

ECUADOR 12/

CCPR A/32/44 (1977)

127. The report submitted by the Government of Ecuador under rule 40 of the Covenant was considered by the Committee at its 31st and 32nd meetings, on 19 August 1977.

128. In his introductory statement, the representative of Ecuador stated that the provisions of the Covenant had been fully incorporated in the domestic law of his country. He went on to give a detailed analysis of each of the provisions of the Covenant as compared to similar principles embodied in the Constitution of Ecuador. With regard to the implementation of articles 22 and 25 of the Covenant, he was pleased to inform the Committee that the necessary steps were being taken to return to a fully constitutional form of Government early in 1978. Two draft Constitutions had been prepared and the people would approve one of them by means of a referendum which was scheduled to take place in 1978. The right to freedom of association was fully guaranteed in the country. Political parties enjoyed full possibilities of engaging in political activities and they had already begun with their campaign for the referendum and for the election of members of Parliament and the President of the State. The representative of Ecuador informed the Committee that there were at present no political prisoners in Ecuador.

129. The questions put to the representative of Ecuador are summarized below:

(a) The question was put whether the Covenant by reason of its ratification had become part of the domestic law of Ecuador so that a citizen could invoke it in the courts if he believes that his right has been violated. It was stated in reply that, when the Government ratified the Covenant it issued an Executive Decree approving the Covenant and incorporating it in the domestic law of the Republic. The individual had full recourse before the courts for violation of the rights so incorporated, but so far there had been no cases of denouncement of this nature.

(b) Noting that article 141 (17) of the Constitution obliges the authorities to take action on petitions within 30 days, some members asked what steps could be taken in case of silence of the administration beyond 30 days. The representative of the Government replied that, if the petition relates to a matter of taxation, the absence of a reply ipso jure signifies that the taxpayer wins his case. However, if the petition deals with another subject, the petitioner should submit a complaint to the competent administration.

(c) Clarification was sought whether the law recognized the right of everyone, even a person who was not a victim or representative of the victim, to complain before the courts in violation of human rights (actio popularis). The representative of Ecuador said that the two draft Constitutions which will be put to a referendum both contain provisions on this matter.

12/ CCPR/C/1Add.8.

(d) Information was requested on measures taken by the Government to reduce infant mortality. It was said in reply that this matter had been of great concern to the Government, since Ecuador has a very high rate of child mortality. Twenty years ago the Government had begun to provide more medical assistance to the people through local hospitals. Medical staff has been increased and health centres have been established in small settlements and parishes. All these measures have played an important role in reducing infant mortality. It was hoped that in the future this could be reduced to tolerable limits.

(e) More detailed information was requested on the protection of the accused, in particular accused persons detained pending trial. The representative of the Government said that no one may be held in "preventive detention" for more than 24 hours without being brought before a judge. During that period he may contact a lawyer at any time.

(f) Clarification was sought on the position of aliens, in particular concerning the right to protection against arbitrary expulsion, set forth in article 13 of the Covenant. It was replied that the immigration law laid down detailed provisions concerning the expulsion of aliens. One of the grounds for expulsion was interference with internal politics of the country. Only Ecuadorians have the right to take part in the political life of the country.

(g) The question was asked whether the past political system had any adverse and possibly lasting effect on the enjoyment of the rights set forth in the Covenant, in particular with regard to the access of the people to courts and whether the organization of the courts was still a special and temporary one or whether it was now in full conformity with the Constitution. In reply it was said that the organization of the courts, based on the Constitution was as follows: there are judges at the Provincial and Canton levels who are appointed by the higher courts, namely the Provincial Courts and the Supreme Court whose judges in turn were appointed by the Congress of the Republic. No judge belongs to the armed forces, except of course those of the Military Tribunals. A Special Tribunal was in function from 1972 to 1974, but no such extraordinary jurisdiction exists at present.

(h) More information was requested on protection of the inviolability of the home. The representative of the Government stated that in Ecuador, the home was a sacred place. The police could only enter and search it for any investigation if they can show a search warrant issued by a competent authority.

(i) Some members wished to know the exceptions, if any, to the prohibition to intercept, open or search papers, business records, letters and private documents, as provided in article 141 (9) of the Constitution. The representative of the Government mentioned that, in case of bankruptcy ("quiebra y bancarrota"), on the basis of a duly issued warrant by the judge, an accountant may be asked to examine the financial situation of the company which has been declared bankrupt ("en quiebra y bancarrota"). Another exception occurred when a minority of shareholders was not satisfied with the report of the company. At their request, the judge may appoint an expert to look into the matter. Still another exception was the power of the Taxation Tribunal to examine the tax situation of certain persons.

(j) Questions were asked concerning the conditions under which freedom of expression and the profession of journalist may be exercised, especially in the light of article 141 (10) of the

Constitution which states that “the primary object of journalism is the defence of national interest” and that journalism constitutes “a social service”. It was said that in 1970 a new law governing the practice of journalism had been enacted in Ecuador. The Committee will be provided with a copy of this legislation. Only those who were graduated from a school of journalism and those who had been journalists for more than five years came under the purview of this law. Ecuador has no official press, and the Government has no share in the Ecuadorian press. It possesses a State radio broadcasting company and it publishes the Official Register which contains the texts of laws and decrees. As an example of the freedom of the press in Ecuador, the representative of the Government mentioned the case of a Minister of State who had accused a journalist of writing a slanderous article against him. The case was brought to the Court which decided in favour of the journalist. There exists in Ecuador a Court for Printing Matters which handles cases relating to the press. It is composed of prominent journalists under the Chairmanship of a lawyer appointed by the Supreme Court. Press offences are libels, calumnies, reports based on false facts and attacks against the honour of a person.

(k) Some members asked questions regarding implementation of the principle of equality of rights of men and women in marriage. The representative of the Government stated that, before 1945, the wife had several legal incapacities: she was not allowed to sign a contract without her husband’s authorization and she could not have her own bank account. A law of 1945 introduced considerable improvement in her legal status, according to her rights equal to those of the husband.

(l) Information was requested on the conditions for the establishment of family property rights as provided in article 142 (4) of the Constitution. A couple may establish a family property for the benefit of the children or for their own benefit. An unmarried person may likewise establish such a property, which is inalienable, but the amount is limited to 200,000 sucros or about \$US 45,000. In case of divorce the property will be divided.

(m) In the light of recent political developments in the country, clarification was sought regarding the limitations on the exercise of political rights by members of the armed forces and members of religious communities as provided in article 141, paragraph 15, of the Constitution. The representative of the Government replied that, in Ecuador in order to guarantee fully democratic elections, any interference from military and religious groups in political campaigns was prohibited.

(n) Information was requested on the implementation of article 148, paragraph (p) of the Constitution stating that no one may hire minors below 12 years of age as domestic servants, in relation to article 143 (5) of the Constitution which makes elementary education compulsory. It was said in reply that elementary education at public schools is free and compulsory until the age of 12. There is no upper age for school attendance. In accordance with the Labour Code, employers who hire minors must allow them to go to school at least four hours a day. In the evening, after office hours, there are many adults who attend elementary school classes. Illiteracy used to be about 39 per cent in Ecuador. Now, as a result of special efforts of the Government it has been reduced to 27 per cent.

(o) Noting that Ecuador has sizable groups of indigenous population, some members requested information on measures taken by the Government to prevent discrimination against these peoples and to safeguard their linguistic and cultural identity. The representative of the Government

stressed that, since the foundation of the Republic, there had been no discrimination against indigenous population in Ecuador. They can go to school and have access to all the public services: for example, there are no separate seats in public transport and in the theatres. The great majority of these indigenous people are bilingual. Teaching at the rural schools is bilingual. In general, teachers and the parish priest understand and speak both Spanish and Quechua.

(p) Noting that article 146 of the constitution emphasizes that ownership has a social function and that land should be cultivated for the benefit of the people, some members asked for information on existing social legislation to implement this provision of the Constitution. In reply, it was stated that an Ecuadorian law on Agrarian Reform had been enacted in 1965 to ensure the implementation of this provision and to guarantee that land will be exploited in such a way that it will increase the production so as to fulfill the needs of the population.

(q) Questions were put regarding limitations on freedom of industrial and commercial undertaking. The representative of the Government said that private monopolies were prohibited and that only the State was entitled to have a monopoly in certain fields. At present the State has a monopoly only as regards the marketing of fuel. Another limitation is the manufacture of arms and explosives which is the exclusive right of the Army. Mention should also be made of the sale of drugs and narcotics which can be purchased only from an authorized chemist on prescription.

(r) In the context of article 26 of the Covenant on equality before the law, clarification was requested on the meaning of the terms “concertajo” and “huasipungo”. In reply to this question the representative explained that the term “concertajo” was a legacy from the Spanish colonial régime. It is similar to the system of serfdom which existed in Spain during the Middle Ages. In 1870, the system was officially abolished but in practice it continued to exist until the end of the nineteenth century. At present the system is no longer in existence. The term “huasipungo” which is a Quechuan word also was meant to describe an inequitable system of land holding and exploitation. Under this system, an agricultural worker could be provided with a house and a plot of land. In return for this favour he would not receive his full payment in money for his labour. This system does not exist any longer, as it was abolished by the Agrarian Reform Law.

CCPR A/33/40 (1978)

555. At its 118th meeting, held on 31 October 1978 (CCPR/C/SR.118), the Committee continued its consideration of the initial report of Ecuador (CCPR/C/1/Add.8) ^{9/} together with the supplementary report containing additional information (CCPR/C/1/Add.29) submitted in reply to the questions which had been asked at the 32nd meeting. The Committee decided to consider the issues raised topic by topic.

556. Several members of the Committee requested information on the developments in the constitutional and political situation in Ecuador during the period since the Committee had discussed the initial report. In particular, they inquired about the following points: (a) The progress achieved in arriving at a normal constitutional and legal régime; were there still any vestiges of the state of emergency prior to the return to normal, such as the suspension of certain rights and the imprisonment of persons for political or trade union activities? (b) The procedures under which the new Constitution had been adopted; had persons who could not read or write voted in the referendum held for the purpose of approving it and in the government elections? It was said that, if they had not, that might constitute discrimination which conflicted with article 25 of the Covenant.

557. The representative of Ecuador explained that the process of a return to normal on which his Government had embarked two years previously envisaged an initial stage of approval of the Constitution that was to apply on the return to normal. For that purpose, two texts had been presented to the population, which had expressed its will in a referendum held on 16 January 1978, in which 80 per cent of those included in the electoral registers had voted. The illiterate had not voted, because they were not listed on the registers, in conformity with the legislation now in force. In the second stage, sectional and presidential elections had been held on 16 July 1978. As a result of the sectional elections, the administration of the 20 provincial councils and the 68 municipal councils in the country had been handed over to the authorities chosen by the people in the elections. In the presidential elections, however, none of the six candidates representing 15 political parties had obtained the absolute majority required, and a second election was to be held on 8 April 1979 between the two candidates who had obtained the highest number of votes. On the same day, the President would be elected, as would the members of the National House of Representatives. Both the President and the House would assume their functions on 10 August 1979, the date on which the new Constitution would also come into force. The latter was to be the basic law of the country, with a status similar to that of the 1945 Constitution which was now in force. The new Constitution provided that illiterate persons would have the right to vote, but the vote would not be compulsory, as it was for persons who could read and write. He went on to say that there were no restrictions of the kind imposed during the state of emergency, since all constitutional guarantees had been restored in order to ensure a valid electoral process, which had taken place in complete freedom. He also gave an assurance that there were no political or trade union detainees and that, if someone in those fields was under arrest, it was because ordinary criminal charges were involved.

^{9/} The initial report by Ecuador was considered by the Committee at its 31st and 32nd meetings, on 19 August 1977 (see CCPR/C/SR.31 and SR.32)

558. Some members of the Committee asked whether the obligation to vote did not constitute a restriction on political freedoms, why members of the armed forces did not have the right to vote, whether illiterates currently had the right to vote and whether the Government envisaged measures to make it easier for illiterates to exercise their right to vote under the new Constitution (for example by the use of symbols or colours). In that connection, it was pointed out that the illiterate and other deprived groups were the most in need of representation in Government. One member requested information on the qualifications required for a person to be a candidate for various types of public service, and there was a question as to whether illiterates had access to the public service.

559. The representative of Ecuador pointed out that the compulsory vote did not restrict the electorate's political freedom, because if a person wished to remain outside the electoral process he could return a blank ballot or have his vote cancelled. The compulsory vote was intended to encourage citizens to participate in political life, and failure to comply with the rule entailed appropriate sanctions, such as being debarred from holding public office. The members of the armed forces could not participate because they were assigned the task of ensuring the validity and proper conduct of the elections and, therefore, must not be involved. Although illiterates had not voted in the elections, the system of differentiating ballot papers by colour was already in use.

560. He said that illiteracy had fallen from 33 or 34 per cent five years previously to 28 per cent, thanks to the action of the Government and of private institutions, which were running literacy programmes for adults, since children were covered by the compulsory school system.

561. Several members asked what status the recent Constitution and its provisions had within the legal system in Ecuador and whether it had already entered into force; whether it would be possible to invoke before the courts provisions such as those of article 44, which ensured all citizens, without distinction as to sex, the enjoyment of the civil, political, economic, social and cultural rights embodied in the international declarations, covenants, agreements and other instruments in force. It was said that article 44 appeared to ensure non-discrimination solely with regard to a person's sex, and therefore in a much narrower manner than did article 2 of the Covenant and it was asked whether, in addition to article 44, there were other legislative provisions in Ecuador that ensured observance of the principles of the Covenant as regards non-discrimination.

562. Several members inquired about aspects of the Tribunal of Constitutional Guarantees established under the Constitution and asked whether access to that Tribunal was open not only to persons who considered themselves victims of a violation of human rights but also to any person who wished to lodge a complaint of violation of the Constitution without being himself a victim; whether, for the purposes of access to that body, it was first necessary to exhaust all other available remedies or whether it was possible to appeal directly to the Tribunal; what other remedies were provided for in the new Constitution; and whether the Tribunal's functions were confined to investigating cases and submitting recommendations to the Congress or whether it had decision-making powers.

563. In reply to members of the Committee, the representative of Ecuador referred to the scope of article 44 of the new Constitution, which guaranteed the enjoyment of all rights embodied in international instruments. Apart from that general provision, other provisions incorporated the international covenants in legislation, so that they could be invoked in the courts as a positive right.

In order to ensure that such provisions were complied with, there was an Ecuadorian National Human Rights Committee which received complaints of violations. The Tribunal of Constitutional Guarantees, established under article 141 of the new Constitution, would start to function in August 1979; its task in safeguarding human rights was described in the report. Any citizen might have recourse to the Tribunal if he considered that constitutional rights had been violated. A person who was illegally detained could choose to appeal either to the courts or to the Tribunal, and one jurisdiction would not block or override the other. The Tribunal could decide that there was no justification for detention and order the prisoner to be released. In the case of persons who enjoyed special prerogatives and were subject to judgement by the National House of Representatives, the Tribunal could not take decisions; it could only prepare the indictment and transmit it to the House. The jurisdiction of the police judges referred to in the report was restricted to matters of lesser importance, such as police contraventions. They acted exclusively as examining judges and could not take decisions on substantive matters, when the case was of some gravity.

564. Article 44 of the Constitution mentioned only the equality of both sexes with regard to the human rights guaranteed in international instruments, but article 19, paragraph 4, prohibited all discrimination of any kind and article 4 condemned all forms of colonialism, neo-colonialism and racial discrimination.

565. With regard to the rights guaranteed by international instruments, including economic and social rights, the members of the Committee requested information on the measures being taken to improve the country's material situation and to permit genuine enjoyment of those rights, in addition to the legal provisions mentioned in the report. It was observed that Ecuador particularly well illustrated the interdependence of all human rights and that the Committee's later study of its development should be oriented in that direction. It was also asked what criteria prevailed in the distribution of land to the peasants under the Land Reform Act now in force. One member of the Committee asked in what way the State was contributing to the establishment of family estate.

566. The representative of Ecuador explained that, in addition to the measures listed in the report, the formation and development of agricultural co-operatives was encouraged. It was therefore possible for those who did not earn enough to buy economically viable plots of land to do so as members of a co-operative and request loans from the National Bank of Co-operatives.

567. The Land Reform Act in force provided that land not worked at certain established levels could be expropriated by the Land Reform Institute for distribution to the peasants. Detailed plans and statistics on the agrarian reform would be communicated to the Committee at a later date.

568. As to State aid for the establishment of family estate, he said that there were various institutions which authorized credit specifically for family estate. When a property was acquired with a loan from the national Social Security Institute, the Bank for Housing or the mutual Benefit Association, it was incorporated by law in the estate, which could not exceed 300,000 sucres (about \$12,000).

569. In relation to the rights and guarantees embodied in article 14 of the Covenant, one member of the Committee stated that all the guarantees established in article 14, paragraph 3, of the Covenant did not seem to be covered and he requested more information on that matter. Another member

asked for clarification as to whether the procedures in criminal law allowed a person charged with committing an offence to be released under the personal surety of a third party, without depositing a sum of money. An explanation was also requested as to which authorities were competent to order detention, because the report stated in paragraph 15 that “the judge shall order detention” and in paragraph 16 that “the competent authorities may order such detention”, while paragraph 22 spoke of police judges.

570. The representative of Ecuador said that, in accordance with article 88 of the Code of Criminal Procedure, nobody could be detained, simply on suspicion, for a period exceeding 48 hours; after that time he had to be released if there was no written order from a judge giving grounds for his detention. Once that time-limit had expired, the detainee could appeal under habeas corpus and secure his release. A detainee also enjoyed the following guarantees: a free defence by professional lawyers; examination of witnesses and the assistance of an interpreter throughout the trial if he was not Spanish-speaking. All the other guarantees enumerated in article 14 were covered in various legal provisions. Conditional release could be obtained only by the payment of bail, since the system of personal surety did not exist.

571. In relation to articles 26 and 27 of the Covenant, several members of the Committee referred to the situation of the indigenous communities in Ecuador. It was asked, in particular, what measures had been taken to safeguard the family life and other rights of the persons who had been moved away from the lands on which oil-well drilling had been started, in the eastern region of the country. Noting that article 39 of the new Constitution did not include an express ban on discrimination against persons because of their language, one member asked whether that form of discrimination existed. Clarification was also requested concerning the meaning of expressions such as “social mobilization” and “revitalization of native values” employed in paragraph 43 of the report, which listed some measures to promote the participation of the indigenous inhabitants in economic development.

572. The representative of Ecuador said that the Government was trying to incorporate them in the economic life of the country without detriment to their individuality. Through both the educational system and the religious and lay missions engaged in development activities in those communities, efforts were being made to maintain and preserve their cultural values. For example, the teachers in indigenous schools must know the language of the community in which they worked. It was not true that villagers had been moved from areas where oil-wells were being drilled. Some communities were settled in nearby areas, but as a result of the law which had recently been enacted to grant funds to the State Oil Corporation, sufficient money was available to compensate them if their lands had to be expropriated. Furthermore, the Corporation was responsible for finding them a new place to live. He explained that the expressions “social mobilization” and “revitalization of native values” referred to the Government’s policy to promote the culture and language of the indigenous communities and their participation in society.

CCPR A/43/40 (1988)

310. The Committee considered the second periodic report of Ecuador (CCPR/C/28/Add.8 and 9) at its 796th to 799th, 831st and 832nd meetings, held on 28 and 29 March and on 22 July 1988 (CCPR/C/SR.796-799) and SR.831 and 832).

311. The report was introduced by the representative of the State party who emphasized that the situation in his country could not be understood by means of a simple comparison between the constitutional order of Ecuador, with its laws and various political, administrative, criminal and civil procedures, and the norms of the Covenant. Rather, it had to be studied in the light of the material conditions affecting Ecuador and the international context. The country was facing major problems of drug trafficking and terrorism, as were its neighbours, and it was impossible to understand the alleged human rights violations in Ecuador without examining the conflicts taking place in neighbouring countries, such as Colombia,. At the same time, the Government was beset by other major difficulties: the external debt, the drop in oil prices, which had been the main source of domestic financing, the aftermath of the March 1986 earthquake, the destruction of the oil pipeline six months earlier, which had delayed oil exports, and devastating rains in 1987. The problem of drug trafficking was related to that of terrorism, since terrorists provided protection to drug producers, who in turn supplied the funds to arm the terrorist groups. There had been a series of serious terrorist incidents in recent years.

312. The representative also pointed out that Ecuador was still in the process of adjusting to the restoration of democracy after two decades of military dictatorship and rule by arbitrary decree, that the legislative reforms begun in 1960 had not yet been completed and that parliament continued to operate through interim regulations rather than by adopting laws, as provided in the Constitution.

Constitutional and legal framework within which the Covenant is implemented

313. With regard to that issue, members of the Committee wished to receive additional information concerning the functioning of the Tribunal of Constitutional Guarantees and to be provided with some concrete examples of the latter's role in ensuring compliance with the Constitution and in redressing violations of individual rights. They also wished to know how the authorities implemented the decisions of the Tribunal of Constitutional Guarantees and requested specific examples of cases where the Government had acted upon the findings of the Tribunal. They asked whether it was true that no action could be taken on the Tribunal's findings unless they were published in the official gazette and whether there were any proposals for special legislation to strengthen the Tribunal. Members also inquired whether there were judicial decisions in which the Covenant had been directly invoked before the courts, whether complaints concerning human rights violations had been lodged before bodies other than the Tribunal of Constitutional Guarantees and what the results of such complaints had been, what the relationship was between the Covenant and domestic laws and regulations and what steps had been taken to ensure the latter's consistency with the Covenant, what the functions and activities of the national Human Rights Committee had been since 1978 and how the Congressional Commission on Human Rights had reacted to that Committee's recent report. Additional information was also sought on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol.

314. In addition, some members wished to know how judges were appointed and removed, how the separation of powers and the rule of law operated in practice, who decided what should be placed on the parliamentary agenda, who promulgated laws, who monitored the President, what legal actions had the force of law and whether a legal decision could be suspended. Further information was also sought regarding the impeachment proceedings against the Minister of the Interior.

315. In his reply, the representative of the State party said that the structure of the Tribunal of Constitutional Guarantees had been completely revised in the new Constitution, but that the norms and regulations governing its functioning remained those of the 1968 Constitution. Accordingly, the Tribunal's decisions could not yet be enforced. Under the Constitution, the Tribunal was responsible, *inter alia*, for ensuring the observance of the constitution, making observations regarding decrees that were enacted in violation of the Constitution or the laws and taking cognizance of complaints made by any individual or legal entity regarding violations of the Constitution. The President of Ecuador had never opposed the promulgation of any decisions of the Tribunal relating to human rights. Proposals to strengthen the Tribunal of Constitutional Guarantees would be implemented to the extent that they were compatible with economic, social and political development objectives.

316. The Constitution guaranteed the right to submit complaints and petitions directly to the authorities as well as to receive relevant replies within an appropriate time-limit and in accordance with the law. The Constitution also guaranteed the sanctity and legal protection of human rights and fundamental freedoms as set forth in the Universal Declaration of Human Rights and under the relevant international instruments, which were legally binding in Ecuador. The Covenant could be, and had been, directly invoked before Ecuadorian courts. The national press and the government information office endeavoured to promote public awareness of human rights.

317. The task of interpreting the Constitution fell to the parliament. The Constitution was the supreme law of the land and provisions deviating from it were void. If the President objected to a bill, the parliament could not consider it again for at least a year, but it could ask the President to hold a referendum on the matter. The President promulgated the laws and could temporarily suspend the force of law under special circumstances provided for in the Constitution. In addition, the President was empowered to declare a state of national emergency, at which time he could suspend the enforcement of constitutional guarantees. The Tribunal of Constitutional Guarantees could at any time suspend partially or totally the effect of laws or other provisions that were unconstitutional.

318. The separation of powers enshrined in the Constitution was a tradition, but each branch performed some of the functions of the other two. Thus, the legislative branch not only legislated but also conducted political trials, as provided under the Constitution, and certain administrative courts and judges dealing with fiscal matters and administrative disputes were appointed by the executive branch. Judges were appointed by parliament for a term of six years, with the possibility of reappointment. Vacancies were filled on a provisional basis by the respective courts until parliament made regular appointments to fill the posts. The Minister of the Interior, Luis Robles Plaza, had been tried and removed from office for violating an internal regulation.

Self-determination

319. In connection with that issue, members of the Committee wished to know Ecuador's position with regard to self-determination in general and specifically with regard to the struggle for self-determination of the South African, Namibian and Palestinian peoples.

320. In his reply, the representative of the State party said that Ecuadorian foreign policy championed the right of peoples to self-determination and repudiated all forms of colonialism and apartheid. Ecuador had at all times opposed South Africa's illegal occupation of Namibia and had supported all United Nations resolutions calling for Namibian independence. Ecuador had also supported all the United Nations resolutions calling on Israel to withdraw from the territories it had occupied in 1967, including Jerusalem, and opposed Israeli settlements in the occupied territories.

Non-discrimination and equality of the sexes

321. With reference to that issue, members of the Committee wished to receive information concerning the outcome of the elections held on 31 January 1988 in so far as the election of women was concerned, the proportion of women to men attending secondary schools and universities, and the number of professional women, such as doctors, economists, lawyers, engineers, architects and chemists, in Ecuador. Members also wished to know whether article 34 of the Code of Civil Procedure, relating to equality before the courts, and articles 135 and 138 of the Civil Code, relating to the equality of spouses, were compatible with articles 3 and 14, paragraph 1, of the Covenant and what discriminatory legal provisions were to be abolished under the planned reform. It was also asked what the situation of the Basques who had been expelled from other countries to Ecuador was and whether they enjoyed all the rights guaranteed to nationals by the Constitution, including the right to liberty and security of person and the right freely to choose their residence, and whether the rights of aliens were restricted as compared with those of citizens and, if so, in what respect. It was also observed that the Committee was generally interested in any factors and difficulties affecting the implementation of the Covenant, any measures adopted to give effect to the rights recognized in the Covenant and any progress made in the enjoyment of those rights. Regarding the recent emergency situation, members asked how it had been proclaimed, what had caused it, whether the Ecuadorian Government had informed the other States parties to the Covenant and what changes had occurred during the emergency.

322. In his reply, the representative explained that he did not have detailed statistics on the January 1988 elections, as the Supreme Election Tribunal had processed ballots only the week before. Women practised professions on an equal footing with men and there were approximately the same number of males and females in primary schools, at the intermediate levels and in secondary schools. Only one Basque was currently interned in his country and his rights to personal safety, a limited amount of freedom and choice of residence remained inviolable. Aliens enjoyed the same constitutional rights and guarantees as Ecuadorians with the exception of political rights. They could enter or leave the country freely depending on their visa status. However, their freedom of movement could be restricted if they had not met their obligations towards creditors and did not have real assets which could be attached. Under the Constitution and the laws on citizenship, they could not own real estate in border zones, in certain restricted areas along the Pacific coast, or in island territories, for reasons of national security and sovereignty.

323. Responding to other questions raised by members of the Committee, the representative drew attention to the progress that had been made in the protection of human rights in Ecuador, referring to certain provisions of the new Code of Criminal Procedure, the new Code of Civil Procedure, the Civil Code and the draft code of the family. While the Constitution conferred on the President of the Republic the power to suspend the applicability of constitutional guarantees, he could not suspend the right to life or order an Ecuadorian to be expelled or exiled. Under the current administration, constitutional guarantees, had been suspended on only one occasion, for 24 hours, because of a national strike with overt political motives. The Government had promptly notified the States parties, through the Secretary-General of the United Nations, of the imposition of the state of emergency and then of its lifting, in accordance with article 4, paragraph 3, of the Covenant.

Right to life and prohibition of torture

324. With regard to that issue, members of the committee wished to know what respective roles were played by the national police and the military police in the interrogation of suspects, what rules and regulations governed the use of firearms by the police and security forces, whether there had been any violations of those rules and regulations and what measures had been taken to prevent their recurrence. Members also sought additional information concerning the implementation of the provisions of article 7 of the Covenant concerning torture and cruel, inhuman and degrading treatment or punishment, in particular, on concrete measures taken by the authorities to ensure strict observance of that article and the penalties imposed on violators. Further information was also sought concerning measures taken by the Government to prevent public forces or prison guards from beating and torturing suspects or inmates, the number of persons who had died in custody in the period under review, the public health system, particularly the progress made since 1978 to expand health services covering the rural population and vulnerable persons, such as mothers, children and pregnant women, positive action taken to reduce the infant mortality rate, and regarding article 6 of the Covenant, pursuant to the Committee's general comments Nos. 6 (16) and 14 (23).

325. In addition, members expressed concern about cases of disappearance and assaults by paramilitary squads. They wished to know in that regard what complaints had been made recently and what measures had been taken by the Government to investigate such complaints and to punish the persons responsible. They asked about the outcome of cases submitted to the Tribunal of Constitutional Guarantees, inquired whether cases of mistreatment by prison wardens in the penitentiaries had been thoroughly investigated and requested further information about the status of "flying squadrons". Lastly, clarification was sought of an incident that had occurred on 10 January 1988 involving the mining co-operative, which had allegedly resulted in deaths, injuries and disappearances.

326. In his reply, the representative of the State party explained that the essential functions of the national police in the interrogation of suspects were established in article 3 of the Organic Law on the National Police of 7 March 1975 and police investigations were regulated by articles 49 to 51 and 67 of the Code of Criminal Procedure of 1983. While that Code also provided an institutionalized basis for the criminal police, that police force had not yet been established because of budgetary limitations. The Office of the public Prosecutor had sent out to all police offices copies of basic documents, including the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners and the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment and wished to see them faithfully observed by all police personnel. A human rights seminar had been held in July 1986 for chiefs of police and Ecuador would soon deposit its instrument of ratification of the Convention against Torture. In some isolated cases, where members of the Ecuadorian police had been accused of violating article 7 of the Covenant, they had been tried by competent judges and, when found guilty, had been sentenced in accordance with the law. No one had died in custody in the period under review. The police had orders to exercise restraint in the use of firearms and to cause as little harm as possible. Grounds for using firearms included self-defence, cases of mutiny or rebellion by subordinates, and attempts by prisoners to escape. If the police violated the regulations concerning the use of firearms, they were subject to trial and punishment in accordance with the provisions of the Police Code.

327. Responding to other questions raised by members of the Committee, the representative explained that three-month vaccination campaigns had been organized and a programme providing free medicine to children under six years of age had been established. The death penalty had been abolished by the 1906 Constitution, the maximum prison sentence being 16 years. Ecuador supported the principle of the inadmissibility of war in international relations and had repeatedly agreed to the need for general and complete disarmament, beginning with nuclear disarmament.

328. Attempts had been made to portray Ecuador as a country of terrorism where groups of idealists were fighting against a repressive State. On the contrary, human rights were respected in Ecuador and, although certain violations might occur from time to time, such incidents in no way constituted a pattern. Most cases of disappearance could be explained by the fact that a person might be declared as missing before the police had had a chance to notify anyone. The Ministry of the Interior had reported that, since 1986, there had been no complaints of disappearances. There were no paramilitary squads in Ecuador nor any death squads. Based on a few exceptions to the general principle of respect for human rights, parallels were being drawn between Ecuador and another country where there had been grave human rights violations. Such a comparison was inaccurate and completely unacceptable. The term "flying squads" might refer to groups of from four to six policemen who patrolled the streets in small trucks and dealt with serious situations; they were regular members of the police force and subject to the rules governing that force. Details concerning the incident at the mining co-operative had been distorted erroneously in order to place the blame for human rights violations on the Government. The people involved had been removed under a perfectly legal procedure. It was true that two deaths had resulted, but the allegation that 35 persons had disappeared was an exaggeration on the part of those who wished to imply that a massacre had taken place.

Liberty and security of person

329. With reference to that issue, members of the Committee asked under what circumstances and for how long persons could be held in preventive detention without being charged with a criminal offence, what measures the Government was taking to address problems in that area, what the maximum length of detention and detention pending trial was, what was done to ensure that a person's arrest and whereabouts were reported, who was responsible for contacting the family of a person who had been arrested and how quickly after an arrest that was done. Members also wished to have additional information on the law and practice relating to institutions other than prisons, on the apparent jurisdictional conflict between mayors and presidents of municipalities, on the one

hand, and judges or other officials responsible for the custody of detainees on the other, on remedies, other than habeas corpus, available to persons detained wrongfully and their effectiveness and on recent practices concerning the granting of habeas corpus.

330. Members also wished to know whether there were any safeguards to ensure that persons in preventive detention were not subject to treatment inconsistent with the Covenant, whether there were provisions prohibiting incommunicado detention and granting access to other detainees or to persons, such as doctors, lawyers and family members, as well as ensuring that detainees were held in publicly recognized places and whether the detention, the name of the detainee and the place of detention were entered in a central register. One member also expressed concern that approximately 60 per cent of detainees remained unsentenced.

331. Responding to questions raised by members of the Committee, the representative of the State party indicated that preventive detention and detention pending trial could not exceed 24 hours, even in cases of flagrante delicto. In practice, a person could be held pending trial for more than 24 hours, depending on a number of circumstances, such as the type of crime or public reaction to a particularly monstrous crime; such cases, however, were exceedingly rare. When a person was detained, his lawyer and family were informed immediately. There were no institutions of detention other than prisons, which were known as social rehabilitation centres. The apparent conflict between municipal authorities and judges resulted from the fact that the 1946 Constitution had given mayors the power to intervene in cases which had been decided by judges. Such intervention was impossible under current law but municipal authorities in the opposition sometimes attempted to apply the 1946 law.

332. Responding to other questions, the representative said that remedies other than habeas corpus included the remedy of complaint (recurso de queja), application for review (recurso de revision) and the possibility of being released on bail. Furthermore, under the Code of Criminal Procedure, a judge was required to refrain from issuing an order of preventive detention if the maximum sentence in a case under investigation did not exceed one year. It was inconceivable that anyone could be imprisoned indefinitely in Ecuador without claims being brought by his family. There was no constitutional or legal provision for a central register of persons held in preventive detention.

Treatment of prisoners and other detainees

333. With reference to that issue, members of the Committee wished to have further information on the term, "classification by biotype", referred to in article 16 of the General Regulations for Application of the Code of Execution of Sentences and Social Rehabilitation. They also wished to know whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether relevant regulations and directives were accessible to prisoners, what the practical situation was concerning sanitary conditions and medical services, what the conditions of detention were in the four types of social rehabilitation centres referred to in paragraph 34 of the report (CCPR/C/28/Add.8), whether non-governmental organizations could monitor conditions of detention or visit detainees and how the treatment of those awaiting trial differed from that of convicted prisoners. It was also asked what remedies were available to detainees, whether wardens could be challenged before the courts, whether measures were taken to expedite the trial of juveniles in accordance with the requirements of article 10, paragraph 2 (b), of the Covenant, whether the

period of detention prior to conviction was automatically taken into account, whether there was any provision for remission on grounds of good conduct and whether there was any system of review of parole whereby a prisoner could be released under supervision.

334. In his reply, the representative explained that the concept of “biotype” was necessary in order to develop a scientific classification of people for the purpose of social rehabilitation. The establishment of specific criminal tendencies, deriving from factors ranging from abnormality to immaturity, made it possible to standardize therapeutic norms, thereby not only saving money but also reducing recidivism and time spent in prison. The United Nations Standard Minimum rules for the Treatment of Prisoners were observed to the extent that social rehabilitation centres made compliance possible. All social rehabilitation centres had professional staff whose function it was to make regulations and directives known and accessible. Owing to economic constraints, conditions varied from one prison to another, but, in so far as the infrastructure allowed, prisoners enjoyed the minimum conditions established by the United Nations. Spouses had visiting rights in prisons and all detention centres and prisons had medical facilities. There was no judicial body responsible for monitoring prisoners in Ecuador. However, every year the judges of the provincial higher courts met to discuss problems that arose in their work and in connection with prisons.

335. The treatment of offenders varied according to the category of offence. Persons on trial, suspects, and certain economic offenders, such as debtors, were held in detention centres or in the detention sections of prisons, never in the prisons themselves. Juveniles received protection under the Minors’ Code. Special minors’ courts were presided over by lawyers and had doctors and educationalists on the panel. Such courts were accountable to the Ministry of Social Welfare. Sentences took effect from the first day that the offender had been deprived of his liberty and could be reduced if there were extenuating circumstances. They were subject to review by the Supreme Court or by the judge who had passed the original sentence, if there was sufficient evidence to suggest that the person concerned was innocent.

Right to a fair trial

336. With regard to that issue, members of the Committee wished to know whether there were guarantees for the independence of the judiciary and sought further information on the disagreement that had arisen in 1985 between the executive and legislative branches concerning the independence of the judiciary and the constitutional machinery established for appointing its members. In that connection, it was asked what specific action had been taken by the Minister of the Interior on his own responsibility. Members also inquired whether there were legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, whether there were measures to ensure in practice that an accused person could offer a defence, whether free legal services and assistance to criminal defendants was available, whether any judges had been dismissed or obliged to pay damages for having unduly delayed the administration of justice, what the practice was with regard to article 227 (4) of the Penal Code and what constituted a punishable delay in the administration of justice. Information was also sought on the removal of eight judges in 1986, on the dismissal of judges in 1987 and on the length of criminal proceedings in Ecuador.

337. In his reply, the representative of the State party said that the Constitution guaranteed the

autonomy of the judiciary and prohibited any authority from intervening in its affairs. The National Congress had been in violation of the Constitution when it had declared that the terms of office of Supreme Court judges had ended. However, the disagreement between the executive and the legislative branches had been settled by an agreement on the election of the current Supreme Court. Regarding the independence of the judiciary, the representative stated that members of both the Supreme court and the other tribunals were elected by Congress. He noted that reforms were needed in that regard and that the structure of the judiciary should be improved.

338. Accused persons were tried in public by a panel of three judges and could, with the permission of the presiding judge, examine the witnesses. A judge could be disqualified from a trial if he had formerly presided over trials with the same parties or if there were blood, financial or legal ties between him and the parties. Article 277 of the Penal Code established prison penalties for biased judges and court officials. The State was required to provide public defence counsel for persons belonging to indigenous populations, workers and all persons lacking economic means. The main problems hampering the administration of justice in Ecuador were undue delays in the conduct of trials, the parties' non-compliance with legal requirements, biased judgements, bribery and corruption. Legal sanctions to correct such problems ranged from fines and criminal charges to dismissal of judges. In that connection, it was very significant that the Supreme Court had had the courage to sanction eight of its members in 1986.

Freedom of movement and expulsion of aliens

339. In connection with that issue, members of the committee wished to know what restrictions these were on the freedom of movement of aliens and their choice of residence, what legal provisions existed and what the practice was concerning the expulsion of aliens, in the light of article 13 of the Covenant and the Committee's general comment No. 15 (27), and what legislation governing the right of asylum for political offences had been adopted pursuant to article 43 of the Constitution. Observing that the Minister of the Interior could, at the request of a foreign State, order aliens to be interned, some members wondered how long such internment lasted and whether it was compatible with the Covenant. Regarding deportation proceedings, it was asked whether the alien was permitted to choose his own counsel and whether he could be expelled to a country where he might be in danger of persecution.

340. In reply to those questions, the representative of the State party emphasized that the restrictions on the freedom of movement and choice of residence of aliens were prescribed by law and concerned incitement to domestic or foreign political conflict and to civil war. Furthermore, he drew attention to the legal provisions governing the expulsion of aliens. The grounds for expulsion were aimed, *inter alia*, at illegal entry into the country and conviction of a flagrant offence. In addition, the Migration Act stipulated that the alien would have a counsel designated by the court. No alien would be deported to a country in which he could suffer the death penalty and no aliens were currently interned in Ecuador. Lastly, he referred to the various national and international rules which guaranteed the enjoyment of the right of asylum in Ecuador.

Right to privacy

341. With reference to that issue, members of the Committee asked what legal régime governed

lawful interference with correspondence, telephone and telegraphic communications and what the practice was in that regard, whether there had been any complaints concerning abuses and arbitrary actions by the police against citizens and, if so, what measures had been taken to prevent the recurrence of such acts.

342. In reply to those questions, the representative of the State party said that Ecuadorian law guaranteed the inviolability and secrecy of correspondence. Those principles applied equally to cables, telegrams and telephone conversations, and the only exceptions were those prescribed by the National Security Act. Furthermore, the Fundamental Law on Communications provided that in the event of war or internal disorder or in an emergency the commander of the armed forces should take control of communications. In addition, the use of private papers as evidence in judicial proceedings could not be contemplated unless the investigation established that they had a direct bearing on the offence in question. As to possible abuses and arbitrary action by the police in that connection, the representative stated that, when such cases occurred, an investigation was carried out and, where appropriate, penalties were applied. Thus in 1986, the Minister of the Interior had asked the General Commander of Police to investigate such activities on the part of certain police officers.

Freedom of religion and expression

343. With regard to that issue, members of the Committee asked what procedures existed for legal recognition, authorization or toleration of various religious denominations and what limitations there were on freedom of the press and the mass media under the law. They wished to receive further information on any cases involving arrest and detention for the expression of political views and on the implementation of the provisions of the Constitution guaranteeing freedom of conscience and religion. In addition, they asked whether authorizations for the operation of television channels and broadcasting stations and for the publication of periodicals had been denied and, if so, what reasons had been given for such refusals. In this connection, one member requested clarification as to whether the television station "Ortel" had been granted authority to broadcast.

344. In reply to those questions, the representative explained that anyone could worship as he chose, subject to the restrictions prescribed by law to protect security, public morality or the fundamental rights of others. With regard to freedom of the press and the mass media, he drew attention to the constitutional and legal provisions protecting that freedom and explained that the Government was its guarantor and that all currents of political opinion or religious faith had access to the mass media. Nevertheless, in the event of an incorrect statement or aspersion on the honour of another, a right to free rectification was available and the Code of Criminal Procedure contained provisions concerning libel and slander. In that connection, only one case of insult to the President of the Republic had been reported since 1984.

345. With regard to the closure of broadcasting stations, the representative explained that they had come about as a result of politically motivated work stoppages. Such closures had, for example, taken place in October 1987 during a 24-hour state of emergency and on the occasion of the kidnapping of the President of the Republic. Lastly, the representative drew attention to the fact that the Director of the Telecommunications Institute had decided, despite the opposition of the Association of Engineers and the Association of Television Workers, to accept the decision of the Court of Constitutional Guarantees granting "Ortel" authority to broadcast.

Freedom of assembly and association

346. With regard to that issue, members of the Committee asked what legislation existed to implement the provisions of article 19, paragraph 3, of the Constitution and what the actual situation was with respect to the existence and functioning of trade unions in Ecuador. In addition, it was also asked how trade unions could be dissolved and whether civil servants had the right to strike. Noting that trade unions were permitted in Ecuador only if they did not engage in political or religious activities, some members requested clarification of the scope of Decree No. 105, which stated that the act of inciting to or participating in a collective work stoppage was a punishable offence.

347. In reply to those questions, the representative of the State party reviewed the various legal provisions guaranteeing the right of association and of free assembly for peaceful purposes and the right to form trade unions and works committees. In addition, he emphasized the distinction between legitimate strikes and work stoppages on political grounds, stating that the latter, organized by infiltrators, were illegal and violated social harmony.

Protection of the family and children, including the right to marry

348. Members of the Committee wished to receive further information on the practice in Ecuador with respect to the protection of the family and children. In addition, clarification was sought of the meaning of the term “responsible parenthood” used in the report.

349. In reply to those questions, the representative stated that the Constitution afforded the family ample protection and guaranteed moral, cultural and economic conditions in which it could flourish. Marriage was based on the free consent of the future spouses and on the equal rights and equal legal capacity of husband and wife. Free, stable and monogamous union was also protected. With respect to the encouragement of responsible parenthood provided for in article 24 of the Constitution, he highlighted the efforts which were being made in order to educate and inform parents about family planning. In addition, the representative explained the successive reforms concerning the legal status of the family, which had made it possible, in particular, to increase the protection and legal capacity of married women. He also emphasized the legal provisions concerning assistance to and protection of minors, in particular of those who had been materially, morally or legally abandoned.

Right to participate in the conduct of public affairs

350. With reference to that issue, members of the Committee wished to know what was being done to protect the security of congressmen in carrying out their duties, how many political parties were recognized under the law and what the current level of the electoral quotient established under article 38 of the Constitution was. In particular, it was asked whether the electoral quotient was constant and why any party that failed to obtain such a quotient in an election should be dissolved by law.

351. In his reply, the representative said that the security of congressmen was assured by a special guard operating in the Congress building under the orders of the President of the Congress. He also stated that the electoral quotient, by which minorities were represented, was obtained by dividing the total votes cast by the number of representatives to be elected, and that 16 political parties were

legally recognized.

Rights of minorities

352. With regard to that issue, members of the Committee wished to know the size of each major ethnic group in Ecuador and of the indigenous population and asked how their rights provided for in article 27 of the Covenant were ensured. It was observed that some ethnic groups seemed to suffer from modern development, in particular, from the activities of oil companies and, it was asked, in that connection, what protection was afforded to them.

353. In responding, the representative explained that in the coastal regions the indigenous population was mainly of mixed race, except in the Province of Esmeraldas where it was mainly black. Various indigenous groups were found in the mountain areas where a type of feudal protection system was practised. There was a special problem in relation to the aboriginal population in eastern Ecuador where oil prospecting was disrupting their way of life and eliminating their distinctive culture. Nevertheless, ethnic minorities were protected by the State and matters of land titles were regulated by the Institute of Agrarian Reform.

General observations

354. Members of the Committee expressed appreciation for the State party representative's cooperation and readiness to engage in a dialogue with the Committee. They observed, however, that, while the representative had endeavoured to reply to many questions, some important ones had remained unanswered. Members explained that their concerns with respect to a number of issues had not been fully allayed, pointing, *inter alia*, to involuntary disappearances of persons, the behaviour of the military and paramilitary forces, freedom of association, the granting of *habeas corpus*, the independence of the judiciary and the situation of ethnic minorities. They hoped that such concerns would be brought to the attention of the Government.

355. The representative of the State party thanked the members of the Committee for their attentiveness and assured them that his country would continue to respect human rights within the framework of the rule of law.

356. In concluding consideration of the second periodic report of Ecuador, the Chairman also thanked the representative for his co-operation.

CCPR A/47/40 (1992)

219. The Committee considered the third periodic report of Ecuador (CCPR/C/58/Add.9) at its 1116th to 1119th meetings, on 6 and 7 November 1991 (CCPR/C/SR.11116-11119). (For the composition of the delegation, see annex VIII)

220. The report was introduced by the representative of the State party, who noted that great efforts had been made by Ecuador in recent years to promote human rights. The feeling of insecurity and the climate of fear that had prevailed in the period 1984 - 1988 had been replaced by a tolerant democratic system and by a peaceful attitude on the part of the present Government. Isolated cases of human rights violations still occurred, however. Where certain authorities had in some way been involved in such cases, because of the low level of awareness of some members of the police force and the difficulties involving in changing their mentality, the Government had acted forcefully and responsibly against them.

221. Referring to a number of important developments in the field of human rights that had occurred in his country since the submission of the report, the representative explained that on the basis of a report from an international commission set up to investigate the cases of two young Colombian brothers who had disappeared in Ecuador, the Criminal Investigation Service had been dismantled and replaced by a judicial police body. In addition, a number of police officers involved in the tragedy had been arrested. An Office of Director-General for Human Rights, which had benefited from United Nations assistance, had also been set up within the Ministry of Foreign Affairs. One of its achievements had been the adoption of specific policy changes relating to social rehabilitation, which included the reconstruction of the country's detention centres. An agreement allowing the International Committee of the Red Cross to interview prisoners had also been concluded and training courses in human rights for members of the armed forces and the police had been instituted. A comprehensive review of criminal legislation and procedures was also to be conducted. Additionally, the Government had concluded a peace agreement with certain guerrilla groups, which had subsequently been disarmed and disbanded.

222. Another important human rights development in recent years had been the initiation of a dialogue with indigenous communities. Following the largest uprising of indigenous peoples in Ecuador's history in 1990, a dialogue was undertaken with the leaders of the Indian community, which had proved to be very fruitful. In-depth and far-reaching reforms had been adopted, including the introduction of bilingual education and the donation of over 1 million hectares of land.

Constitutional and legal framework within which the Covenant is implemented and state of Emergency

223. With regard to that issue, members of the Committee wished to know what the constitutional standing of the Ad Hoc Commission on Human Rights was; what action had been taken to follow up its proposals; whether there were any cases in which offences against constitutional freedoms had been punished; what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol to the Covenant with regard to Ecuador; whether the reasons for declaring a state of emergency referred to in the report were consistent with the provisions of article

4 of the Covenant; what rights had been derogated from and what remedies were available during the states of emergency. Members also wished to receive information, in the light of article 141 of the Constitution, on the status of the Court of Constitutional Guarantees and asked what action had been taken as a result of its recommendations.

224. In addition, members inquired what the exact position of the Covenant was within the Ecuadorian hierarchy of norms and whether provisions of the Covenant could be invoked before the Court of Constitutional Guarantees; how many complaints had been referred to the Inter-American Commission on Human Rights; whether former officials of the Criminal Investigation Service had joined the new judicial investigation service; and why cases of violations of human rights were still occurring. Concerning the Ad Hoc Commission on Human Rights, members wished to receive information about its functions and activities, the impact of its decisions on law and practice, and about the number of complaints that had been submitted to it. Further information was sought as to the applicable procedure and the competent authorities for obtaining compensation pursuant to article 9, paragraph 5, of the Covenant in respect of the Bolaños case and, in particular, about the measures that had been taken by the authorities to grant Mr Bolaños compensation.

225. With regard to article 4 of the Covenant, it was asked whether the Government had always made use of the notification procedure laid down in paragraph 3 of that article. Clarification was also sought as to the compatibility of article 78 (g) of the Constitution with article 4, paragraph 2, of the Covenant. Members also suggested that the circumstances in which it was possible to proclaim a state of emergency should be more strictly defined since the existing constitutional provisions made it easy to resort to a state of emergency merely in response to labour unrest.

226. In his reply, the representative of the State party stated that the Ad Hoc Commission on Human Rights was a legislative commission established under rule 119 of the rules of procedure of the National Congress. As such, it was a multiparty body in which both the Government and the opposition were represented and it dealt with possible violations of human rights from the political standpoint. Its most important action to date had concerned the disappearance of two Colombian brothers, in the course of which it had demonstrated its usefulness and received much public support. It had also played an advisory role with respect to changes in the Civil Code, the Code of Criminal Procedure and the Code of Execution of Sentences.

227. Referring to remedies available for violations of constitutional freedoms, the representative explained that such cases could be brought before a judge in the ordinary courts or before the Court of Constitutional Guarantees, which defended the rights and freedoms enshrined in the Constitution and whose members came from the executive, the judiciary and the private sector and were appointed by the National Congress. Failure by any official to implement a decision of the Court was punishable under the terms set out in the Penal Code. A considerable number of complaints against particular authorities or policies of the Government and of unfair dismissal for expression of opinions critical of the Government had indeed been brought before the Court. Although those procedures were extremely slow, there had been, in recent months, four convictions against members of the police for offences against constitutional freedoms. Under Order No. 8524A, an examination of all accusations of abuse of power or corruption made against the police in the past eight years had been initiated by the Ministry of the Interior. Furthermore, a high-level commission had been set up under Decree No. 2693 to draft a set of rules for the police as well as other legal instruments

relating to their operation.

228. Concerning the views adopted by the Committee in the case of Mr Bolaños, who had been unjustly charged with a crime and detained for many years without being sentenced, the representative noted that Mr Bolaños had been released and that the Government had arranged employment for him. However, although the principle of compensation was enshrined in the Constitution, relevant legislation implementing that guarantee had not yet been developed for all infringements of human rights. In the case of Mr Cañón García, a Colombian citizen, the Government recognized that the procedures under Ecuadorian law for the expulsion of aliens had not been complied with and the authorities had since then given specific instructions with regard to the expulsion of aliens to the INTERPOL section and to other police bodies.

229. Responding to other questions, the representative admitted that there were still instances of human rights violations in Ecuador. They had, however, to be regarded as arising from factors such as economic problems and inadequate social organization. Active efforts were being made to solve those problems, to continue to prosecute those violating human rights and to foster a proper attitude towards human rights. Members of the former Criminal Investigation Service who had been involved in cases of human rights violations had been dismissed from the police force and those who had not been implicated in any abuses had been reintegrated into police bodies that were not involved with criminal matters. A higher proportion of communications had been submitted to the Human Rights Committee than to the Inter-American Commission on Human Rights since the Committee had been in operation longer, was better known and was more effective in making Governments aware of human rights violations.

230. With regard to questions raised in connection with article 4 of the Covenant, the representative of the State party said that the reasons for declaring a state of emergency in Ecuador were consistent with the Covenant's provisions. The National Congress could revoke a state of emergency and the Court of Constitutional Guarantees could decide whether a declaration of state of emergency was valid. The latter had, for instance, declared that one such declaration made in May 1988 had not been justified. More recently, the Government had introduced a state of emergency in response to industrial action by petroleum workers which had entailed dramatic economic consequences for Ecuador. The strike had deprived the country of 60 per cent of its foreign currency earnings and the workers had attempted to cut off the vital trans-Andean pipeline to press inordinate claims for compensation and for changes in the ownership of the petroleum industry. The President had suspended freedom of movement and the right of assembly within the petroleum installations as well as the constitutional guarantees relating to the right to work. The state of emergency had lasted barely two weeks and the Congress had been duly informed, in accordance with the Constitution, and had endorsed the measure. In future, the authorities would not fail to notify the Secretary-General whenever a state of emergency was declared, in accordance with article 4, paragraph 3, of the Covenant. The list given in article 48 (n) of the Constitution was identical, in spirit, with the provisions mentioned in article 4, paragraph 2, of the Covenant and the exercise of the fundamental human rights concerned had never been suspended.

Non-discrimination and equality of the sexes

231. In connection with that issue, members of the Committee wished to know, in the light of the

Committee's general comment No. 18 (37), whether there had been any developments in relation to article 2, paragraph 1, and article 26 of the Covenant since the submission of the report. In addition, clarification was requested about the compatibility with the Covenant of the distinction made in article 9 of the Constitution between Spaniards and Ibero-Americans, on the one hand, and all other foreigners, on the other. Further information was requested regarding measures taken by the authorities to assist in the integration of indigenous populations into society and the prohibition against the signing of work contracts abroad by women.

232. In his reply, the representative of the State party pointed out that, under Ecuadorian law, racial discrimination was considered an offence and that amendments to the Civil Code, which sought to put an end to any form of legal discrimination between men and women, had been adopted in August 1989. Similarly, amendments to the Penal Code were currently being discussed in order to eliminate any shortcomings in that regard. The apparent distinction with respect to dual nationality in article 9 of the Constitution was based on historical considerations, since Spaniards and Ibero-Americans were the direct ancestors of the Ecuadorians. The rights of aliens, other than in the exercise of political rights, were not restricted as compared with those of citizens. The regulation which stipulated that companies wishing to hire a foreigner should give proof that his services were indispensable and that there were no Ecuadorians qualified to occupy the position was an administrative measure designed to protect the interests of Ecuadorians.

233. Referring to the rights of indigenous populations, the representative explained that for centuries the Indians had suffered considerable discrimination and savage exploitation at the hands of the Spanish conquerors, but also later at the hands of persons of mixed race. Although today they were no longer considered inferior beings as they had been during the colonial period, they were still poorer than other Ecuadorians. In the past, helping the Indians had meant helping them to climb the social ladder to the detriment of their identity. The recent trend, however, was to protect the cultural identity of the Indians. Some very primitive groups still existed in the country, and there was considerable debate as to whether they should be allowed to remain as they were or be integrated in the prevailing civilization. In view of the very strong arguments that such groups had the right to their own lifestyle and culture and that the myriad of different cultures in Ecuador should be preserved, the groups concerned had so far remained undisturbed. The Government had taken positive measures to help the Indians, both in the field of education and in respect of agrarian reform. Furthermore, an extensive bilingual intercultural teaching programme had been set up and a national bilingual education department, headed by a representative of the indigenous populations, was now managing 1,500 schools. The Government had considerably extended the territory of the indigenous people of the Amazon region as well as those in the Andes. Development programmes for the general welfare of the poorest indigenous areas had also been implemented, with priority given to irrigation projects.

Right to life

234. Referring to that issue, members of the Committee wished to know what measures had been taken to investigate cases of disappearances and extrajudicial executions, to punish those found guilty, to compensate victims and to prevent the recurrence of those acts. They requested information on the mandate and composition of the high-level inter-agency commission mentioned in the report as well as on the rate of violent crimes in Ecuador and measures taken to prevent them.

They also asked what measures had been taken to prevent the spread of cholera and other lethal diseases. In addition, information was requested regarding the legislation and practice in Ecuador in respect of abortion and on the number of women punished for having an abortion.

235. In his reply, the representative of the State party referred to certain cases of disappearances and extrajudicial executions that had been brought to the attention of the authorities and explained that, in the coastal agricultural areas, groups of landowners were waging a murderous war over land occupancy. All such cases had been investigated and the culprits, when found, brought to justice. With regard to the disappearances for which the police forces were responsible, the Government had taken general measures, such as the aforementioned abolition of the Criminal Investigation Service. It had also taken specific measures after the case of the Restrepo brothers, who had disappeared in 1988. In that particular case, the Government's concern had led it to set up on 13 July 1990 an international commission of inquiry to investigate the disappearance of the two children. In its report, the commission had concluded that the children had disappeared while in the hands of the police and that the senior police authorities had tried to hush up the case. It had therefore recommended that those guilty should be brought to justice, that action should be taken to prevent a recurrence of such incidents and that the family should be compensated. The Government had already taken steps in that direction, in particular by extending the mandate of the international commission, which had already received other complaints of disappearances and torture.

236. Turning to other questions, the representative said that abortion was considered a crime in Ecuador and that statistics were not available. Cholera had reached the country early in 1991 and the authorities and, in general, all sectors of the country, had combined their efforts to fight that scourge.

Treatment of prisoners and other detainees and liberty and security of the person

237. With regard to that issue, members of the Committee wished to receive information on the results of the campaign waged to make the armed forces and the police aware of the obligation to respect the human rights of persons under arrest or investigation; on recent allegations of torture and ill-treatment of persons arrested or detained on criminal charges; and on the nature of complaints received and any action taken thereon by the Court of Constitutional Guarantees in the period under review. They also asked how many persons, if any, had been tried and sentenced under the provisions of articles 187, 204, 205 and 206 of the Penal Code during the reporting period. With reference to persons having been held unlawfully because the time-limits laid down by law had expired, members of the Committee wished to receive information on the number of detainees involved, the length of their unlawful detention, and on the provisions that had been made for compensation. They also wished to receive additional information on a case of arbitrary or unlawful detention mentioned in the report.

238. In addition, in the light of a report by the International Labour Organization (ILO) concerning the application of ILO Conventions in Ecuador, clarification was sought of the possibility for members of the armed forces to undertake activities within the framework of development programmes involving both military and civilian personnel. Information was also requested concerning legislative provisions that seemed to authorize incommunicado detention during the first 24 hours of detention and on regulations governing work by prisoners.

239. In his reply, the representative of the State party said that, the campaign aimed at promoting human rights among the general public, and in particular the members of the armed forces and the police, had yielded very positive results. The Ecuadorian Human Rights Commission had taken an active part in that campaign and basic materials, such as a manual on human rights for use by police officers, had been published and widely disseminated. Furthermore, nearly two thirds of the prison guards had taken a course on how to respect the dignity of prisoners.

240. Concerning allegations of torture and ill-treatment, the representative emphasized that the authorities had duly examined all cases submitted to them, particularly those submitted by the Special Rapporteur of the Commission on Human Rights and by non-governmental organizations. The cases of 270 police officers who had allegedly tortured detainees had been referred to the competent authorities. A new department had also been set up under the Ministry of Justice and had made a study of the complaints of abuse of powers and corruption by members of the police force, which were expected to lead to administrative penalties.

241. With regard to remain in custody and detention pending trial, the representative pointed out that no one could be detained for more than 24 hours without being brought before a judge. There had, however, been countless cases of arbitrary and unduly prolonged detention. A new department had been set up within the framework of the Ministry of Justice in order to put an end to abuses in that area. Following the establishment of that department there had been a sharp decline in the number of persons detained without charge. There were two main types of remedies to combat arbitrary detention: constitutional habeas corpus, which protected the fundamental rights of the individual, and judicial habeas corpus, which enabled a detainee to challenge the legality of his detention in a higher court. The reforms under way would make it possible to prevent arbitrary or illegal detention on the basis of an administrative decision or political considerations in the future and permit full respect for liberty and security of the person, as set forth in the Covenant.

242. Members of the armed forces were by no means subjected to forced labour, but, traditionally, the army had always cooperated in the economic and social development of the country. The Labour Code did not apply to them and they were governed solely by military laws. Labour was not compulsory in prisons and the activities available to the detainees were extremely varied. Each individual was paid for his labour and received training in preparation for reintegration into society.

Right to a fair trial

243. In connection with that issue, members of the Committee wished to know what efforts had been made to abide by the principles embodied in article 14 of the Covenant and to put them into practice; what guarantees were available for defendants and their counsel; whether there was any special court in Ecuador and, if so, what role and jurisdiction it had; how the independence and impartiality of the judiciary were guaranteed; whether it was prohibited to compel a person to testify against himself; and whether there was a legal aid or advisory scheme in Ecuador and if so, how it operated.

244. In his reply, the representative of the State party said that much still remained to be done in Ecuador to ensure the complete independence of the Court of Constitutional Guarantees, especially in cases of conflict between the executive and the National Congress, but a process to rectify that

shortcoming had already started. Furthermore, a tradition of discrimination against the poor and indigenous populations still hampered the course of justice. A bill providing for the appointment of indigenous justices of the peace and justices with special responsibility for matters affecting inhabitants of the poor and disadvantaged urban areas was under consideration.

245. With regard to the rights of defendants, new regulations had been established according to which detainees were entitled to free legal consultations. Legal counsel could go directly to the prisons to consult with them and thus facilitate the settlement of cases. According to the Constitution, it was expressly forbidden to compel a person to testify against himself. The armed forces had special courts to deal with offences committed by the military in the exercise of their duties.

Freedom of movement and expulsion of aliens, freedom of religion and expression and freedom of assembly and association

246. Referring to those issues, members of the committee wished to receive information on relevant provisions regarding applications for passports, costs incurred in obtaining a passport and possible grounds of refusal to issue a passport, including possibilities of appeal; on the remedies against an expulsion order; on the forms of worship considered as detrimental to public morals; on the exceptions to freedom of expression based on constitutional and legal provisions relating to the state of emergency; on the restrictions, if any, currently applicable to associations in the interest of public order; and on current legal provisions governing the right to strike.

247. In addition, it was asked in which legal cases individuals were required, under article 19 (15) of the Constitution, to declare their religion or belief; whether restriction of the right to privacy under the National Security Act applied only in emergency situations or also in other situations; whether the Compulsory Military Service Act permitted conscientious objectors to perform alternative national service and, if so, what the latter's duration was compared with that of compulsory military service; how the freedom to seek, receive and impart information was implemented in practice; and whether government employees had the right to organize and to strike. Clarification was also requested as to the compatibility with article 22 of the Covenant and relevant ILO Conventions of several provisions of Ecuadorian law relating to the membership of the executive committee of a works council; the modalities for dissolution of a works council; the prohibition against trade unions taking part in religious or political activities; the penalty of imprisonment for the instigators of collective work stoppages; and to protection against acts of anti-union discrimination.

248. In his reply, the representative of the State party said that, although there were no political restrictions on the issue of passports, a person's exit from the country had to be restricted in some legal cases. The cost of a passport was equivalent to the average monthly wage and administrative appeal was available in the case of refusal to issue a passport. There was complete freedom of movement within the country. The Intendente General de Policía, who was a magistrate responsible to the Ministry of the Interior, was empowered to deport any alien who was in Ecuador illegally, and no appeal could be made against his decision. Expulsion orders against aliens legally in Ecuador had to be referred to the Minister of the Interior, whose decision was final. Requests for the extradition of aliens had to be decided upon by the President of the Supreme Court.

249. Concerning the exercise of freedom of religion and expression, the representative explained that, according to article 19 (6) of the Constitution all persons could freely practise the faith that they preferred, except for the limitations prescribed by law to protect the security, public morality and fundamental rights of other persons. Among the many sects that had arisen in Latin America in recent years there were some that were not only dangerous to public morals but even to life. The Penal Code provided for the punishment of any illegal acts of that type. The President of the Republic was empowered to impose censorship on the media during a state of emergency; that measure, had, however, never been applied under the present Constitution. There was currently no provision for conscientious objection in Ecuador. In actual fact, as Ecuador's armed forces were small, they did not require all the potential conscripts and it was relatively easy to avoid performing military service. However, most of the poorer elements of the population eagerly performed their military service as it provided them with an opportunity to escape poverty and rural isolation. The issue of freedom of access to information was now the subject of considerable attention in Ecuador. Administrative files were public, with the exception of those relating to national security and military matters. However, access to administrative files was hampered by the bureaucratic tendency towards secrecy.

250. There were no restrictions on freedom of assembly, but the suspension of enforcement of constitutional guarantees was permitted during a state of emergency. There had been no cases of such suspension apart from restriction of the right to meet in certain specific places, such as in the vicinity of oil refineries or in areas of strategic importance. The right to strike was guaranteed under the Constitution and set forth in the Labour code. That right was fully respected by the Government subject to the necessary security arrangements. Although the Ecuadorian Government had received in the past requests to improve its legislation, there was currently no complaint against Ecuador by the ILO Committee of Experts on the Application of Conventions and Recommendations. It was considered that a strong organization of the labour force was absolutely essential to a democratic way of life and, therefore, all forms of trade-union freedom were supported. A proposal to reform the Labour code was currently under consideration by the Congress and most of the proposed reforms were supported by the trade unions. The remaining changes, which were necessary in the current economic situation, did not restrict labour freedoms. Members of the civil service possessed the right of association, although they could not organize strikes, and there were a multitude of civil service unions.

Protection of children

251. Referring to persistent reports that children in Ecuador had been kidnapped for sale or adoption, members of the Committee wished to know what provisions had been adopted to protect children from such practices and to prosecute persons who had committed such offences. In addition, it was asked what were the legal status, citizenship rights and inheritance rights of children born out of wedlock. Further information was also sought on the right of married women to initiate legal proceedings.

252. In his reply, the representative of the State party confirmed that there had indeed been cases in which children had been kidnapped for adoption. A number of individuals, including lawyers who had acted as intermediaries, had been convicted and sentenced to prison. The incidents had caused a national outcry and the regulations on adoption had been suspended on account of the

loopholes they offered to unscrupulous individuals. Furthermore, on 11 January 1990, new adoption regulations, designed principally to promote the interest of adopted children, had come into force.

Since the reform of the Civil Code in 1970, there had been no distinction whatsoever between children born in or out of wedlock, provided that a legal declaration of paternity or maternity was made. As a result of the 1988-1989 reforms, both spouses were equal before the law and married women were no longer subject to the tutelage of their husbands. Women were now also free to enter into contracts and to appear in court.

Right to participate in the conduct of public affairs

253. With regard to that issue, members of the Committee inquired what progress had been achieved in the preparation of a draft amendment to the Political Parties Act to bring its provisions more into line with the concept of “electoral quotient” referred to in the Constitution; what were the consequences of the deprivation of civil rights; and whether the provisions of Ecuadorian law, which made voting compulsory except for those who were illiterate or aged over 65, were compatible with the Covenant.

254. In addition, they wished to know why members of the police and the armed forces did not have the right to vote; what legal sanctions, if any, were applicable to persons who were unwilling to perform their duty to vote; whether the stipulation that a party had to be a nationwide organization before it could be registered was fully in conformity with article 25 of the Covenant; why only the President had the power to call a referendum; and whether it was intended to repeal article 13 (2) of the Constitution, which provided that the rights of citizenship were suspended during confinement in prison.

255. In his reply, the representative of the State party said that the “electoral quotient” requirement, whereby a party that did not obtain at least 5 per cent of the vote cast in two successive elections at the national level was automatically dissolved, had been abrogated. Deprivation of civil rights included the right to vote and to stand for election, and applied to all persons who had received final prison sentences. There was no contradiction between the Covenant and those provisions of Ecuadorian law that made voting compulsory except for those who were illiterate or aged over 65 as there was no question of depriving any category of persons of the right to vote. There were historical reasons for according optional suffrage to illiterate persons. Illiterate persons came from the indigenous Indian population and liberal elements in the society had opposed giving indigenous peoples voting rights based on the assumption that they were too easily manipulated by the large landowners and the Church. It was therefore considered that making voting optional for illiterate persons would reduce such manipulation. However, since the number of persons who could not read or write was decreasing, the impact of such a measure on the political life of the country was diminishing. Mandatory voting was of great importance in a fragile democracy and was a means of ensuring the legitimacy of the Government.

256. The right to vote had not been granted to members of the police and the armed forces for historical political reasons. Civilian society had indeed sought, by withholding the right to vote, to restrain the army’s political ambitions. In recent years, however, the armed forces had tended increasingly to respect the electoral order and one school of thought was in favour of granting them the right to vote. The stipulation that a party had to be a nationwide organization before it could be

registered was also to be understood in its historical context. Ecuador was divided by the Andes, a barrier which had created wide geographical differences and an intense regionalism. In the past, that situation had been exploited by political parties anxious to maintain regional powers and oligarchy. As a result, political parties now had to be national in scope, and under the Political Parties Act a large proportion of Ecuador's 21 provinces had to provide candidates for election. There were, however, no major restrictions on the formation of parties, and there were currently 17 political parties in Ecuador.

Rights of persons belonging to minorities

257. With reference to that issue, members of the Committee wished to receive information on how the ecological deterioration of the area in the Amazon region was affecting the social and cultural organization of the indigenous communities living there and on any measures that had been taken to address that problem. In addition, information was requested on treaties or agreements, if any, between Ecuador and its indigenous populations and on the representation of minorities in the elected bodies of Ecuador.

258. In his reply, the representative of the State party stated that the Shuaros made up about half the indigenous population living in the Amazon region, the rest comprising a further 13 ethnic groups. The ecological deterioration of the region was due, in particular, to the deforestation attendant on the spontaneous settlement that had taken place after roads had been built through the area; oil production; and the granting of agricultural concessions to plant crops such as the oil palm. In an attempt to curb spontaneous settlement, the Government had amended the agrarian reform measures that had conferred ownership of land on those clearing it of trees. The Institute for Agrarian Settlement was also promoting more rational use of lands in the Amazon region. The indigenous peoples had a very important role to play in the protection of the area and, therefore, over 1 million hectares had been granted to them. The Government had also set up new stringent standards for oil companies working in the Amazon region and a bill had been drawn up to establish a fund for conservation of the ecology of the Amazon region. However, enormous problems still remained to be addressed and continuous vigilance was necessary. Ecuador hoped to be as successful in protecting the Amazon region as it had been in conserving the ecologically fragile area of the Galápagos region.

259. Replying to other questions, the representative said that indigenous peoples had always been considered as Ecuadorians and, therefore, Ecuador had not signed any treaty or agreement with them. Electoral minorities participated in Government according to a quota system based on the size of their vote in an election.

Concluding observations by individual members

260. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of Ecuador and for having engaged in a fruitful and constructive dialogue with the committee. The delegation had given comprehensive and frank replies and the report itself made no secret of the human rights violations committed, in particular, by some branches of the police. It was clear that the Government was very concerned to improve the human rights situation and had the necessary political will to eliminate the last

vestiges of human rights violations. Positive developments noted by the Committee included Ecuador's accession to a large number of regional and international human rights instruments; the human rights training being dispensed to members of the police and armed forces; the abolition of the Criminal Investigation Service; the restructuring of the police; and the creation of an Office of Director-General for Human Rights within the Ministry of Foreign Affairs.

261. At the same time, members of the Committee were of the view that every effort should continue to be made to prevent and eliminate once and for all cases of ill-treatment, to elucidate all the cases of disappearances that had occurred in the past, and to punish those responsible. Among the concerns expressed by members that had not been fully allayed were those relating to conditions for declaring a state of emergency and making the declaration provided for in article 4, paragraph 3, of the Covenant; compulsory labour in the context of military service; the independence of the judiciary, especially arrangements for appointing members of the Supreme Court and the powers of the Court of Constitutional Guarantees; the prohibition against women signing contracts to work abroad; and the denial of the right to vote to members of the police and the armed forces. It was also felt that legislative provisions should be adopted providing for compensation to victims of torture or arbitrary arrest or detention. Lastly, the hope was expressed that more forceful measures would be taken on behalf of the indigenous population.

262. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the Ecuadorian delegation. It was a fact that Ecuador not only faced problems of very long standing but also an extremely difficult economic situation. No progress in solving those problems would have any meaning, however, if the rights and dignity of the individual were not respected.

263. In concluding the consideration of the third periodic report of Ecuador, the Chairman thanked the delegation for submitting a candid report that showed, without covering up cases of torture, disappearances and ill-treatment that still existed in the country, that the Government was concerned to make progress in promoting human rights.

CCPR A/53/40 (1998)

274. The Committee considered the fourth periodic report of Ecuador (CCPR/C/84/Add.6) at its 1673rd and 1674th meetings, on 14 July 1998, and at its 1692nd meeting, on 27 July 1998, adopted the following observations.

A. Introduction

275. The Committee welcomes the fourth periodic report, as well as the addendum to the report, updating information submitted by the State party. The Committee appreciates the presence of a high-level delegation and the frank exchange with the Committee, enabling it to obtain a clearer view of the present human rights situation in Ecuador.

276. The Committee, while appreciating the addendum to the report provided by the State party, regrets that it did not receive a core document, which would have helped the Committee to better understand the problems existing in Ecuador. The Committee also regrets the overall lack of reliable statistics.

B. Positive aspects

277. The Committee takes note of the promulgation of the new Constitution in May 1997, which will enter into force in August 1998, and welcomes the expanded list of provisions for the protection of human rights.

278. The Committee welcomes the adoption of legislation which establishes measures for the compensation of victims of human rights violations. It also expresses its satisfaction with the information that the next-of-kin of two particularly serious cases of human rights violations have been compensated by the State party.

279. The Committee welcomes the National Human Rights Plan, as well as the establishment of the Consejo Nacional de la Magistratura. It also notes the decision to appoint a new Ombudsman and welcomes the creation of the remedies of amparo and habeas data, as well as the expansion of the remedy of habeas corpus.

280. The Committee welcomes the information that article 23 of the Constitution prohibits the enacting of amnesty legislation or granting pardons for human rights violations; that torture, enforced disappearances and extrajudicial executions have no statute of limitation; and that obedience to superior orders cannot be invoked as an extenuating circumstance. It also welcomes the information that the jurisdiction of the military tribunals has been limited to members of the armed forces in the exercise of their official functions; that these tribunals have no jurisdiction over civilians; and that cases of human rights violations by members of the army and the security forces fall under the jurisdiction of civilian courts.

281. The Committee welcomes the information that the Constitutional Court has declared unconstitutional the criminalization of private homosexual relations between consenting adults and

the law excluding persons charged under the Narcotics and Psychotropic Substances Act from the application of the new provisions on detention pending trial.

282. The Committee welcomes the information that a series of educational programmes have been devised in collaboration with international institutions, to enable all segments of the population, in particular members of the army, security forces and the police, and members of the judiciary and lawyers, to be better acquainted with international standards for the protection and observance of human rights and human dignity.

C. Principal subjects of concern, suggestions and recommendations

283. The Committee is concerned at the many instances of violence against women and the very few judicial decisions thereon. The Committee stresses that all reported acts of violence against women should be investigated and appropriate judicial proceedings instituted.

284. The Committee expresses its concern about the very high number of suicides of young females referred to in the report, which appear in part to be related to the prohibition of abortion. In this regard, the Committee regrets the State party's failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives. Such situations are, from both the legal and practical standpoints, incompatible with articles 3, 6 and 7 of the Covenant, and with article 24 when female minors are involved. The Committee recommends that the State party adopt all necessary legislative and other measures to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.

285. Notwithstanding the positive information provided in respect of the measures taken to amend criminal proceedings, to establish oral hearings and to introduce alternative ways of dealing with civil matters, the Committee continues to be concerned about the unreasonably long judicial delays. The Committee encourages the State party to expedite the process in view of the severe backlog in the courts.

286. The Committee is particularly concerned that accused persons may be held in detention pending trial for a maximum duration of a third of the possible sentence facing them, irrespective of the risk that they may fail to appear for trial and that the State party's own statistics indicate that close to 70 per cent of the prison population is awaiting trial. This situation is incompatible with the presumption of innocence and the right to be tried within a reasonable time or to be released on bail as provided for in articles 9 and 14 of the Covenant. Therefore:

The Committee recommends that bail legislation be brought into conformity with the provisions of the Covenant and that resort to preventive detention be the exception and not the rule.

287. The Committee expresses concern about the long delays in judicial proceedings which are incompatible with the requirements of articles 9 and 14 of the Covenant. It is also concerned at the severe shortage of public defenders for the poor in Quito and Guayaquil and their total unavailability in many parts of the country. This situation is particularly grave since Ecuadorian law requires mandatory legal assistance in court proceedings. Therefore:

The Committee recommends that the State party address the question of the long judicial delays, and in particular that it comply with the provisions of the Code of Criminal Procedure, which stipulates that the initial trial should be completed within 60 days. The Committee encourages the State party to increase the number of public defenders and to extend their presence throughout the whole of its territory.

288. The Committee expresses its concern that the provisions of Law No. 10282 on the state of emergency and those contained in article 103 (6) (h) of the Constitution, enumerating the constitutional articles which may be derogated from during a state of emergency are not in conformity with the Covenant. The Committee regrets not having received sufficient information on which articles may be derogated from during a state of emergency and whether they are in conformity with the Covenant.

289. The Committee is concerned that, despite the Plan for Equal Opportunity 1996-2000 and the constitutional guarantees of the rights of women and laws designed to end discrimination, women continue to receive unequal treatment in Ecuador owing in part to the continuation of traditional attitudes and obsolete laws. This situation and the aforementioned laws give rise to problems under articles 3, 23, 24 and 26 of the Covenant. The Committee recommends that the State party fully implement the Plan for Equal Opportunity. It also recommends that the State party abrogate those provisions of the Code of Criminal Procedure which prevent a prostitute from being considered as a suitable witness in trials. The Committee requests the State party to inform it of the measures adopted and of the results achieved under the Plan for Equal Opportunity in its next periodic report.

290. The Committee is also concerned that, despite the legal requirement of judicial authorization for the employment of children under 14 years of age, there continues to be exploitation of children in employment. Therefore:

The Committee recommends that the Comité Nacional para la Eradicación Progresiva del Trabajo Infantil be provided with the necessary means to carry out its mandate to eliminate the practice of child labour.

291. The Committee is concerned that the births of children born in Ecuador to undocumented refugees are frequently not registered due to the parents' fear of deportation. This situation prevents the children from claiming Ecuadorian nationality, to which any child born in Ecuador is entitled under Ecuadorian law. In this regard:

The Committee recommends that the State party adopt measures guaranteeing to all children of undocumented refugees born in Ecuador the right to a nationality.

292. The Committee expresses concern at the impact of oil extraction on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. In this connection, the Committee is concerned that, despite the legislation enacted to allow indigenous communities to enjoy the full use of their traditional lands in a communal way, there remain obstacles to the full enjoyment of the rights protected under article 27 of the Covenant. Therefore:

The Committee recommends that further measures be taken to ensure that members of indigenous

groups be protected against the adverse effects of the oil exploitation within the country and be enabled to enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity and traditional livelihood.

293. The Committee appreciates the assurances provided by the State party that the views of the Committee expressed in communications Nos. 480/1991 and 481/1991 are being dealt with. However, the Committee has not been informed of the actual implementation of the views and the redress that the victims may have obtained. The Committee awaits the receipt of the relevant information.

294. The Committee urges that respect for human rights be institutionalized at all levels of government, and recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.

295. The Committee recommends that the State party give the widest dissemination to the present concluding observations, in particular by bringing them to the attention of officials responsible for the administration of justice, non-governmental organizations and the media.

296. The Committee draws the attention of the Government of Ecuador to the provisions of paragraph 6 (a) of the Guidelines Regarding the Form and Contents of Periodic Reports from States Parties, and requests that its next periodic report, due in June 2001, should include material which addresses all the present concluding observations.