatibility of article 214 of the Penal Code, concerning the exemption from criminal liability of a subordinate for illegal acts under certain circumstances, with article 2, paragraph 3, of the Convention. Noting that the Supreme Court had issued an opinion in favour of amending article 214, they wished to know what steps were being taken by the Government or the National Congress to do so.

68. In relation to article 3 of the Convention, members wished to know how that article was given effect in Ecuadorian legislation and whether there had been any actual cases in which refoulement, expulsion or extradition had been refused on the grounds that the person concerned was in danger of being subjected to torture in his own country.

69. With regard to article 4, information was sought as to the number of cases of persons convicted of torture, the penalties they had been given, whether any members of the SIC had been prosecuted or were currently facing charges, and whether it was necessary to try members of the police and the armed forces by special courts also in the case of offences of torture.

70. Concerning article 5 of the Convention, members of the Committee sought further clarification as to the application of its provisions, including details of any offences committed abroad where both the perpetrator and the victim had been foreigners.

71. With regard to article 6 of the Convention, it was stated that from the information provided it appeared that the legislation of Ecuador did not fully comply with the article's requirements.

72. Concerning article 9 of the Convention, it was noted that Contracting States to the Bustamante Code of Private International Law had an option to agree or accept certain forms of communication of criminal matters whereas, under the Convention, States parties were obliged to assist one another in connection with criminal proceedings.

73. With respect to article 10 of the Convention, members of the Committee noted that the various educational measures regarding the prohibition against torture did not seem to apply to medical personnel and suggested that the number of training and education programmes should be increased. They recalled, in this regard, that assistance could be sought from the Centre for Human Rights for that purpose.

74. In connection with article 11, further details were requested as to the rules governing interrogations, in particular those relating to access of the arrested person to a physician and a lawyer, and detention in solitary confinement. It was also asked how the right of a person held incommunicado to communicate with his lawyer, provided for in article 130, paragraph 2, of the Penal Code, was applied in practice; whether the period of pre-trial detention, which was limited to 24 hours, was counted from the time of the detainee's arrest; whether the detainee was entitled to remain silent until he had seen a lawyer; and whether there was any provision for regular visits to persons held in custody by independent magistrates. In addition, information was requested concerning the resignation of certain prison officials in January 1990.

75. With reference to article 13 of the Convention, it was asked whether persons who lodged accusations of torture with a court or submitted a complaint to the Court of Constitutional Guarantees or to the special commissions of the Congress were provided with any form of protection by the Government.

76. Regarding article 14 of the Convention, members of the Committee requested details of the provisions made by the reporting State for the complete rehabilitation of the victims of torture and whether there had been any actual cases where compensation had been awarded to victims of torture. It was asked, in particular, whether compensation was paid directly by the State or whether victims had to file a claim against their torturers.

77. Concerning article 15 of the Convention, members of the Committee wished to receive more information on penal provisions which established that any statement extracted through the use of torture would be void and disregarded in a court of law in cases of any kind, including cases involving drugs.

78. With regard to article 16 of the Convention, further information was sought as to the conditions of detention in Ecuador and concerning relevant rules for the prohibition of acts of cruel, inhuman or degrading treatment or punishment.

79. In reply to the various questions raised by members of the Committee, the representative of the State party said that the Constitution of Ecuador took precedence over all other instruments of domestic or international law and that the international instruments had to be approved by the National Congress to have the force of law. Police commissioners and officers could institute proceedings to establish that an offence had been committed, charge the alleged offender and order

pre-trial detention, but only the examining magistrate was authorized to take a decision on whether an offence had been committed. The legal reform at present under consideration was designed to ensure that any criminal proceedings were brought before the competent courts from the time an inquiry had started until a ruling had been handed down. Until September 1991, the National Police had the power to institute proceedings. In the future this power would be the responsibility of the Judicial Police under the supervision of the judicial authorities. For the present, however, a transitional provision had made the National Police Command responsible for organizing such proceedings.

80. Judges of the Supreme Court were appointed by the National Congress while judges of lower courts were appointed by bodies at a higher level in the judicial hierarchy. A debate was currently in progress on depoliticizing the higher ranks of the judiciary. Former members of the SIC had for the most part been reassigned to other departments of the police force not concerning with investigations.

81. Municipal authorities took decisions on the constitutional aspects of habeas corpus when power to order a detainee's release could not be entrusted to other authorities, perhaps owing to communication difficulties in Ecuador. Mayors and chairmen of municipal councils were not, however, authorized to take any decision on the lawfulness of a warrant for arrest. Any official who refused to obey an order from such municipal authorities for the release of a detainee would be liable to instant dismissal. Amparo was a remedy for which application was made to the judicial authority immediately above the court which had ordered imprisonment.

82. The Constitution made contempt an offence and it would be necessary to bring the Penal Code into line with it. Officials were obliged to abide by the decisions of the Court of Constitutional Guarantees and the Court could dismiss or deprive of his civil rights any official who failed to do so.

83. With regard to the jurisdiction of various courts, particularly military and police courts, the representative indicated that the matter had assumed greater importance with the trial of the persons involved in the Restrepo brothers case which, according to the court, came within the jurisdiction of the Supreme Court and the ordinary law system. A draft code of penal procedure was under preparation and it would define more clearly the offences that came under the ordinary law system and those that were subject to the jurisdiction of the police court.

84. With regard to article 1 of the Convention, the representative stated that while domestic legislation did not always use the same vocabulary as the Convention, it was broad enough to enable judges to apply the latter's provisions.

85. Referring to article 2 of the Convention, the representative pointed out that there were certain circumstances, such as self-defence, which might justify human rights violations. The declaration of the Supreme Court of Justice in favour of amending article 214 of the Penal Code was intended precisely to bring domestic provisions in line with those of the Convention.

86. With regard to article 3 of the Convention, the representative informed the Committee that a decision to extradite could only be taken by the Supreme Court. Decisions on expulsion were made

by the Secretary-General of the police of the province concerned, who was not a police official but a magistrate. His decision was final except where expulsion was provisional. Expulsion could not be ordered to a country where the expelled person might be submitted to torture.

87. In connection with article 4 of the Convention, the representative referred to questions relating to penalties imposed for specific cases of torture and pointed out that one of the failings of the Ecuadorian judicial system was the slowness of proceedings. A large percentage of detainees had to wait months if not years before appearing before a court and it was not unusual for the period spent in pre-trial detention to be longer than the actual prison sentence. Efforts had been made to remedy that situation, including a project, undertaken in cooperation with the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Delinquency, to improve the administration of justice by the Supreme Court.

88. Referring to article 5 of the Convention, the representative stated that Ecuadorian law could also apply to Ecuadorian nationals or aliens who committed acts of torture abroad but who had been arrested in Ecuador.

89. Concerning article 11 of the Convention, the representative explained that the contradictions regarding the duration of incommunicado detention in domestic law had been partly resolved by a judgement of the Court of Constitutional Guarantees holding that the provisions of the Constitution must take precedence and that such detention must not last longer than 24 hours. A person held incommunicado could have contact with his lawyer, as the right of defence was guaranteed by the Constitution, but no machinery to facilitate such contacts had been expressly provided for by law. Practical measures existed to assist detainees in their social rehabilitation even though specialized personnel was insufficient in that respect. Prison officials who resigned in 1990 had done so because they were dissatisfied with Ecuador's penal system. Their reports had been made known to the public through the press and had led to reform efforts, especially concerning the social rehabilitation centres.

90. Referring to article 14 of the Convention, the representative explained that although the State was required, under the Constitution, to compensate individuals for any damage suffered as a result of the operation of public services or acts performed by public officials, as yet there was no law guaranteeing either moral and financial reparation or medical rehabilitation for victims of torture.

#### Concluding observations

91. In concluding the consideration of the report, the Committee took note with satisfaction of the efforts the Government of Ecuador was making to improve the judicial system and to provide training for law enforcement and medical personnel in order to combat torture. However, the Committee stated that there were certain areas in which further efforts were needed, particularly to ensure that measures involving deprivation of liberty were taken by judges and not by administrative officials. In this regard it was noted that "examining magistrates" had no judicial function and were in fact officials of the Ministry of the Interior. Additionally, it would be necessary to adapt and modify a number of provisions of domestic law; to eliminate the disparity between article 141 of the Constitution, which laid down the powers of the Court of Constitutional Guarantees, and Ecuador's penal legislation; and to reform the special legal régime.

92. The Committee was also of the view that article 25 of the Penal Code did not sufficiently ensure conformity with article 4 of the Convention; that the Penal Code should be brought into line with article 2, paragraph 3, and article 3 of the Convention; and that the law should be further developed not only regarding compensation but also in respect of providing full rehabilitation for victims of torture.



## **CAT A/49/44 (1994)**

97. The Committee against Torture considered the periodic report of Ecuador (CAT/C/20/Add.1) at its 164<sup>th</sup> and 165<sup>th</sup> meetings, held on 15 November 1993 (see CAT/C/SR.164 and 165), and adopted the following conclusions and recommendations:

### **A. Introduction**

98. The Committee thanks the State party for its report and its sincere cooperation in the constructive dialogue with the Committee. It takes note of the information submitted in the report and in the oral presentation by the delegation of Ecuador.

99. Ecuador has fulfilled its obligation to submit a periodic report under article 19 of the Convention. Its next report is due on 28 April 1997.

### **B. Positive aspects**

100. The Committee appreciates the firm commitment of the Government of Ecuador to the promotion and protection of human rights and in particular its efforts to eradicate all forms of torture.

101. It also appreciates the efforts made by Ecuador to modernize its legislation (Constitution, Penal Code, Code of Penal Procedure, and Act on the Attorney-General's Office) and to establish a Judicial Police, which will be the only public body responsible to criminal investigation, under the direct supervision of independent magistrates.

### **C. Subjects of concern**

102. The Committee is nevertheless concerned by the many allegations received from various non-governmental organizations regarding torture, which is reportedly practised in a number of places of detention and prisons, particularly in the premises of the Crime Investigation Office.

103. The Committee is also by the fact that no action has been taken on several of the recommendations it made to Ecuador in 1991, in particular those aimed at bringing all custodial measures (arrest warrants, habeas corpus) under the direct responsibility of independent members of the judiciary. In general, the Committee is concerned by the limitations that appear to be placed on the powers of the courts in Ecuador and by the existence of officials referred to as "judges" who are empowered to try cases without belonging to the judiciary and who consequently do not provide safeguards of independence.

### **D. Recommendations**

104. The Committee recommends that Ecuador should take fundamental and urgent steps for the complete eradication of torture and other similar treatment. To that end, the Government should

ensure that all forms of torture as defined in article 1 of the Convention are offences under criminal law.

105. The Committee also encourages Ecuador to implement, within a reasonable period the legislative reforms undertaken to place the criminal justice system (from the investigation of offences to the serving of sentences) under the direct supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected cases of torture or ill-treatment.