

## ECUADOR

### CERD 26<sup>th</sup> No. 18 (A/8418) (1971)

28. From its 56<sup>th</sup> to its 58<sup>th</sup> meetings, the Committee proceeded to determine formally its view as a Committee (as distinct from the views expressed at previous meetings, which were those of the individual members) as to which reports were satisfactory, in the sense that they furnished all or most of the required information, and which reports were unsatisfactory or incomplete and therefore needed to be supplemented by further information. The initial report (and supplementary report, if any) of each State Party was put before the Committee separately by the Chairman. Where there was no consensus, the question whether a State Party's report (or reports) was satisfactory or whether, failing that, the Committee wished to request additional information from that State Party, was decided by vote.

...

30. On the other hand, the reports submitted by the following 17 States Parties were considered by the Committee incomplete or unsatisfactory, in the sense that significant categories of information were either totally lacking or insufficiently provided in them: . . . Ecuador . . . At its 58<sup>th</sup> meeting, held on 23 April 1971, the Committee adopted the text of a communication which it decided to request the Secretary-General to submit to the aforementioned States Parties, in accordance with rule 65 of its provisional rules of procedure. (The text of this communication is reproduced in annex V.)

**CERD 28<sup>TH</sup> No. 18 (A/9018) (1973)**

104. The initial report of Ecuador, submitted on 17 June 1970, was considered by the Committee at its third session. It was deemed unsatisfactory and additional information was requested. No such information was received by the Committee. The second periodic report, submitted on 26 January 1972, was considered at the seventh session (128<sup>th</sup> and 129<sup>th</sup> meetings).

105. Some members expressed the view that the report under consideration was comprehensive and that it complied with the guidelines laid down by the Committee. It was also pointed out that the report included the texts of provisions of the Constitution, various codes and other enactments; that it provided information not only on legislative measures but also on other measures, such as programmes in the field of education; and that it furnished useful information on the demographic composition of society. It was noted that the Constitution contained provisions which were absent from the constitutions of other countries. Specially noted was the Act Concerning the Abolition of Precarious Labour in Agriculture of 1970, designed to provide special assistance to the Indian population.

106. Several members, however, expressed disagreement with the assertion, that,  since there is no racial discrimination of any kind in Ecuador, it is unnecessary for its legislature to adopt any legislative, judicial or administrative measures relating to the condemnation of racial discrimination and apartheid; nor is there any need for measures condemning or prohibiting discrimination, inasmuch as discrimination is not practised even de facto . The requirements for positive action to give effect to certain provisions of the Convention, such as article 4, were mandatory, in the opinion of those members, unless legislation already existed which fully met those requirements.

107. Questions were raised about the status of the relations of Ecuador with the racist regimes in southern Africa; the penalties for violation of anti-discrimination provisions of the Constitution and of such legislation as the Agrarian Reform Act; the scope, and the relevance to racial discrimination, of articles 133 and 135 of the Penal Code; the meaning of the terms  native  and indigenous , in the light of the demographic information contained in the report; and the manner in which the legal instruments referred to in the report were interpreted and applied and the extent to which their application made them effective tools in the fight against racial discrimination. It was felt that it would be useful to receive some information that would illustrate the statement:  The Government is giving full effect to its undertaking  to encourage, where appropriate, integrationist multiracial organizations and movements... . .

108. The representative of Ecuador informed the Committee that, since the report under consideration was submitted, the political and social situation in Ecuador had evolved; that the present Constitution contained new provisions relating to racial discrimination which would necessarily have repercussions on criminal law; and that the new educational programme included courses relating to human rights and racial discrimination. He also informed the Committee that trade, tourist and other exchanges with South Africa were prohibited by law. And he commented on the meaning of the demographic terms and on the scope and relevance of the articles of the Penal Code concerning which some questions had been

raised.

109. While deeming the report satisfactory, the Committee nevertheless hoped that, in its next report, the Government of Ecuador would provide information relative to the questions raised during the consideration of the present report.

**CERD 29<sup>TH</sup> No. 18 (A/9618) (1974)**

127. The third periodic report of Ecuador maintained and carried forward a dialogue with the Committee which was initiated in the second periodic report, and which the Committee welcomed. Observations made by individual members of the Committee at previous sessions were commented upon. The texts of the instructions sent by the Government of Ecuador to its delegation to the twenty-seventh session of General Assembly, with reference to items of its agenda relating to the racist regimes of southern Africa, were embodied in the report. Moreover, the Committee was informed that the Government of Ecuador had decided - in the light of certain observations made during the Committee's consideration of that Government's previous report - to incorporate into its new Penal Code a number of provisions penalizing offences against racial discrimination, particularly those described in article 4 of the Convention; and the texts of articles 211-215 of the preliminary draft of the proposed Code were embodied in an addendum to the third periodic report.

128. It was noted that the draft articles of the Penal Code mentioned in the preceding paragraph satisfied the requirements of article 4 of the Convention in all but two respects: the financing of racist activities, prohibited under paragraph (a) of article 4, and the outlawing and prohibition of racist organizations, required under paragraph (b) of that article, were not included among the offences described in the draft articles of the Penal Code. Some members wondered whether that omission was attributed to the presence in Ecuadorian law of some general provisions which made it unnecessary for those two items to be added to the draft.

129. The representative of the Government of Ecuador replied to several specific questions put to him in the course of the discussion.

## **CERD A/31/18 + Corr.1 (1976)**

222. The fourth periodic report of Ecuador, submitted in two successive documents, was considered by the Committee together with the introductory statement made by the representative of the Government of Ecuador. The Committee noted with satisfaction that a preliminary draft of several articles of the Penal Code, currently in the course of amendment, was provided; that information on administrative and other measures was supplied; that no cases of alleged racial discrimination had been brought before the courts; and that the comments made during the Committee's consideration of past reports of Ecuador had been taken into account, both in the preparation of the report and in the drafting of the proposed amendments to the Penal Code.

223. Members of the Committee took note with appreciation of the information on the administrative and other measures, particularly in the fields of education and agrarian reform. Some members of the Committee welcomed those measures as manifestations of a general programme aimed at raising the standard of living of all population groups in the country, and thereby establishing an economic and social infrastructure conducive to the application of the Convention by improving the conditions of the population; other members emphasized, in addition, the direct effect of those measures upon the disadvantaged segments of the population in particular, and considered them to be in keeping with the provisions of article 2, paragraph 2, of the Convention. It was in the latter context also that they viewed the steps taken to strengthen the teaching of Quechua - which was considered part of the national heritage - but in the framework of a bilingual system of education conducive to the establishment of a dialogue between all sectors of the population.

224. Members of the Committee took note of the fact that, taking into account comments made during the Committee's consideration of the previous reports of Ecuador, the Standing Legislative Committee was planning to consider amending the wording of paragraph 3 of article 211 of the preliminary draft of the Penal Code, which provides for punishment to any person who "participates in racist activities or belongs to organizations whose purpose is to propagate or promote racial discrimination". Although some members thought that, under existing domestic law and in application of article 141 of the Constitution, the police could at present take action with regard to racist groups and organizations, if any were formed; and although other members were of the view that, since the provisions of the Convention had become part of internal law, the provisions of article 4 of the Convention were already binding - all members who participated in the discussion of that question welcomed a change in the wording of paragraph 3 of article 211 of the preliminary draft of the Penal Code that would result in avoiding any ambiguity and bringing the text into fuller conformity with the wording of article 4, paragraph (b), of the Convention. Moreover, it was observed that an organization might surreptitiously engage in propagating or promoting racial discrimination without declaring as its "purpose" the performance of such acts; article 4, paragraph (b), of the Convention, however, laid down the obligation to "declare illegal and prohibit organizations ... which promote and incite racial discrimination", and not merely those whose "purpose" was to promote and incite racial discrimination.

225. The hope was expressed by several members that the text of the provisions of the projected

amendments to the Penal Code would be transmitted to the Committee after their adoption; and that further information on measures giving effect to the provision of article 7 of the Convention, information on measures taken in accordance with the provisions of article 2 (para. 1, subpara. (e)) of the Convention, and the information envisaged in general recommendations III and IV would also be supplied in the next report.

226. The following questions were asked by members of the Committee: (a) With reference to article 178 (c) of the Constitution, which called for the promotion of the cultural development of  natives and peasants, and article 189 (o) of that instrument, which dealt with agricultural labour, particularly that performed  by natives: Were all Ecuadorian peasants natives? Or was there a difference between Ecuadorian peasants and Ecuadorian natives? And if so, what difference? (b) What was the proportion of natives to the total Ecuadorian population? (c) With reference to the information that some 10 per cent of the Ecuadorian population had been affected by the agrarian reform: What proportion of Ecuadorian Indians had benefited from the redistribution of land? (d) If an act described in article 4 of the Convention were committed before the new Penal Code entered into force, could it be penalized under existing Ecuadorian legislation? (e) Did the provisions of article 141, paragraph 2, of the Ecuadorian Constitution - which stipulated that any discrimination based on race and constituting an affront to human dignity was an offence punishable by law - apply to employment in the private sector? (f) What remedies were available, in accordance with article 6 of the Convention, to the victims of such offences?

227. The representative of the Government of Ecuador referred to the discussion - summarized in paragraph 224 above - of the relationship between the provisions of article 4 of the Convention and those article 211 of the preliminary draft of the Penal Code and reaffirmed that the plans to consider rewording paragraph 3 of the latter article had been prompted by the discussions in the Committee at previous sessions of past Ecuadorian reports. With reference to the requests enumerated in paragraph 225 above, he provided additional information on measures taken in accordance with the provisions of article 7 of the Convention and referred to information already submitted to the Committee on the composition of the population. He gave the following replies to the questions enumerated in paragraph 226, above: With regard to the second question, he said that 50 per cent of the Ecuadorian population consisted of members of the indigenous population. With regard to the fourth question, he stated that, prior to the entry into force of the Convention, the Ecuadorian Constitution had stipulated that racial discrimination was an offence punishable by law; when the Government had ratified the Convention, its provision had automatically been incorporated into the Constitution. With respect to the fifth question, he said that article 141 of the Constitution made no distinction between the public sector and the private sector and that any act of discrimination was punishable by law. And, with reference to the sixth question, he stated that any person who was the victim of discriminatory practices could bring the matter before the courts. Finally, he assured the Committee that information would be supplied concerning questions which had not been answered.

## **CERD A/34/18 (1979)**

357. The fifth periodic report of Ecuador (CERD/C/20/Add.35 and 36) was considered together with the introductory statement made by the representative of the reporting State, who informed the Committee of the new developments in Ecuador since the submission of the previous report, the most significant of which were the adoption of a new Constitution, the changes made in the Penal Code pursuant to the provisions of the Convention and the measures taken to give effect to the agrarian reform of the country, from which 90,000 peasant families had so far benefitted.

358. The Committee welcomed in particular the new legislative measures adopted by Ecuador in accordance with the provisions of the Convention. It was asked in this regard when the new Constitution would enter into force, whether it would supersede the 1945 Constitution and whether Decree No. 3194 of 29 January 1979 putting into operation the provisions of the Convention, and incorporating practically verbatim the provisions of article 4 (a), (b) and (c) in the Penal Code, had entered into force.

359. In connection with the agrarian reform, it was observed that it would be useful to have, in the next periodic report, more detailed statistics which would give a clearer picture of the progress made in that regard. It would be particularly interesting to know, on the basis of demographic data, how much land still had to be redistributed and among how many families. It was also asked what efforts were under way to eliminate the traditional exploitation of huasipungueros (tenant farmers).

360. With regard to the implementation of article 6 of the Convention, it was noted that Ecuador had established specialized courts of justice for the purpose of ensuring restoration of the rights of any citizen impaired by the administrative authorities. An explanation was requested as to the meaning of the words □ specialized courts □.

361. With regard to the implementation of article 7, members of the Committee expressed the hope that the next periodic report of Ecuador would furnish additional information about activities in the educational and cultural fields.

362. The representative of Ecuador, replying to questions by members of the Committee, informed them that the new Constitution would enter into force on 10 August 1979: the 1945 Constitution had been mentioned in the report because that was the one in force in the meantime. He confirmed that Decree No. 3194, amending the Penal Code, had already become law. He also stated that it was difficult to give precise percentages for the demographic composition of his country; the races of which the population was composed were fully intermingled. The agrarian reform was proceeding slowly because of technological, economic and social problems, but the system by which huasipungueros worked the land had been totally abolished by the 1964 agrarian reform. As regards the meaning of □ specialized courts □ he stated that they were administrative courts.

## **CERD A/37/18 (1982)**

204. The seventh periodic report of Ecuador (CERD/C/91/Add.2) was introduced by the representative of the reporting State who pointed out, in particular, that the decision to incorporate the provisions of article 4 of the Convention into the Penal Code was a consequence of the dialogue initiated between the Committee and Ecuador with the submission of its first periodic report. Ecuador had acceded to all the international conventions on the protection of human rights and it was one of the few countries that had made the declaration provided for in article 14 of the Convention. He also pointed out that within the framework of the National Development Plan, the Government was endeavouring to improve the living conditions of the agricultural population and had decided to devote one third of State budget to education of its population.

205. The Committee congratulated Ecuador on the quality of its report, which contained the texts of the legislative provisions enacted to give effect to the Convention. Several members emphasized that Ecuador had made the declaration according to article 14 of the Convention.

206. With reference to article 2 of the Convention and in order to appreciate better the implementation of the provisions of the Convention in Ecuador, further information was requested concerning the ethnic composition of the population, since it was known only that the indigenous population amounted to 50 per cent. It was asked what was done to ensure that the indigenous population enjoyed human rights and fundamental freedoms under the same conditions as others and how it was protected in the courts; whether the various ethnic groups could receive instruction in their own language and whether the new Constitution of 1978 had introduced changes in that area. Members of the Committee requested more details on the teaching of quechua and on the use of quechua and other languages in administrative, judicial and other matters. In so far as Ecuador guaranteed the rights set forth in the international instruments, it was asked whether it transformed them into individual guarantees of which a person could avail himself directly against the State authorities; and whether the benefits of those guarantees were being extended to foreigners. Referring to the implementation of the Government's agrarian reform mentioned in the report, the members of the Committee raised several questions, in particular, whether the land was first bought from the rich landowners before being redistributed; whether only arable land was involved; what the proportion was of people who had no land and to which group they belonged; how many indigenous families had benefitted from an allocation of land and whether they could emigrate to the city in cases where they had settled on land allocated to them which did not suit them; whether the budget provided sufficient funds for water, irrigation and improvement of the quality of life of the rural population as well as what measures concerning infrastructure and agricultural equipment had been adopted in Ecuador in order to ensure the success of the agrarian reform. Additional information was also requested on priorities of the National Development Plan and on measures taken under article 2, paragraph 2, of the Convention in favour of the most disadvantaged groups of the population to ensure their adequate development.

207. With reference to article 4 of the Convention, some members of the Committee took note of Decree No. 3194, which amended the Ecuadorian Penal Code with a view to giving effect to the



provisions of this article. More details were asked for on the judicial guarantees surrounding protection against racial discrimination, and the protection of the basic rights of the citizen, since they were not specified in the report.

208. As regards article 5 of the Convention, members of the Committee drew attention to the provisions of the Constitution of 1978, which provided for the right of habeas corpus before the magistrate or President of the Council, who verified the legality of the order for the deprivation of freedom. It was asked whether the magistrate or the President of the Council, who were agents of the executive power, also exercise judicial functions, whether their decision was subject to judicial control and whether an administrative authority in Ecuador could ensure a decision taken by the judicial power.

209. With regard to article 6 of the Convention, several members of the Committee asked for clarification on how Ecuador's judicial organization was set up, how the rights of the defence were ensured, whether quechua could be used in the courts and what were the rules of penal, civil and administrative procedure.

210. Turning to article 7 of the Convention, the Committee commended the Ecuadorian Government for allocating one third of its national budget to education. However, more details were requested on the specific measures taken in the area of teaching, education, culture and information, in particular, on the role of the information media in the dissemination of other cultures and the principles of human rights and the way in which the population was informed of its rights, on what was being done to promote indigenous languages and studies and whether Ecuador was developing its exchanges with other Latin American countries. With regard to the indication in the report that education was aimed at instilling a spirit of tolerance in pupils, more information was requested on what was meant by "spirit of tolerance" and on the way in which it could be instilled.

211. Replying to questions raised by members of the Committee, the representative of Ecuador stated that in the economic area a new experiment was undertaken at the initiative of the Central Bank of Ecuador, which had decided to grant loans to indigenous farmers and had set up mobile units for the most remote regions. The National Development Bank also granted loans to disadvantaged farmers.

212. With reference to questions concerning articles 5 and 6 of the Convention, the representative stated that his Government, anxious to avoid abuses of power with respect to private individuals, had taken steps to make the person in charge of implementing the right of habeas corpus independent of all three powers, legislative, executive and judicial. That was why application for the remedy of habeas corpus was made to an elected official, either by the victim or his lawyer. The magistrate or President of the Council examined the legality of the order for the deprivation of freedom and heard the two parties, after which he could order the release of the detained person. With regard to legal protection, the representative said that under article 107 of the Constitution a person who did not have the means of paying a lawyer was entitled to the services of a public defence counsel (defensor público).

213. With reference to article 7 of the Convention, the representative stated that the educational programmes directed by teachers were broadcast by radio to isolated rural zones which did not have

access to newspapers or television. Questionnaires made it possible to verify whether the subjects taught had been properly assimilated by the listeners. He assured the Committee that all other questions would be dealt with in the next report of Ecuador.

## **CERD A/40/18 (1985)**

84. The eighth periodic report of Ecuador (CERD/C/118/Add.4) was considered by the Committee at its 701<sup>st</sup> and 702<sup>nd</sup> meetings, on 5 and 6 March 1985 (CERD/C/SR.701 and SR.702).

85. The report was introduced by the representative of Ecuador who referred to the relevant articles of the Constitution and Penal Code which guaranteed the rights set forth in the Convention. He pointed out that the revision of the Constitution which had been taking place since submission of the report had further strengthened the remedy of habeas corpus. The Government was endeavouring to raise the level of literacy and to extend free education among the less privileged sectors of the population and had embarked upon a large scale programme of economic reconstruction designed to eliminate poverty.

86. The Committee commended the Ecuadorian Government for its thorough report. It had followed the Committee's general guidelines (CERD/C/70/Rev.1) and provided a wealth of information answering the many questions which had been raised during the consideration of Ecuador's previous report. The current report was an excellent example of how to present the Government's efforts to implement the Convention. Ecuador was a party to all the human rights conventions containing reporting obligations, had made the declaration under article 14 of the Convention and had ratified the Optional Protocol to the Covenant on Civil and Political Rights. The current report was an encouraging sign of political will to remove the vestiges of discrimination and to rectify existing inequalities, especially in the area of education, which was a prerequisite for the elimination of discrimination. Detailed information could be provided in the next report concerning the long established institution of habeas corpus in Ecuadorian legislation. Clarifications were sought regarding the percentage of Indians in the population, since there seemed to be a discrepancy between the 50 per cent figure indicated in previous reports and the figure of 18.5 per cent given in the present report.

87. With regard to the implementation of article 2 in conjunction with article 5 of the Convention, the Committee wished to have more information on the kind of economic activities performed by the various ethnic groups, particularly: how the increase in gross national product was distributed in terms of ethnic groups; how the indigenous tribes leading a nomadic and primitive existence could effectively exercise their rights under such conditions despite the fact that everyone was equal under the law; whether, under the agricultural conditions prevailing in Ecuador, the land reform was viable and could support the needs of peasant families to whom individual plots of land of nine hectares had been allocated, (in that connection a breakdown of the population affected by the agrarian reform was requested in the next report) and what assistance was being given to indigenous communities to enable them to effect the transition from a subsistence economy to a cash economy. The Committee would also welcome further information concerning the special measures the Government might be taking to bridge the wide differences in income levels and to deal with unemployment. Additional data were requested on the improvements in health care in the various ethnic communities.

88. The Committee asked what measures were being planned to preserve the culture and way of life of the country's ethnic groups which would not jeopardize the country's modernization. Clarification

was sought concerning the constitutional provision under which Quechua or the appropriate indigenous language could be used in addition to Spanish in schools situated in areas where the population was predominantly indigenous and it was asked whether that was consistent with the statement in the report to the effect that the Constitution established the right of the indigenous population to be taught in their own language, particularly in cases where the indigenous population was not predominant. Members of the Committee requested information regarding the measures being taken to enable indigenous populations living in such areas as the Amazon to implement their right to use their own language and receive bilingual education. They also asked about intermarriage between different ethnic groups and whether it was subject to any restrictions; whether the target for the illiteracy rate of 5.9 per cent mentioned in the report had been achieved by August 1984; what percentage of Ecuador's budget was allocated to education; what percentage of the secondary-school leavers belonged to each indigenous group; what percentage of the indigenous population did not speak Spanish; whether interpretation was automatically provided for such people whenever necessary, for example, when taking part in court proceedings, and whether it was free of charge.

89. Members of the Committee sought clarification regarding the provision of article 33 of the Constitution under which suffrage was compulsory for those who could read and write and optional for illiterates. In that connection, it was pointed out that, though the right not to vote was not denied, the differentiation between the duty to vote or the right to vote based on the voter's level of education was not easy to understand. Practical difficulties resulting from illiteracy could hardly justify making such a differentiation. In that context, it was asked what proportion of indigenous people had thus far been left out of the country's political life. The Committee would welcome further information on the degree of political representation of the indigenous groups and the kind of self-management systems followed in those communities to allow them to improve their situation without loss of cultural identity. Further information would also be welcomed on the social status of the "mestizos" and "mulattos".

90. In relation to article 4 of the Convention, members stated that it would be helpful for the Committee, and also as an example for other States parties, to have the exact reference to, and the text of, the relevant section of the Penal Code which incorporated the provisions of that article of the Convention. In that context it was pointed out that the fact that the Penal Code had not been applied did not imply that there were no cases of racial discrimination; clarifications were requested in that respect.

91. As far as article 7 of the Convention was concerned, members requested information on how the public at large was being informed about the provisions of the Convention and the ways in which they were applied.

92. In reply to questions raised and observations made by members of the Committee, the representative of Ecuador explained that the process of interbreeding was still going on in his country and that by some reckonings, 50 per cent of the population was indigenous, by others only 18 per cent. The next report would furnish fuller information on the various ethnic groups and cultures in Ecuador.

93. With regard to the question of land reform, the main problem was not the distribution of arable

land, which was plentiful, but rather that of increasing its productivity. Although productivity was currently growing at the rate of only 2.5 per cent per annum, it was hoped that it would increase by 50 per cent in the next 10 years. He indicated that the total number of recipient peasant families under the agrarian reform referred to in the report should not be interpreted as the total number of families owning land. Many other families had acquired land through inheritance or purchase. Some indigenous communities had passed from a subsistence economy to a cash economy and had even developed the advanced use of credit, maintaining accounts in foreign banks and exporting their products to other countries.

94. He informed the Committee that indigenous cultures were being preserved by the indigenous groups themselves and by other Ecuadorians proud of their historic heritage. A national organization - FODERUMA - had been founded to help indigenous cultures to flourish while at the same time modernizing the living conditions of the indigenous people. No single language unified the various indigenous groups. The original inhabitants had spoken many different tongues. In the twelfth century, Quechua had been imposed by the invading Incas as a lingua franca, and it had been adopted by the Christian missionaries, who had spread it to other tribes. However, the original languages had subsisted. Currently, only about 50 per cent of Indians spoke Spanish in addition to their own vernacular. Interracial marriages were not restricted, but indigenous customs favoured excessive inbreeding which was leading to the extinction of certain tribes like the Colorados and the Jibaros.

95. Education received 33 per cent of the national budget, which was higher than the 30 per cent minimum mandated by article 71 of the Constitution. Illiteracy had now been reduced to some 12 per cent of the population, with pockets of illiteracy mainly in rural areas.

96. With regard to the right to vote, all citizens over 18 could now vote even if they were illiterate. The new Constitution had given illiterate citizens the vote as an interim solution to provide them with some measure of compensation for their vulnerable position in society, until such time as illiteracy was eradicated. At the same time, the law established stringent rules making it difficult for any literate citizens who did not vote in one election to vote subsequently. As a result, a very high percentage had participated in the latest elections.

97. Finally, the representative of Ecuador said that, in its next report, his country would provide more detailed information on all the points raised and would also include the texts of the relevant sections of the Penal Code incorporating the provisions of article 4 of the Convention.

## **CERD A/45/18 (1990)**

100. The ninth and tenth periodic reports of Ecuador, combined in a single document (CERD/C/172/Add.4), were considered by the Committee at its 868<sup>th</sup> meeting, on 9 August 1990 (CERD/C/SR.868).

101. The reports were introduced by the representative of the State party, who said that his country, a melting pot of races and cultures, guaranteed for all its citizens the free exercise of the human rights set forth in the international instruments in force. In order to ensure full enjoyment of those rights, his country, despite its obvious lack of resources, was striving by all possible means to overcome underdevelopment, to improve the living conditions of its population and to maintain social peace, while fully respecting the environment. In addition to the efforts being made to improve the situation of children and the status of women, the participation and integration of the indigenous populations, who accounted for 18.5 per cent of the total population, was one of the Government's priority fields of action. Emphasis was being placed on the literacy campaign, as was shown by the existence of 1,750 bilingual teaching centres with an enrolment of 34,000 pupils. The extreme mobility of and the miscegenation in the population were contributing to the integration of minority groups and were discouraging discrimination in all its forms.

102. Members of the Committee noted with satisfaction the reports submitted by the Government of Ecuador and thanked the representative of the State party for his introductory statement. They also welcomed the fact that Ecuador had made the declaration provided for in article 14, paragraph 1, of the Convention. It was regretted, however, that the reports had not been prepared in accordance with the revised general guidelines adopted by the Committee (CERD/C/70/Rev.1) and that they had not provided sufficient information concerning the practical implementation of constitutional or legislative provisions providing for action against discrimination. In that respect, members wished to know whether the Convention was being directly invoked in Ecuador; they expressed surprise that apparently the Convention's provisions had never been invoked before the courts. Even if its provisions had not been invoked, this did not suffice as evidence that there was no racial discrimination in Ecuador.

103. Members of the Committee indicated their desire for further information on the ethnic composition of the population; on protection of the natural environment, with which the indigenous populations lived in close symbiosis; on the measures taken by the Government to protect the country's heritage and to preserve the cultural identity of minority groups; on the languages which could be used in the courts or in the administration; on the implementation of article 2, paragraph 1 (d), of the Convention; on the measures taken to reduce unemployment and to narrow the income gap; and on the enforcement of Law No. 256 concerning equality of men and women. Information was also requested concerning the measures taken in favour of certain Indian tribes - such as the colorados - which were said to be disappearing; on the methods used by certain oil companies to establish themselves in various areas of the country where indigenous populations resided; and on the activities of the Instituto Lingüístico de Verano. Questions were also raised about the persistence of a certain form of social marginalization, and the views expressed in a document of 1 August 1990 from the Confederation of Indigenous

Nationalities of Ecuador, which referred to certain difficulties encountered by the indigenous populations.

104. Regarding the implementation of article 5 of the Convention, members noted with interest that Ecuador devoted 30 per cent of the State budget to education. In that connection, they wished to have more information concerning the progress made in the field of education and the literacy rate of the indigenous populations. They asked whether the aim was to make those people literate in Spanish or in their own language and what proportion of them attained the higher educational level. Regarding agrarian reform and the problems the Government had encountered in connection with land belonging to the indigenous populations, it was asked what percentage of the national territory was occupied by the latter; what had been the result of the reforms introduced in 1973; how many land titles had been granted to indigenous populations; and whether the latter were really succeeding in progressing from a subsistence economy to a production economy. Information was also requested concerning the budget and concerning the membership and the activities of the National Office of Indigenous Affairs. Members also asked whether minority groups were guaranteed equality in access to work, whether collective organization was possible for them and what health services they enjoyed. With reference to the political rights available to members of minority groups, members asked whether the legislative and administrative measures mentioned in the reports had yielded any results as far as the participation of the indigenous populations in public life was concerned; to what extent they participated in elections; what was their representation in the Parliament and in the senior levels of Government; and what were the aims and activities of the bodies mentioned in paragraph 26 of the report.

105. With reference to article 7 of the Convention, members asked whether the Government of Ecuador had taken immediate and effective measures in the fields of education, culture and information to overcome prejudice linked to racial discrimination and intolerance and, in particular, whether the indigenous populations were informed of the relevant provisions of the international instruments concerning human rights.

106. Replying to the questions asked by members of the Committee, the representative of the State party said that his Government's basic aim was to ensure the development of the country's economic and social structures. Despite the considerable burden of its foreign debt, which amounted to \$11 billion for a population of 10 million inhabitants, Ecuador had set up in 1954 a National Council for Economic and Social Planning. Particular efforts were also being made to ensure the advancement of women and, on 18 August 1989, the National Congress had adopted 81 pieces of legislation guaranteeing the absolute equality of spouses.

107. Replying to the many questions that had been asked concerning the indigenous populations, the representative of the State party stressed the vital support given by the Indian element to the development of Ecuadorian culture. Both the 1964 Agrarian Reform Act and the subsequent migration had contributed to the blending of the populations, although the country's low population density had delayed the integration of isolated groups and raised certain problems. Wishing to avoid a return to the paternalism of the colonial period, the Government had made the strengthening of local autonomy one of its priorities. It was thus endeavouring, through the work of the National Office of Indigenous

Affairs, to help the indigenous populations to develop within their own environment. Those groups accounted for 18.5 per cent of the total population and a census planned for 1990 should provide data relating to each of the ethnic groups.

108. The Government's literacy campaign aimed to contribute to the development of the indigenous populations and only 10 per cent of the population were now illiterate. Regarding land policy, the representative said that the Government had sought to establish a wide-ranging dialogue with the indigenous population in order to reach agreements on vital matters, such as access to land, the minifundios and the regulations of water use. Regarding the participation of indigenous groups in the public life of the country, he said that all citizens, whatever their origin, had access to the highest positions in the State and that several persons of indigenous origin had played a major role in politics.

109. With reference to article 7 of the Convention, the representative of the State party said that many documents relating to human rights, including those of the National Association for Human Rights, had been translated into Quechua. That had made the Quechuas better acquainted with their rights and obligations and had thus enabled them to take a more active role in society.

110. In conclusion, the representative of the State party thanked the members of the Committee for the interest they had shown in the situation in his country and said that Ecuador would provide additional information in its future reports.



## **CERD A/48/18 (1993)**

128. The Committee considered the eleventh and twelfth periodic reports of Ecuador (CERD/C/197/Add.9 and CERD/C/226/Add.1) at its 971<sup>st</sup>, 972<sup>nd</sup> and 983<sup>rd</sup> meetings, held on 10, 11 and 18 March 1993 (see CERD/C/SR.971, 972 and 983).

129. Introducing the report, the representative of the State party said that there was no systematic racial discrimination in Ecuador and that the inequalities that did exist were the result of the social, economic and structural problems encountered by all developing countries. The Government was constantly trying to improve its legislation to promote equality and would receive the advice and comments of the Committee in the best possible spirit.

130. The representative pointed out that the 1989-1992 National Development Plan referred to in the report was a particularly important instrument, since more emphasis had been placed on planning than in the past. The Plan came under the authority of the Vice-President and was binding on the public sector. One of the main obstacles to its implementation was the influence of external factors on the economy. In that connection, approximately 30 per cent of the State budget went to pay off Ecuador's foreign debts.

131. Members of the Committee expressed their appreciation for the high quality of the reports submitted by Ecuador. It was noted that the reports emphasized that Ecuador was a multiethnic and multicultural society and that the State was endeavouring, through the National Development Plan, to promote the groups and cultures that were contributing to the creation of a national identity. However, it was pointed out that the reports did not contain demographic information on the ethnic composition of Ecuadorian society. In particular, members of the Committee requested specific data on the birth, death and life expectancy rates of indigenous populations as compared with the population as a whole. Members also pointed out that the reports did not contain enough concrete examples of how victims of racial discrimination were protected by the legal system.

132. It was noted that the report placed considerable emphasis on the exploitation of natural resources and environmental protection. In that regard, more detailed information was needed on the effect of such programmes on the cultural and social life of indigenous populations, especially those living in the Amazon region. Such programmes did not appear to be of direct benefit to the populations whose lands were being used and no mention of their views on the subject had been included in the report.

133. In relation to article 2 of the Convention, members of the Committee wished to know which groups were considered as "indigenous nationalities"; how an individual was identified as belonging to a given nationality or minority; what was meant by "popular cultural characteristics" as referred to in paragraph 13 of the eleventh periodic report; and whether there were any distinctions among aliens as to the extent of the rights that were guaranteed.

134. With respect to article 4 of the Convention, members wished to know what the actual practice of

the courts was with regard to penalties for participation in racist organizations or activities; whether there had been any rulings in that regard under the relevant law; and whether the Government envisaged any revisions to the relevant sections of the Penal Code.

135. Concerning article 5 of the Convention, members of the Committee wished to know what the exact criteria were that were used by the authorities in deciding when instruction would be provided in indigenous languages; to what extent children who received instruction in an indigenous language also received training in Spanish; why the right to vote was denied to illiterates, who tended to come from indigenous communities; how funding for the rural educational system compared with funds allocated for white or white-mestizo students; whether the budget for the bilingual education system for indigenous peoples had been significantly reduced in 1991; and what measures were being taken in response to an increase in health problems among indigenous communities, particularly those linked to environmental degradation resulting from oil exploration.

136. Members of the Committee also wished to know what percentage of members of Parliament were members of indigenous communities; how indigenous people were represented in local government; to what extent indigenous communities were involved in decision-making on questions of direct concern to them, such as land allocation and delimitation; whether title to indigenous lands was held by individuals, families or communities; how "ethnobiological reserves" were designated; how respect for the cultural values of native populations was ensured in practice regarding development projects, including exploration for hydrocarbons; what role was played by indigenous organizations in monitoring the implementation of laws governing the exploration and exploitation of natural resources in indigenous areas; whether indigenous communities and organizations were consulted in decisions concerning the exploitation of resources; whether compensation was made to indigenous persons whose livelihood was jeopardized by new industries; to what extent indigenous communities profited from the exploitation of hydrocarbons in the Amazon region; whether the Government had investigated the illegal acts of paramilitary groups in indigenous communities and what measures had been taken to better protect those communities from further acts of intimidation and coercion; who had set up the various Quechua organizations referred to in paragraph 21 of the eleventh report; whether the large number of imprisoned indigenous leaders had been released; whether indigenous groups were precluded from forming their own political parties; the extent to which article 48 of the Constitution applied to large landowners; whether indigenous peoples were provided with tools, loans, technical assistance or any other infrastructure when they were allocated land; and what protection was afforded indigenous communities in order to discourage attacks by larger landowners.

137. With respect to article 6 of the Convention, members of the Committee wished to have more information on the Commission on Human Rights, in particular how it was established and what its current activities were; on statistical data relating to remedies available for acts of racism; on sentences handed down in connection with racist acts and on whether complaints about such acts had been brought before the Inter-American Commission on Human Rights; and whether violation of the environmental regulations issued by the National Environmental Department gave rise to any sort of civil liability or criminal responsibility.

138. With reference to the indigenous uprisings in 1990 and the dialogue subsequently established with the leaders of the indigenous communities, members asked what demands the indigenous groups had made, particularly in regard to land, and what was the outcome of that dialogue. Members of the Committee also asked the representative to comment on allegations that paramilitary groups in the province of Imambura were operating against indigenous communities with the acquiescence of the Government; and on allegations that an indigenous community leader had suffered ill-treatment in prison.

139. Replying to the questions and comments of the members of the Committee, the representative of the State party stated that he had transmitted to his Government the requests for further information made by members of the Committee. Precise responses to those questions would be communicated to the Committee in the next report.

140. Concerning the general framework for the protection of human rights, he explained that constitutional reform was currently being considered, including the possibility of creating the post of Ombudsman under the judicial branch. At present, the Procurer General of the Justice Ministry was responsible for reviewing and investigating human rights complaints.

141. With respect to representation of indigenous communities in government, the stated that the present Constitution did not provide for an indigenous representative in Congress. All representatives were elected by the people without regard to colour or race. Since the indigenous uprisings in 1990, representatives of the Ecuadorian Government had been participating in ongoing dialogue with leaders of the various indigenous communities. A list of 16 points had been put forward by those communities, which included demands for better access to the means to exploit their lands.

142. With regard to the exploitation of resources on indigenous lands, the President of Ecuador had personally studied the problem of petroleum exploitation in the Amazon with a view to ensuring the protection of the environment and the interests of the indigenous communities who lived there. According to Ecuadorian law, rights to resources below the surface belonged to the Government but exploration was carried out with due regard to providing appropriate compensation to the indigenous communities. That had been the case particularly with the Huaoranis, a stone-age tribe numbering only about 2,715 individuals which was not at all integrated into Western civilization.

#### Concluding observations

143. The Committee commended the regularity with which the Government of Ecuador had reported on the implementation of the Convention in that country.

144. The Committee noted that one of the objectives of the National Development Plan was to ensure the recognition of Ecuador's multiethnic and multicultural character. The Committee expected that indigenous communities would benefit from the implementation of the Plan as far as their economic, social and cultural status was concerned.

145. The Committee encouraged the Government, in its next report, to provide detailed information on the implementation of the National Development Plan so that the Committee could fully assess the conditions in which the indigenous communities lived. The Committee expressed particular concern that economic exploitation of the Amazon region should be undertaken only after full consideration of the interests of the indigenous communities in the preservation of their identity. The Committee trusted that the Government would take effective steps to achieve that end.

146. The Government of Ecuador was called upon to report on the functioning of the judiciary in connection with the Convention and especially upon the status and functions of the ad hoc Commission on Human Rights established by the Ecuadorian National Congress.

## **CERD A/58/18 (2003)**

47. The Committee considered the thirteenth to sixteenth periodic reports of Ecuador, due from 4 January 1994 to 4 January 2000, respectively, and submitted as one document (CERD/C/384/Add.8), at its 1556th and 1557th meetings (CERD/C/SR.1556 and CERD/C/SR.1557), held on 4 and 5 March 2003. At its 1580th meeting (CERD/C/SR.1580), held on 20 March 2003, it adopted the following concluding observations.

### **A. Introduction**

48. The Committee welcomes the detailed reports submitted by the State party and appreciates the updated information provided orally by the delegation, as well as its frank and straightforward answers to the questions and comments formulated by members of the Committee. However, the Committee notes that the constructive dialogue it was thus able to resume with the State party after 10 years of interruption could have been further enhanced if it had taken place earlier.

### **B. Positive aspects**

49. The Committee notes with satisfaction that the 1998 Constitution, as well as other legal provisions, guarantee special measures of protection for indigenous and Afro-Ecuadorian people and criminalize racial discrimination against these and other ethnic minorities. It also notes that the State party has adopted legislation which criminalizes the illegal smuggling of people across the country's borders under often inhumane conditions (*coyoterismo*).

50. The Committee welcomes the adoption of several action plans within the framework of the State party's National Human Rights Plan, in particular those on the rights of black persons and on the rights of foreigners, migrants, refugees and stateless and displaced persons, as well as the State party's efforts to promote the adoption of other action plans, in particular on the rights of indigenous peoples.

51. The Committee welcomes the creation by the State party of an Ombudsman's Office with special units for indigenous and Afro-Ecuadorian affairs, and of a Commission for Public Coordination of Human Rights.

52. The Committee welcomes the introduction of a bilingual education system in Ecuador for teaching some 94,000 indigenous children in both Spanish and their own languages.

53. The Committee notes with satisfaction that the State party has ratified ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 1989 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

54. The Committee also welcomes the State party's expressed intention to ratify the amendment to

article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination. In this connection the Committee refers to General Assembly resolution 57/194 of 18 December 2002 in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

### C. Concerns and recommendations

55. The Committee expresses its concern about the lack of consistent statistical data on the ethnic composition of the Ecuadorian population. While it recognizes the difficulties in establishing criteria for defining the different ethnic groups, the Committee emphasizes that such data are necessary to ensure the application of special legislation in favour of these groups.

56. The Committee recommends that the national institutions responsible for the advancement of the rights of indigenous and Afro-Ecuadorian people, in particular the Council for the Development of Ecuadorian Nationalities and Peoples (CODENPE), the Council for Afro-Ecuadorian Development (CODAE) and the Ombudsman's Office, be further strengthened. The interlinkages and delimitation of responsibilities between the numerous institutions working in this field should be explained in the State party's next report. The Committee also recommends that the State party strengthen, through adequate funding and other appropriate means, the recently established Commission for Public Coordination of Human Rights.

57. The Committee notes that, despite constitutional and legal guarantees, indigenous and Afro-Ecuadorian people, as well as members of other ethnic minorities are, de facto, still discriminated against. It urges the State party to ensure the practical application of the constitutional and legal provisions which outlaw racial discrimination and to guarantee special protection measures in favour of indigenous and Afro-Ecuadorian people, as well as members of other ethnic minorities, in particular through the national courts and other competent bodies such as the Ombudsman.

58. Serious concern is expressed about reported instances of excessive use of force by the police and armed forces against indigenous people, particularly in the context of political demonstrations and civil unrest. The Committee recommends that the State party ensure that such acts are avoided and, in this connection, recommends that the State party include human rights education in the professional training of police and armed forces, as well as prison staff, and requests it to report on any measures taken in this regard.

59. While welcoming the sincerity with which the State party recognizes the existence of de facto discrimination against indigenous people, Afro-Ecuadorians and members of other minorities, the Committee is concerned that a disproportionately high percentage of persons belonging to ethnic minority groups often do not enjoy equal access to the labour market, land and means of agricultural production, health services, education and other facilities and, accordingly, a disproportionately high percentage of members of these groups live in poverty. The Committee urges the State party to intensify its efforts to raise the living standards of these groups, with a view to ensuring their full enjoyment of

the economic, social and cultural rights enumerated in article 5 of the Convention. The State party is requested to include in its next report precise figures as well as some key indicators relating to the enjoyment of economic, social and cultural rights by the different ethnic groups, disaggregated by urban/rural population, age and gender.

60. With regard to the important problem of illiteracy among indigenous and Afro-Ecuadorian people, the Committee recommends that the State party take measures to increase the number of bilingual teaching personnel, in particular from among these communities. The State party's next report should contain precise data as to the percentage of the indigenous, Afro-Ecuadorian and other minority populations having access to primary, secondary and university education, as well as on access by these groups to programmes in their language on the radio, on television and in other mass media.

61. The Committee notes that women belonging to ethnic minorities are subject to double discrimination, based on their ethnic origin as well as their gender. Information relating to gender-related discrimination against indigenous and Afro-Ecuadorian women and on action taken by the State party in this regard should be included in the next periodic report. In formulating the action plan on the rights of women, the State party should address the problem of double discrimination against women belonging to ethnic minorities as well as their lack of political representation in Ecuador, in line with the Committee's General Recommendation XXV on gender-related dimensions of racial discrimination.

62. As to the exploitation of the subsoil resources of the traditional lands of indigenous communities, the Committee observes that merely consulting these communities prior to exploiting the resources falls short of meeting the requirements set out in the Committee's general recommendation XXIII on the rights of indigenous peoples. The Committee therefore recommends that the prior informed consent of these communities be sought, and that the equitable sharing of benefits to be derived from such exploitation be ensured. Detailed information on land titles of indigenous communities, as well as on remedies available to indigenous people claiming compensation for the environmental depletion of their traditional lands, should be included in the State party's next periodic report.

63. The Committee is concerned about the lack of confidence on the part of members of ethnic minorities in the Ecuadorian judicial system. The State party is requested to report on the causes of this lack of confidence, and on whether the current reform of the judicial system has made it more efficient and more easily accessible for the poor.

64. The Committee recommends that the State party disseminate widely information on the available domestic remedies for acts of racial discrimination, on the legal avenues for obtaining compensation in cases of discrimination and on the individual complaint procedure under article 14 of the Convention.

65. The Committee notes the lack of information in the State party's report on the functioning of the indigenous judicial systems and recommends that such information be provided in its next periodic report.

66. The Committee is concerned at the reports on discrimination and hostility suffered by migrants and calls on the State party to intensify its efforts in designing and implementing educational campaigns to combat racial discrimination within all sectors of society.

67. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on the measures taken to implement the Durban Declaration and Programme of Action at the national level.

68. The Committee encourages the State party to consult with organizations of civil society working for the promotion of human rights during the preparation of the next periodic report, and recommends that the periodic reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

69. The Committee recommends that the State party submit its seventeenth periodic report jointly with its eighteenth and nineteenth periodic reports, due on 4 January 2006, and that it address all points raised in the present concluding observations.