



# International Covenant on Civil and Political Rights

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## Human Rights Committee

Ninety-seventh session

Geneva, 12–30 October 2009

### Consideration of reports submitted by States parties under article 40 of the Covenant

#### Concluding observations by the Human Rights Committee

#### Ecuador

1. The Human Rights Committee examined the fifth and sixth periodic reports of Ecuador (CCPR/C/ECU/5) at its 2667th and 2668th meetings (CCPR/C/SR.2667 and 2668) held on 19 and 20 October 2009, and adopted at its 2682nd meeting (CCPR/C/SR.2682), held on 29 October 2009, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the consolidated periodic report submitted by the State party. It is pleased to have the opportunity to resume the dialogue with the State party and expresses its appreciation of the exchanges pursued with the delegation. However, the Committee regrets that the replies to the list of questions have not been submitted by the State party in keeping with the provisions of article 40 of the Covenant, but rather in the name of the Ministry of Justice and Human Rights. It also regrets the shortcomings in the replies to the questions posed during the dialogue.

#### B. Positive aspects

3. The Committee notes with satisfaction the legislative reforms carried out by the State party, in particular through the entry into force of the new Constitution in October 2008, the repeal in 2007 of the so-called contempt provisions of the Criminal Code, as well as the declaration in 2006 of the mandatory preventive detention (“detención en firme”) measure as unconstitutional, which implied a progressive lessening of prison numbers, thereby reducing the incidence of overcrowding.

4. The Committee notes the inclusion of the provision for the Public Defender’s Office under the current Constitution (art. 191) as a safeguarding mechanism for persons unable to engage the services of a defence counsel to guarantee their rights. It also welcomes the fact that this legal measure was included in the new Code of the Judiciary.

5. The Committee notes with satisfaction the decision to declare unconstitutional articles 145 and 147 of the National Security Act, whereby civilians could be tried by military courts for acts committed during states of emergency.

6. The Committee notes the voluntary character of military service under article 161 of the current Constitution.

7. The Committee welcomes the provision in part II, Rights, chapter 6, article 66, paragraph 29, and article 78 of the Constitution dealing with prevention measures and the eradication of human trafficking as well as the protection and social reintegration of the victims. In this regard it also welcomes the implementation of the National Plan to Combat Human Trafficking and Exploitation.

### **C. Main grounds of concern and recommendations**

8. The Committee notes with satisfaction that the new Constitution establishes the principle of equality between men and women and the principle of non-discrimination. However, the Committee continues to be concerned by the disparity between the de jure and de facto situation with regard to the legal protection of women and to gender equality (arts. 2, 3, 25 and 26).

**The State party should adopt effective measures to guarantee the full implementation of current legislation so as not to discriminate against women. The State party should redouble its efforts to combat discrimination against women in the world of work so as to ensure practical equality of opportunity in obtaining high-level positions in the public and private sector as well as equal pay for equal work.**

9. The Committee welcomes the creation of the Women's and Family Commissions and the establishment of specialized units concerned with domestic violence and sexual offences in the Public Prosecutor's Office in the main districts as well as the introduction of a Programme for the Protection of Victims of Sexual Violence and efforts to ensure the application of Act 103 on Violence against Women and the Family. Nevertheless, the Committee is concerned at the large number of cases of violence against women and girls and the high level of sexual abuse and harassment against girls in schools (arts. 3, 7 and 24).

**The State party should:**

- (a) **Investigate and punish the offenders;**
- (b) **Ensure effective access to justice by the victims of sexual violence;**
- (c) **Grant police protection to victims, and establish shelters where they can live in dignity;**
- (d) **Redouble its efforts to provide an educational environment free of discrimination and violence through awareness-raising campaigns and the training of educational personnel and students;**
- (e) **Take preventive and awareness-raising measures to counter gender violence, such as the provision of training for police officers, especially in the Women's Commissions, on women's rights and gender violence.**

**In this connection, the Committee would like to receive in the State party's next periodic report detailed information on the progress achieved in combating gender violence.**

10. The Committee welcomes the written explanation from the State party concerning the declarations of states of emergency proclaimed in the current year in the cities of

Guayaquil, Quito and Manta. However, the Committee is concerned by the allegations that State agents used force against people participating in public demonstrations (art. 4).

**The State party should give practical effect to the provisions of article 4 of the Covenant, as required by article 165 of the Constitution. The State should likewise investigate and sanction those responsible for such acts and compensate the victims.**

11. The Committee welcomes with satisfaction the initiatives taken by the Ministry of Education and Culture to eliminate illiteracy but notes with concern the high rate of illiteracy among girls living in rural areas (arts. 3 and 24).

**The State should redouble its efforts to eradicate illiteracy, particularly among girls living in rural areas.**

12. While the Committee notes that discrimination against sexual minorities is prohibited under article 11, paragraph 2, of the new Constitution, it is concerned at the fact that transsexual women have been placed in private clinics or rehabilitation centres in order to undergo so-called sexual reorientation treatments. It also deeply regrets that such persons have been subject to forced detention and ill-treatment in rehabilitation clinics in the town of Portoviejo in June 2009 (arts. 2 and 7).

**The State party should take preventive and protective measures to ensure that persons of a different sexual orientation are not detained in private clinics or rehabilitation centres in order to be subjected to so-called sexual reorientation treatments. The Committee recommends that the State party investigate the alleged detentions and torture and adopt the necessary remedial measures in accordance with the Constitution.**

13. The Committee notes with concern the continued occurrence of cases of ill-treatment of prisoners by the police in the context of police detention, without those responsible being brought to justice in most cases (art. 7).

**The State party should:**

(a) **Take immediate and effective measures to put an end to such abuses, monitor, investigate and, where appropriate, prosecute and punish law enforcement officers who commit acts of ill-treatment and compensate the victims. In this connection, the State party should in its next periodic report provide statistics on criminal and disciplinary proceedings initiated for this type of act and the results thereof;**

(b) **Intensify human rights training for law enforcement agents so that they do not engage in such conduct.**

14. While the Committee notes that the Children and Adolescents Code prohibits corporal punishment in schools, it remains concerned that corporal punishment traditionally continues to be accepted and practised as a form of discipline in the family and other contexts (arts. 7 and 24).

**The State party should take practical steps to put an end to corporal punishment. It should likewise encourage non-violent forms of discipline as alternatives to corporal punishment in the education system, and should conduct public information campaigns to explain its harmful effects.**

15. The Committee regrets not having received clear and precise information from the State party concerning the Truth Commission which was to investigate, bring to light and put an end to impunity for human rights violations committed by agents of the State between 1984 and 1988 (art. 6).

**The State party should ensure that human rights violations are investigated, the perpetrators prosecuted and the victims and their families granted fair compensation, having regard to the provisions of the Truth Commission's report.**

16. The Committee is concerned about allegations that members of the armed and police forces have been responsible for the death, by discharge of firearms or use of tear gas, of people participating in public demonstrations (arts. 6, 7, 19 and 21).

**The State party should take the necessary steps to put an end to the deaths of participants in public demonstrations at the hands of the police, such as through the establishment of commissions to investigate such acts. The Committee urges the State party to investigate the alleged abuses and bring to justice those responsible.**

17. While acknowledging the measures taken by the State party to improve detention conditions, the Committee is concerned by the high levels of overcrowding and the poor conditions prevalent in social rehabilitation centres, especially the lack of hygiene, shortage of safe drinking water, violence, inadequate medical attention and shortage of staff (art. 10).

**The State party should intensify its efforts to improve the conditions for all detainees, in total compliance with the Standard Minimum Rules for the Treatment of Prisoners. In particular, it should tackle overcrowding as a matter of priority. The State party should provide the Committee with information on progress achieved, with particular regard to the implementation of specific measures to improve the conditions of detainees.**

18. While noting that article 11.2 of the Constitution lays down the principle of non-discrimination on the grounds of a person's criminal record and that the draft amendment to Decree No. 3301 on refugees expressly prohibits the requesting of a criminal record certificate and that the Refugees Department responsible for dealing with requests for refugee status, should not ask for criminal records when handling refugee applications, the Committee regrets that, according to some sources, the practice of requesting a criminal record certificate as an entrance requirement is applied exclusively to Colombian immigrants (arts. 2 and 26).

**The State party should take the necessary steps to ensure that the constitutional principle of non-discrimination on the grounds of a person's criminal record is reflected in practice. In the light of paragraph 5 of the Committee's general comment No. 15 on the position of aliens under the Covenant, the Committee reminds the State party that, while the Covenant does not recognize the right of aliens to enter or reside in the territory of a State party, an alien may, in certain circumstances, enjoy the protection of the Covenant, even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.**

19. While noting that the specific rights of indigenous peoples are enshrined in chapter IV of the current Constitution, the Committee remains concerned that indigenous peoples and Afro-Ecuadorians continue in practice to be the victims of racial discrimination. It is also concerned that Title II, article 11.2 of the Constitution does not establish racial non-discrimination as a principle for the exercise of rights (art. 26).

**The State party should take appropriate measures to ensure the practical implementation of the Constitutional and legal provisions that guarantee the principle of non-discrimination against indigenous peoples and full compliance with articles 26 and 27 of the Covenant.**

20. The Committee requests that the State party's fifth periodic report and these concluding observations be published and widely disseminated to the general public, the judicial, legislative and administrative authorities and non-governmental organizations.

Printed copies of these documents should be distributed to universities, public libraries, the Parliamentary library and other relevant places. It would also be desirable to distribute a summary of the report and the concluding observations to the indigenous communities in their own languages.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit, within one year, relevant information on assessment of the situation and on the implementation of the Committee's recommendations in paragraphs 9, 13 and 19 above.

22. The Committee invites the State party, given that it has not yet submitted its core document, to do so in accordance with the harmonized guidelines on reporting under the international human rights treaties, which were adopted at the Fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

23. The Committee requests the State party, in its next report due to be submitted by 30 October 2013 at the latest, to provide information on the remaining recommendations made and on compliance with the Covenant as a whole.

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