



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

Distr.  
GENERAL

CAT/C/39/Add.6  
28 June 2004

ENGLISH  
Original: SPANISH

---

COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Third periodic reports due in 1997**

**Addendum**

**ECUADOR\* \*\***

[2 June 2003]

---

\* For the initial report submitted by the Government of Ecuador, see CAT/C/7/Add.7; for its consideration, see CAT/C/SR.61, and Official Records of the General Assembly, Forty-sixth Session, Supplement No. 46 (A/46/46), paras. 118-128. An additional report (CAT/C/7/Add.11 and 13) was submitted by the Government of Ecuador and considered by the Committee. See documents CAT/C/SR.89 and 90/Add.1, and Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44 (A/47/44), paras. 60-92.

For the second periodic report, see CAT/C/20/Add.1; for its consideration, see CAT/C/SR.164 and 165, and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 97-105.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

GE.04-42291 (E) 060904 150904

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 6	3
INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION .....	7 - 274	4
Article 1 .....	7 - 17	4
Article 2 .....	18 - 58	6
Article 3 .....	59 - 74	14
Article 4 .....	75 - 95	16
Article 5 .....	96 - 102	20
Articles 6 and 7 .....	103 - 112	22
Article 8 .....	113 - 119	24
Article 9 .....	120 - 126	25
Article 10 .....	127 - 143	26
Article 11 .....	144 - 160	31
Article 12 .....	161 - 183	41
Article 13 .....	184 - 199	46
Article 14 .....	200 - 224	49
Article 15 .....	225 - 233	53
Article 16 .....	234 - 274	54

## Introduction

1. Ecuador is a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As such, in accordance with article 19, paragraph 1, of the Convention, Ecuador is submitting its third periodic report, due on 28 April 1997, containing information for the period up to and including 2001, for consideration by the Committee against Torture.
2. The report is also intended to address the concerns and recommendations expressed by the Committee in 1993 following consideration of the second periodic report<sup>1</sup>, the more significant of which are indicated below.

### Subjects of concern

3. “Many allegations received from various non-governmental organizations regarding torture, which is reportedly practised in a number of places of detention and prisons, particularly in the premises of the Crime Investigation Office.”

As stated in the information provided under article 12, the Crime Investigation Office has been abolished and the Office of the Public Prosecutor has taken over responsibility for investigating criminal offences, during both pre-trial and trial proceedings.

4. “The existence of officials referred to as ‘judges’ who are empowered to try cases without belonging to the judiciary and who consequently do not provide safeguards of independence.”

The Constitution in force since 1998 has introduced substantial changes with regard to the gradual incorporation of administrative judges belonging to the executive branch, in particular military, police and juvenile judges, into the judiciary. Consequently, the judiciary will have sole responsibility for criminal trials.

### Recommendations

5. “Take fundamental and urgent steps for the complete eradication of torture and other similar treatment. To that end, the Government should ensure that all forms of torture as defined in article 1 of the Convention are offences under criminal law.”

As stated in the information provided under articles 2, 4 and 16, Ecuador has taken significant legislative, judicial and administrative steps to ensure that cases of torture and other cruel, inhuman or degrading treatment, corresponding to the definition contained in article 1, are investigated and punished.

6. “Implement (...) the legislative reforms undertaken to place the criminal justice system (from the investigation of offences to the serving of sentences) under the direct supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected cases of torture or ill-treatment.”

In recent years Ecuador has carried out reforms of the Criminal Code and the Code of Criminal Procedure which, as can be seen from the information provided under articles 4 and 12, have placed the investigation of cases of torture and other cruel, inhuman or degrading treatment under the responsibility of the judiciary and the Public Prosecutor's Office.

**INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS  
RELATING TO THE IMPLEMENTATION OF THE CONVENTION**

**Article 1**

7. Ecuador, faithful to its tradition of respect for and promotion of human rights, and consistent with its international treaty obligations in that regard, guarantees the human rights and fundamental freedoms of its citizens. In this context, Ecuadorian legislation expressly forbids any form of torture or other cruel, inhuman or degrading treatment, in accordance with articles 23.1 and 23.2 of the Constitution in force since August 1998.<sup>2</sup>

“Article 23. Without prejudice to the rights established by the present Constitution and by international instruments in force, the State shall recognize and guarantee the following rights to persons:

1. Inviolability of life. The death penalty shall not exist.
2. Personal integrity. The following are prohibited: cruel punishment, torture; all treatment that is inhuman or degrading, or involves physical, psychological or sexual violence or coercion, or the improper use of human genetic material.

The State shall take the necessary steps to prevent, eliminate and punish, in particular, violence against children, young persons, women and older persons.

Genocide, torture, enforced disappearance, abduction and homicide for political reasons or reasons of belief are imprescriptible with regard to both proceedings and penalties. Such offences may not be the subject of a pardon or amnesty. In such cases compliance with the orders of a superior shall not constitute exemption from liability.”

8. The above article of the Constitution is sufficiently broad in scope and yet specific enough to encompass all elements of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It prohibits the use of physical punishment, including the death penalty, which has been abolished under Ecuadorian law since 1878, as well as mental or psychological punishment. From the above article and the information provided below it follows that physical, psychological and sexual violence are also considered cruel, inhuman or degrading treatment under Ecuadorian law. These reforms address one of the concerns expressed by the Committee concerning the absence in domestic legislation of a definition of mental torture.

9. Ecuador has also signed a number of international instruments that strengthen human rights protection for its citizens. With regard to torture, it has ratified the Inter-American Convention to Prevent and Punish Torture, published in *Official Gazette* No. 360 of 13 January 2000, which is far broader in scope than the Convention against Torture.

10. As a reflection of its unwavering commitment to the progressive development of international law, Ecuador has also ratified the Rome Statute of the International Criminal Court, which was published in *Official Gazette* No. 699 of 7 November 2002, and thereby became part of Ecuadorian law.

11. Ecuador has also ratified the following related international instruments, which form part of its domestic legislation:

International Covenant on Civil and Political Rights (art. 5), *Official Gazette* No. 140 of 14 October 1966;

International Convention on the Elimination of All Forms of Racial Discrimination (art. 15, paras. 2 and 3), *Official Gazette* No. 140 of 14 October 1966;

Convention on the Elimination of All Forms of Discrimination against Women (art. 12, para. 2), *Official Gazette* No. 132 of 2 December 1981;

Convention on the Rights of the Child (arts. 36 (d) and 40 (d)), *Official Gazette* No. 387 of 2 March 1990; and

International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, *Official Gazette* No. 206 of 7 June 1999.

12. With respect to one of the concerns of the Committee concerning the relationship between the Convention and national legislation, various constitutional provisions state that international treaties form part of domestic law; thus, article 18 of the Constitution reads:

“Article 18. The rights and guarantees laid down in this Constitution and in the international instruments in force shall be directly and immediately applicable before any judge, court or authority.

Constitutional rights and guarantees shall be interpreted in such a way as to facilitate their most effective enjoyment. No authority shall impose conditions or requirements on the enjoyment of these rights except for those established by the Constitution or by law.

The absence of a law shall not serve to justify violation of or disregard for the rights laid down in the Constitution, to desist from legal action against such violation or disregard, or to deny recognition of such rights.

No law shall restrict the enjoyment of constitutional rights and guarantees.”

13. Moreover, the international human rights law enshrined in the international instruments ratified by Ecuador is not only an integral part of its domestic legislation and therefore directly applicable by the competent authorities but, as stated above, has constitutional status under article 163 of the Constitution:

“Article 163. The norms contained in international treaties and conventions, once promulgated in the *Official Gazette*, shall form part of the domestic legal order and shall take precedence over laws and other norms of a lower status.”

14. Consequently, in accordance with the above constitutional provisions, the provisions of the Convention may be invoked before the courts and other administrative authorities, and may be applied directly.

15. These constitutional guarantees are complemented by a series of criminal provisions that have been cited in the previous reports submitted by Ecuador. It should be pointed out that criminal legislation has been strengthened, especially with regard to procedural law, as can be seen below in connection with article 4, so as to expedite the trial of the most serious offences, such as torture.

16. In conclusion, Ecuadorian legislation expressly prohibits any deliberate act designed to inflict serious pain or suffering, including, as stated above, physical, mental or psychological pain or suffering, in accordance with the provisions of article 1 of the Convention.

17. In addition, and in accordance with article 1, paragraph 2, of the Convention, Ecuadorian legislation contains constitutional provisions that go beyond the scope of those contained in the Convention, in particular, article 19 of the Constitution:

“Article 19. The rights and guarantees laid down in the Constitution and in international instruments do not exclude others intrinsic to the human person and necessary for his psychological and physical development.”

## **Article 2**

18. Ecuador has made a great effort to adopt legal, administrative, judicial and other measures to prevent acts of torture in the country.

### **Legal measures**

19. At the constitutional level, provisions have been adopted that prevent acts of torture and other cruel, inhuman or degrading treatment:

“Article 24.4. Anyone who is arrested shall have the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest and the identity of those conducting questioning.

The person arrested shall be informed of his right to remain silent, to request the presence of counsel, and to communicate with a family member or any other person of his choice. Anyone who arrests a person, with or without a written court order, and who fails to provide confirmation that the detainee has been handed over immediately to the competent authority shall be penalized.”

20. As will be seen below, under article 11, this provision makes it obligatory to identify the officer making an arrest or conducting questioning, prohibits keeping a person who has been

arrested incommunicado, and obliges law enforcement officers to hand the person over immediately to the authority responsible for initiating an investigation and, if appropriate, criminal proceedings. This prevents cases of torture and ill-treatment by arresting officers.

“Article 24.5. No one may be questioned, not even for the purposes of an investigation by the Office of the Public Prosecutor, or by any police or any other authority, without the presence of private defence counsel, or counsel appointed by the State if the person concerned is unable to appoint his own defence counsel. Any judicial, pre-trial or administrative proceedings that fail to comply with this requirement shall lack evidentiary effect.”

21. This constitutional provision also prevents acts of torture by requiring the presence of a lawyer during any investigation; this, as will be seen also under article 15, complies with the provision of the Convention that prohibits any statement made as a result of torture from being invoked as evidence in any proceedings.

“Article 24.6. No one may be deprived of liberty, except pursuant to a written order by a competent judge, in the circumstances, for the period and in accordance with the formalities prescribed by law, except in case of flagrante delicto, when a person may also not be held without a court order, for more than 24 hours. No one may be held incommunicado.”

22. This norm addresses some of the concerns raised by the Committee in connection with previous reports regarding who orders an arrest, how long a person may be held without a court order, how long a person may be held incommunicado, and how much time may elapse before a person is taken before a judge. An arrest is ordered by a judge; no one can be detained for more than 24 hours without a court order; no one may be held incommunicado; the detainee must be taken before the judicial authority immediately.

“Article 24.8. Pre-trial detention may not exceed six months in respect of offences punishable by detention, or one year in respect of offences punishable by imprisonment. Should these limits be exceeded, the pre-trial detention order shall be void, in which case the liability of the judge hearing the case is engaged.”

23. The periods of six months and one year have been determined on the basis of the time required to conclude a case under criminal law. These periods must be respected whenever the judicial authority has initiated criminal proceedings. As stated above, without a court order a person may not be detained for 24 hours. In addition to preventing torture in detention and prison centres, as will be seen under article 11 this provision has led to a significant decrease in prison overcrowding, because judges are forced to complete trials within the established time frame and this addresses another of the Committee’s concerns.

“Article 24.9. During a trial, no one can be obliged to testify against his spouse or relatives to the fourth degree by blood or second degree by marriage, or compelled to testify against himself, in matters that can result in criminal liability.”

24. In addition to the constitutional principles and provisions that guide the State's actions in this area, we wish to draw attention to other measures adopted in response to the provisions of article 2 of the Convention. This section should be read in conjunction with the two previous reports submitted by Ecuador.

25. First, we wish to cite a specific legal measure that judges have been implementing since the entry into force of the new Constitution, based on transitional provision No. 28, which states:

“Those accused of offences punishable by imprisonment who have currently been detained for more than one year without having been sentenced shall be released immediately without prejudice to the continuation of criminal proceeding until their conclusion.

The judges who are hearing the corresponding criminal proceeding shall be responsible for the application of this provision.

The National Council of the Judiciary shall penalize judges who have acted negligently in the conduct of proceedings.”

26. This provision is intended to counter delays in judicial proceedings which, although on occasion justified owing to their complexity, may occasion unnecessary suffering to the detainee. This provision must be read in conjunction with the relevant provisions of the current Criminal Code:

“Article 114 A. Anyone detained and not in receipt of a decision for stay of proceedings or referral to trial for a period equal to or greater than one third of the period established by the Criminal Code as the maximum sentence for the offence for which they were prosecuted shall immediately be released by the trial judge.

Similarly, anyone who has remained in detention without having been sentenced for a period equal to or greater than half that provided for by the Criminal Code as the maximum sentence for the offence for which they were prosecuted shall immediately be released by the criminal court conducting the trial.

These provisions do not apply to those tried for offences punishable under the Narcotic Drugs and Psychotropic Substances Act.”

27. The final paragraph of this article, added to the Criminal Code by Act No. 4, published in *Official Gazette* No. 22 of 9 September 1992, was declared unconstitutional by decision No. 119 of the Constitutional Court, published in *Official Gazette* No. 222 of 24 December 1997, as the result of which its effect was suspended, and the article is being implemented in a general sense.

28. Articles 114 B, C and D of the Criminal Code, which supplement the constitutional provision referred to, should also be cited:

“Article 114 B. In any event the director of the social rehabilitation centre in which the detainee is held shall, on the day following the deadline indicated in the previous article, notify this fact to the judge or court hearing the case so that the immediate release of the detainee may be ordered.



Should the release order issued by the judge or court not be received within 24 hours of the notification given, the director of the rehabilitation centre shall immediately release the detainee, and shall communicate this fact in writing to the judge or criminal court and the president of the district supreme court.”

“Article 114 C. The Supreme Court, as budget allocations permit, shall, within six months of the entry into force of this law, and on the basis of the information and resources available to it, establish, in judicial districts, as appropriate, as many criminal courts and tribunals as necessary such that each such court shall be required to hear no more than 400 cases a year.”

“Article 114 D. Judges and members of criminal courts that do not conclude the cases referred to them within the time frames established in articles 231, 251, 260, 271 and 324 of the Code of Criminal Procedure shall immediately be disciplined by the President of the Supreme Court and shall be fined an amount equivalent to 50 per cent of the general minimum wage on each of the first three occasions on which such delays occur, and shall be removed from their functions on the fourth occasion, in which case they shall not be reinstated for five years.

These sanctions shall be imposed on the same day on which the President of the Supreme Court is informed of the delay, and shall engage his personal financial liability.”

29. It should be noted that these provisions do not reflect any value judgements regarding the functioning of the judiciary or undermine in any way whatsoever their authority to conduct the administration of justice, but are designed only to strengthen the right to personal freedom. This is in response to a further observation by the Committee in this regard.

30. Detailed information is provided under article 4 on the criminal legislation provisions that prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment, and under article 12 on the substantive constitutional and legal reforms of the bodies responsible for police and pre-trial investigation, these representing the outcome of changes to domestic legislation in recent years.

31. Further, as provided for in article 2, paragraph 2, of the Convention, it should be noted that domestic legislation does not justify the commission of the offence of torture in any way; not even exceptional circumstances, such as a state or threat of war, internal political instability or any other public emergency, justify torture. The Constitution regulates such exceptional situations and authorizes the President of the Republic to declare a state of emergency in circumstances of extreme gravity, but its article 181, in particular paragraph 6, expressly stipulates those rights that may be limited or suspended, as follows:

“Article 181. Once a state of emergency is declared, the President may assume all or any of the following powers:

6. Suspension or limitation of any of the rights set forth in articles 23.9, 23.12, 23.13, 23.14 and 23.19, and article 24.9 of the Constitution; but in no circumstances may he order the deportation or confinement of a person other than in a provincial capital or a region in which the person lives.”

32. The rights referred to in this provision refer specifically to freedom of expression, inviolability of the home, privacy of correspondence, movement throughout the country, freedom of association and maximum periods of pre-trial detention. That is, guarantees against torture are maintained even if a state of emergency is declared and may not be suspended or limited in any way.

33. Under article 2, paragraph 3 of the Convention, a further legislative measure adopted pursuant to an observation by the Committee relates to the defence of compliance with orders of a superior. In this connection article 185 of the 1998 Constitution provides as follows:

“Article 185. Law enforcement agencies shall confine themselves to complying with orders and shall have no decision-making capacity. Senior officials shall be responsible for the orders they give, but compliance with the orders of a superior shall not exempt those carrying out the orders from liability in the event of violation of the rights guaranteed by the Constitution and the law.”

34. Similarly, as previously stated, article 23 of the Constitution also refers in part to this subject and states that:

[...] “genocide, torture, enforced disappearance, abduction and homicide for political reasons or reasons of belief are imprescriptible with regard to both proceedings and penalties. Such offences may not be the subject of a pardon or amnesty. In such cases compliance with the orders of a superior shall not constitute exemption from liability.” [...]

35. Thus, article 214 of the Criminal Code, which previously might have given rise to an interpretation that due obedience might serve as a pretext for anyone carrying out the orders of a superior, has no validity whatsoever with regard to the rights guaranteed by the Constitution and by law. Accordingly, with regard to the offence of torture, penalties would also apply to the person giving the illegal order as well as to the person executing it.

### **Judicial measures**

36. The Government acknowledges that in the period covered by this report human rights violations occurred. These occurrences were not systematic, and certainly did not have the consent of the Ecuadorian State, but were the result of isolated excesses by government officials. Accordingly, Ecuador is making every effort to provide appropriate compensation in accordance with domestic legislation and its obligations under various human rights covenants to the victims of torture or to their family members, as indicated in the following table.

**Cases of torture and amicable settlement before the  
Inter-American Commission on human rights**

Case No.		Article of the Convention	Current disposition
11.444	Amparo Constante M.	5, 8, 25	Possible amicable solution - IACHR
11.452	Francisco Llaguno Cobos	5	Possible amicable solution - IACHR
11.443	Washington Ayora R.	5, 8, 25	Prosecution
11.466	Manuel Lalvay Guamán	5, 8, 25	Sentencing - rehearing
11.445	Ángelo Ruales Paredes	5, 8, 25	Sentencing - rehearing
11.478	Putumayo	5, 7, 8, 25	Signature of amicable settlement agreement
	Marco Almeida Calispa	4, 5, 8 and 25	Prosecution
11.439	Roberto Cañaveral	5	Order to initiate proceedings
11.441	Rodrigo Muños et al.	5, 8, 21, 7, 25	Prosecution
11.584	Carlos Juela Molina	5	Order to initiate proceedings
	José Patricio Reascos	1, 5, 7, 8, 11, 24, 25	Prosecution
11.991	Kelvin Vicente Torres	1, 2, 5, 7, 8, 11, 4, 25	Order to initiate proceedings
11.427	Victor Rosario Congo	1, 4, 5, 25	Order to initiate proceedings

37. The table, which contains data to 2001, refers to some cases in which the State, pursuant to quasi-judicial proceedings before the Inter-American Commission on Human Rights, compensated the victims.

38. Byron Roberto Cañaveral Chiluisa. On 26 May 1993 Mr. Cañaveral was arrested by law enforcement officers. A medical certificate reported the presence of injuries as a result of ill-treatment while in detention. The Government compensated Mr. Cañaveral and undertook to conduct judicial proceedings to punish those responsible.

39. Ángelo Javier Ruales Paredes. On 3 July 1993 Mr. Paredes was arrested by law enforcement officers while taking parts from a vehicle. The officers who conducted the routine questioning admitted to having committed acts of physical aggression. The Government compensated Mr. Ruales and those responsible were punished in accordance with the law.

40. Manuel Inocencio Lalvay Guamán. On 6 April 1993 Mr. Lalvay Guamán was arrested by law enforcement officers following a complaint that he had committed an offence. He claimed that he was subjected to ill-treatment. The State could not refute the accusation; it compensated Mr. Lalvay and undertook to proceed with the necessary investigation and, if appropriate, to punish those responsible.

41. Marcia Irene Clavijo Tapia. Ms. Clavijo Tapia was arrested on 17 May 1993 in a drugs sweep. She claims that she was tortured. The State was unable to refute her assertions, compensated the victim, and undertook to proceed with the necessary investigation and, if appropriate, to punish those responsible.

42. Juan Clímaco Cuellar et al. Mr. Cuellar and 10 other individuals were arrested by the Ecuadorian army between 18 and 20 December 1993 during an investigation into an attack on a patrol in Putumayo canton. They alleged that they were subjected to physical and psychological torture. The State was unable to prove that those responsible were not State agents. The Government compensated the victims and undertook to initiate proceedings, where not time-barred, that would lead to the punishment of those responsible.

43. Restrepo Arismendy. On 8 January 1988 the Carlos Santiago and Pedro Andrés Restrepo Arismendy brothers were arrested by the National Police and subsequently disappeared while in police custody. Following an investigation that lasted several years, the State acknowledged its international responsibility for the torture and disappearance of the Restrepo brothers. The State compensated their legal representative and undertook to take appropriate legal and other action to locate the bodies of the Restrepo brothers.

44. Rodrigo Elicio Muñoz Arcos et al. Mr. Muñoz, a Colombian national, and a further three Colombian citizens, were arrested by law enforcement officers on 26 August 1993, accused of theft, attempted abduction and homicide. They claimed that they were tortured. The State was unable to refute the allegations and thus compensated the four alleged victims and undertook to take action to punish those allegedly responsible.

45. Washington Ayora Rodríguez. Convicted of theft in 1989, he was arrested on suspicion of the same offence by law enforcement officers on 14 February 1994. He claims that he was tortured, as attested to by a medical certificate. The State compensated him in respect of the incident, and undertook to investigate and, if appropriate, punish those allegedly responsible.

46. Ángel Reiniero Vega Jiménez. Mr. Vega Jiménez was arrested by INTERPOL agents on 5 May 1994. He was allegedly arrested and subjected to torture and ill-treatment that, according to his representatives, resulted in his death. The State was unable to refute the accusations, and, accordingly, paid financial compensation and undertook to conduct the necessary investigation and, if necessary, to punish those responsible.

#### **Cases before the United Nations Human Rights Committee**

47. José Luis García Fuenzalida (480/1991) and Jorge Villacrés Ortega (481/1991). Pursuant to the Views adopted by the Committee on 15 August 1996 and 24 April 1997, the State accepted the Committee's recommendations and provided financial compensation to both applicants.

### **Pending cases**

48. Patricio Ordoñez and Jairo Corte. Arbitrary detention and ill-treatment by the police in Quito. The complainants claimed that they were beaten on 2 June 2001 by officers of the National Police, merely for being homosexuals. The case is being investigated by the criminal investigation police.

49. Narda Torres Arboleda and Adriana Chávez. Ill-treatment at the hands of unknown perpetrators in Quito. They were beaten in June 2001 by unknown individuals merely for being lesbians. They had obtained police protection orders. The case is being investigated by the police authorities. The assumed perpetrators belong to a non-State paramilitary group.

50. Víctor Arreaga Aragón, a 20-year-old transvestite, was beaten and murdered; he was shot three times by unknown individuals in August 2001 in Guayaquil. An investigation found that the crime had been committed by unknown individuals, presumably members of a non-State paramilitary group.

51. Darío Méndez (fictitious name). In September 2001 Mr. Méndez was kidnapped in Guayaquil by armed, hooded men who insulted him, and beat and raped him. The case is under investigation by the criminal investigation police; the authors of these and other incidents involving attacks on homosexuals, lesbians and transvestites are presumed to be members of a paramilitary group.

52. In a further 65 cases of human rights violations involving lesbians, homosexuals, bisexuals and transsexuals committed in the city of Guayaquil between October 2000 and April 2001, the authorities reported in June 2001 the dismissal of police officers, under sentences handed down by the National Police Disciplinary Tribunal, for having committed these offences.

### **Administrative measures**

53. In June 1998 the Government adopted as a State policy a national human rights plan, under Executive Decree No. 1527, published in *Official Gazette* No. 346 of 24 June 1998. The Plan is intended to prevent, eradicate and punish human rights violations in the country (art. 1). The Plan is universal, mandatory and comprehensive. The Government and civil society (art. 2) are responsible for compliance with and implementation of the Plan. With respect to torture, in article 4.1, the Plan provides that:

“To ensure that detention, investigation and penitentiary systems prohibit torture and physical and psychological ill-treatment as means of investigation and punishment.”

54. For the attainment of this objective, the Plan obliges the State to:

“Article 5.1. Propose reforms, through plans, programmes and changes to the legal system, to the current arrangements for detention, investigation and imprisonment.”

55. As already stated, the State has been implementing these objectives and commitments through constitutional, legal and judicial measures, as well as through other measures such as prevention and education, as noted in this report under article 10.

56. Further, pursuant to Executive Decree No. 3493, published in *Official Gazette* No. 735 of 31 December 2002, the Human Rights Coordination Commission was established as a coordinating mechanism for human rights issues that are the responsibility of the Ecuadorian State and for the fulfilment of Ecuador's commitments to the bodies and organs established under international human rights instruments. The Commission is responsible for preparing and transmitting relevant information on cases of human rights violations committed in the country and for preparing periodic State reports to the oversight bodies for international human rights treaties to which Ecuador is party.

57. Lastly, on 11 December 2002, Ecuador sent a communication to the United Nations High Commissioner for Human Rights in which Ecuador extended an open, standing invitation to all rapporteurs, representatives, experts and other United Nations human rights mechanisms to visit Ecuador whenever necessary in the discharge of their respective mandates and establish any contacts they deemed appropriate with persons and institutions based or established in the country.<sup>3</sup>

58. While, since the submission of the second report, the State has made major changes in its domestic legislation and in the structure of criminal investigation bodies as well as in the administrative arrangements referred to earlier to prevent and eradicate torture, cases of torture and ill-treatment still occur, committed by government agents and private individuals, in the latter case owing to intolerance and discrimination. The State is aware that there is a need to strengthen the National Human Rights Plan, as a State policy, to eradicate such practices once and for all, not only through legal reform but also through the adoption of targeted administrative measures. The work undertaken with civil society since the adoption of the Plan more than four years ago has identified the need to strengthen the education and training programmes begun in recent years for police and prison staff, and the need to improve criminal investigation techniques on the basis of appropriate scientific methods. This will encourage proper investigation of offences and eliminate the use of ill-treatment as an investigative method. For this purpose the State will need, amongst other actions, to increase the budgets for the criminal investigation police and Public Prosecutor's Office.

### **Article 3**

59. In order to give effect to the provisions of article 3 of the Convention, the State conducts a coherent policy for the protection of those in danger of being subjected to torture, as indicated under this article.

#### **Right to asylum and refuge in Ecuador**

60. Asylum constitutes a fundamental principle of the foreign policy of Ecuador.

61. The Constitution of the State, codified and approved on 5 June 1998, entered into force on 10 August 1998. In title III, "On rights, guarantees and duties", article 17 provides that: "The State shall guarantee all citizens, without any discrimination whatsoever, the free and effective exercise and enjoyment of the human rights enshrined in this Constitution and in the declarations, covenants, agreements and other international instruments in force. It shall adopt, through ongoing periodic plans and programmes, measures for the effective enjoyment of such rights."

62. Further, article 29 provides that: “Ecuadorians prosecuted for political offences shall have the right to request asylum and may exercise this right in accordance with the law and international agreements. Ecuador recognizes the right to asylum of aliens.”

63. Ecuador is a State party to the Conventions on Diplomatic Asylum and on Territorial Asylum, signed in the inter-American context at Caracas on 28 March 1954. With the provision of a safe conduct, the State may formulate a request for extradition, which the country granting asylum must study and respond to.

64. Under article XVII of the Convention on Diplomatic Asylum, to which Ecuador is a party: “Once the departure of the asylee has been carried out, the State granting asylum is not bound to settle him in its territory; but it may not return him to his country of origin unless this is the express wish of the asylee.”

65. Article 6 of the Aliens Act provides that: “Aliens who have been displaced as a result of war or political persecution in their country of origin may, in order to protect their life or freedom, be admitted as asylees by the Government of Ecuador, with observance of the provisions of the respective international agreements, failing which the norms of domestic legislation shall apply.”

66. The Caracas Convention treats asylum and refuge similarly, even though each has its distinguishing characteristics and special features. In any event Ecuador is also party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Under article 33 of that convention: “No contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

67. In order to give effect to the provisions of this Convention, the Ecuadorian State, under Executive Decree No. 3316 of 6 May 1992, issued regulations for implementation of the provisions of the 1951 Geneva Convention and its Protocol. The Regulations include the following provisions for the implementation of article 3 of the Convention:

“Article 13. No one shall be refused entry at the border, returned, expelled, extradited or subject to any measure whatsoever that requires him to return to a territory in which his physical integrity or personal liberty may be at risk for the reasons indicated in articles 1 and 2 of these Regulations. For the purposes of these Regulations, the term ‘border’ means the national border itself, ports of entry and airports, and the limits of the territorial waters.”

68. These provisions have been observed by the Ecuadorian authorities in every instance; to date there have been no complaints of deportation of citizens to territories in which there was a possible threat to their physical integrity or personal freedom.

### **Extradition**

69. The Constitution of the State, in its article 25, provides that: “In no case shall an Ecuadorian citizen be extradited. A citizen shall be tried subject to the laws of Ecuador.”

70. Nevertheless, extradition is possible where a treaty or convention is in force between a requesting State and Ecuador and in cases of international reciprocity.

71. The Aliens Act, in its article 3, provides that: “The Government of Ecuador may extradite aliens subject to trial or conviction for ordinary offences committed in another State on submission of a reasoned government request invoking the respective treaty in force for the two countries or international reciprocity in the case of application of domestic legal provisions.”

### **Rejection, deportation and expulsion**

72. Ecuadorian legislation provides for the detention of aliens when they have committed offences relating to migration. The Criminal Code provides for detention for flagrant offences in the use of travel and identification documents, such as: usurpation of identity, falsification of government documents, use of false seals and visas, and fraudulent alteration of passports. The Migration Act also provides for the deportation of aliens when they are in the country illegally, or without proper documentation, or when they have committed violations constituting cause for expulsion or deportation. However, it is the administrative practice of the migration authorities not to apply this provision where open persecution or danger of violation of the right to life or physical integrity in the country of origin is claimed. To this end there is close coordination with the Ministry of Foreign Affairs which, under domestic regulations, has responsibility for refuge for aliens.

73. Under article 19 of the Migration Act the competent authority for the deportation or expulsion of aliens is the Police Commissioner, subject to the observance of due process. Investigation in such cases is subject to the provisions governing due process set forth in article 24 of the Constitution and in the Code of Criminal Procedure.

74. As noted in this report under article 10, the State, with the cooperation of international agencies and human rights organizations, has trained police officers, particularly immigration officers, to safeguard and protect the human rights of aliens, refugees, and stateless and displaced persons.

### **Article 4**

75. The principal legal provisions complementing the Constitution, and which provide for penalties for those responsible for committing acts of torture, are contained in the Criminal Code and the new Code of Criminal Procedure, which was adopted in January 2000 and which entered into force in July 2001. Thus, with regard to arbitrary detention:

“Penal Code, article 186. Short-term imprisonment for a period of three to six years applies in case of arrest on the basis of a fraudulent warrant, or wearing the uniform or using the name of a law enforcement officer, or where the person arrested or detained has been threatened with death.”

“Criminal Code, article 187. Where the person arrested or detained has suffered physical torture, the guilty party shall be imprisoned for a term of three to six years.



A term of imprisonment of six to nine years shall be imposed if the torture results in any of the permanent injuries listed in the chapter on injuries.

Where torture results in death, the guilty party shall be punished with a special a long-term sentence of 16 to 25 years' imprisonment."

76. This article makes express reference to "physical torture" and seems to refer only to torture that leaves external marks. Legal precedent in this regard has been quite clear in indicating that "physical torture" means suffering, abuse, torture, ill-treatment or blows, that is any physical, psychological abuse, when such treatment occasions or causes an external physical change.<sup>4</sup>

77. With regard to statements and confessions:

"Criminal Code, article 203. Any judge or authority that compels a person to testify against himself, his spouse, his ascendants, his descendants or his relatives to the fourth degree by blood or second degree by marriage in matters that can result in criminal liability shall be punished with a prison term of six months to three years."

"Criminal Code, article 204. Any judge or authority that extracts statements or confessions against the person referred to in the previous paragraph by means of beatings, prison, threats or torture shall be punished with a prison term of two to five years and loss of civic rights for a period equal to that of the sentence."

78. This article punishes one of the major objectives of torture, namely to obtain incriminating statements. It covers both physical torture, in the form of physical coercion and beatings, and psychological torture, through threats and imprisonment.

"Code of Criminal Procedure, article 220. Guarantees for the defendant. In no circumstance shall the defendant be forced, through physical or psychological coercion, to admit to guilt in respect of the violation. Similarly, it is prohibited, before and during the trial, to employ violence, drugs or any methods or means that vitiate the free and voluntary making of a statement by the defendant. Police officers, officials and employees in the Public Prosecutor's Office and criminal investigation police who violate this provision shall incur the corresponding criminal penalty."

79. This provision covers psychological coercion as a form of torture. It recognizes that torture can occur before and during the trial and prohibits the use of drugs and other methods in existence or that might be developed.

80. These provisions are in accordance with article 29.9 of the Constitution, referred to in this report in connection with article 2, which prohibits acts of torture.

81. With regard to the treatment of prisoners:

"Criminal Code, article 205. Anyone who issues or executes an order to torture prisoners or detainees, held incommunicado for a period longer than that provided for by

law, with shackles, leg restraints, bars, handcuffs, ropes, unsanitary cells, or other torture, shall be punished by a term of imprisonment of one to five years and loss of political rights for an equivalent period.”

82. Legal precedent holds that “other torture” includes other forms of torture such as psychological.<sup>5</sup>

“Criminal code, article 206. Neither insecurity in prisons, nor intimidating behaviour on the part of detainees and prisoners, nor unruly behaviour by prisoners, shall serve as a pretext in the circumstances referred to in the previous article.”

83. This article categorically provides that there is no excuse or justification for ordering or committing an act of torture.

84. The current Code of Criminal Procedure, published in *Official Gazette* No. 360 of 13 January 2000 and in force since July 2001, contains a general human rights provision that must be observed by the criminal investigation police in all circumstances:

“Code of Criminal Procedure, article 211. Respect for human rights. Criminal investigation police officers must strictly observe legal and regulatory formalities in all their acts and shall abstain, subject to engagement of their own liability, from using verification methods that violate the human rights enshrined in the Constitution, international agreements and national legislation.”

85. The Police Criminal Code also prohibits acts of torture:

“Article 145. If a person under arrest or in detention suffers physical torture the person guilty shall be punished with a term of imprisonment of six to nine years.”

86. The Police Criminal Code covers various offences for which members of the police may be tried, including torture.

87. The Ecuadorian legal order contains provisions regarding attempts to commit an offence, which are of general application in criminal practice. Thus, article 16 of the Criminal Code states:

“Article 16. Anyone who commits acts that are likely to result in the commission of an offence shall be held responsible for an attempt to commit an offence if the act is not committed or not proven.

If the author voluntarily desists from the act he shall be subject only to the penalties applicable to the acts performed, provided that such acts constitute a violation, except where, as provided for by law, in special circumstances an attempt to commit an offence is itself deemed to constitute an offence.

If the author voluntarily prevents the act, he shall be subject to the penalty provided for in respect of an attempted offence, reduced by one third or one half.

Violations shall be punishable only once committed.”

88. Attempted torture is not among the offences or special circumstances in which the law defines an attempt as an offence. But, as noted, since 1998 domestic legislation has considered torture as one of the most serious offences, classifying it as imprescriptible, which should be understood as meaning that only discretionary reduction of the penalty for an act of torture committed or proven is applicable to attempted torture, as indicated below.

89. With regard to complicity and being an accessory after the fact, a similar analysis applies to attempted offences. Articles 43 and 44 of the Criminal Code apply:

“Article 43. An accomplice is anyone who indirectly and subsidiarily cooperates in the performance of the punishable act through acts prior to or simultaneous with the act in question.

If, in the circumstances of the case, the person accused of complicity cooperates only in an act less serious than that committed by the author, the punishment applied to the accomplice shall be only that relating to the act that he sought to carry out.”

“Article 44. An accomplice after the act is anyone who, being aware of the criminal conduct of the offenders, habitually supplies them with lodging, hiding places or meeting places or supplies them with the means for them to benefit from the offence committed, or who aids them by hiding the instruments or the material evidence relating to the offence or by covering up the traces or indications of the offence to avoid punishment, and anyone who, in the course of their profession, employment, practice or occupation, conducts an examination of the traces or indications of the offence, or elucidation of the punishable facts, and hides or alters the truth with the aim of assisting the offender.”

90. With regard to penalties for attempts to commit an offence, complicity or being an accessory after the fact, attention is drawn to articles 46, 47 and 48 of the Criminal Code, which specify the rules for the application of penalties in the case of torture:

“Article 46. Authors of attempted offences shall be subject to a penalty of one third to two thirds that imposed had the offence been committed. In applying the penalty account shall be taken of the danger incurred by the victim of the violation and of the record of the accused.”

“Article 47. Accomplices shall be punished with half the penalty applied to authors of the offence.”

“Article 48. Accessories after the fact shall be punished with one quarter of the penalty applied to authors of the offence; in no case shall this exceed two years, neither shall a term of imprisonment be imposed.”

91. Attention is drawn to the relevant section of article 30 of the Criminal Code:

“Article 30. Aggravating circumstances, when not constituting or modifying the offence, are those that increase the maliciousness of the act, or the alarm caused in society by the violation, or that establish the dangerousness of the authors, as in the following cases:

1. Commission of the violation [...] with viciousness or cruelty, use of any form of torture or other means to increase and prolong the victim's pain [...].”

92. That is to say torture is not only punished as such, but constitutes an aggravating circumstance in the commission of other duly defined offences. Thus, if individual guarantees, for example individual freedom and integrity, guaranteed by the Constitution and the law, are violated with the use of torture, the penalty for the offender is increased in accordance with the relevant provisions.

93. As indicated below, in connection with article 16, the new Children's and Youth Code, promulgated in January 2003, establishes, in its chapter IV, provisions that prohibit torture and other ill-treatment of children and young persons:

“Article 50. Right to personal integrity. Children and young persons have the right to respect for their personal, physical, psychological, cultural, emotional and sexual integrity. They shall not be subjected to torture, or to cruel or degrading treatment.”

94. From the provisions cited it is apparent that Ecuadorian criminal legislation penalizes not only physical torture, but also psychological torture, and covers all the situations included in the definition in article 1 of the Convention, since it clearly indicates the purposes of torture - obtaining self-incrimination, a confession or information, or punishing the detainees or prisoners - and provides that such illegal acts must be committed by a judge or other public official acting in an official capacity. The issuance of the new Code of Criminal Procedure has allowed judges to broadly extend criminal provisions, taking into account both kinds of torture and establishing penalties in accordance with the gravity of the offence.

95. Nevertheless the State is aware that there is a need for the Criminal Code to establish a definition similar to that given in article 1 of the Convention, and efforts will be made to overcome difficulties in that regard.

#### **Article 5**

96. Ecuadorian legislation is fully compatible with article 5 of the Convention. Article 5 of the Criminal Code, as will be seen below, covers all the situations with regard to jurisdiction provided for in the Convention. It should be noted, in addition, that only judges and criminal courts may exercise jurisdiction in criminal cases. Article 17 of the Code of Criminal Procedure provides as follows in this regard:

“Article 17. Authorities. The following are criminal jurisdiction authorities, in the circumstances, forms and manner provided for by law:

- (1) The criminal chambers of the Supreme Court;
- (2) The President of the Supreme Court;
- (3) The chambers of the high courts of justice;
- (4) The presidents of the high courts of justice;

- (5) The criminal courts;
- (6) Criminal law judges;
- (7) Judges trying violations;
- (8) Other judges and courts established under special laws.”

97. With regard to article 17.8, it should be recalled that implementation must be in accordance with transitional provision No. 26 of the Constitution, adopted in 1998:

“26. All magistrates and judges under the executive shall be transferred to the judiciary, and, unless otherwise provided for by law, shall be subject to their own organization acts. This provision covers military, police and juvenile judges. If other public officials include among their functions the administration of justice in specific areas, they shall lose such functions, which shall be transferred to the corresponding organs of the judiciary. [...]”.

98. This provision resolves one of the major concerns of the Committee regarding the need for any investigation of the offence of torture to be carried out exclusively by independent judges who are members of the judiciary.

99. However, largely owing to a lack of resources, it has not been possible to fully implement this constitutional provision; the Government hopes that before the next report is submitted to the Committee the measure will be fully implemented.

100. With regard to the substance of article 5 of the Convention, the following provision of the Criminal Code, as referred to in a previous paragraph, should be noted as covering the exercise of jurisdiction in trying the offence of torture:

“Article 5. Any violation committed within the territory of the Republic, by Ecuadorian nationals or aliens, shall be tried and punished in accordance with Ecuadorian legislation, except as otherwise provided for by law. Violations committed within the territory of the Republic shall be:

Those committed on board Ecuadorian naval or merchant ships or military or civil aircraft, except where in accordance with international law, merchant ships or civil aircraft are subject to foreign criminal legislation, and those committed in the territory of an Ecuadorian legation abroad.

The violation shall be understood to have been committed in Ecuadorian territory when the effects of the act of commission or omission constituting the violation occurred in Ecuador or in places subject to its jurisdiction.

Any national or alien who commits any of these violations outside the national territory shall be punished in accordance with Ecuadorian law: [...]

(4) Offences committed by public officials in the service of the State, in abuse of their authority or in violation of the duties attaching to their functions;

(5) Offences under international law; and

(6) Any other violations in respect of which special legal provisions or international conventions establish the rule of Ecuadorian law.

Aliens who commit any of the violations indicated above shall be tried and punished in accordance with Ecuadorian legislation, provided that they are arrested in Ecuador or are extradited.”

101. This provision complements article 7 of the same legislation:

“Article 7. Any Ecuadorian who, other than in the circumstances provided for in article 5, commits abroad an offence which under Ecuadorian law carries a penalty of imprisonment in excess of one year shall be punished in accordance with Ecuadorian criminal legislation, provided that the offender is in Ecuadorian territory.”

102. For the reasons indicated and in accordance with the provisions of article 5, paragraph 2 of the Convention, it should be noted that Ecuadorian legislation accepts so-called “universal” or “quasi-universal jurisdiction” in trials involving torture, which may be viewed as one of the principal achievements of international human rights law in the quest to eliminate impunity in such cases.

### **Articles 6 and 7**

#### **Detention in cases of torture**

103. Article 24.4 of the Constitution provides that: “Anyone who is arrested shall have the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest, and the identity of those conducting questioning.”

104. It goes on to state that: “the person arrested shall be informed of his right to remain silent, to request the presence of counsel, and to communicate with a family member or any other person of his choice. Anyone who arrests a person, with or without a written court order, and who fails to provide confirmation that the detainee has been handed over immediately to the competent authority shall be punished”.

105. When an alien is arrested, the Department of Migration makes immediate contact with diplomatic or consular representatives in Ecuador to inform them of the situation. If such diplomatic or consular representatives are not present in Ecuador, the Department of Migration contacts the Ministry of Foreign Affairs so that the necessary legal steps can be taken through the diplomatic channel.

106. Assistance for alien detainees is provided by officials of diplomatic missions and consular offices. In their absence, the Ombudsman is asked to appoint counsel to provide free assistance during judicial proceedings.

107. Under the Code of Criminal Procedure (art. 165), for the purposes of investigations a limit of 24 hours is set for the detention of an alien. The period of deprivation of liberty of an accused person is governed by article 24.6 of the Constitution, referred to in connection with article 2.

108. Further, in article 22, the Constitution provides that: “The State shall have civil liability in the event of judicial error and of improper administration of justice, for acts resulting in the imprisonment or arbitrary arrest of an innocent person, and for alleged violations of the norms established in article 24. The State shall have a right of recourse against the responsible judge or official.”

109. Article 24, referred to in the previous paragraph, provides as follows: “To ensure due process, the following fundamental guarantees must be observed, without prejudice to others established under the Constitution, international instruments, laws and legal precedent”, the article enumerates 17 guarantees, including:

“No one may be tried for an act of commission or omission that at the time of commission was not defined as a criminal, administrative or other offence, nor shall any punishment not provided for by the Constitution or by law be applied. Neither shall any person be tried except in accordance with pre-existing legislation, with observance of the proper procedure in each case;

In the event of conflict between two laws providing for penalties, the less rigorous shall be applied, even if it was promulgated subsequent to the violation; in the event of doubt, the provision containing the penalties shall be applied to the accused in the most favourable sense;

No one may be deprived of liberty, except pursuant to a written order by a competent judge, in the circumstances, for the period and in accordance with the formalities prescribed by law, except in case of flagrante delicto, when a person may also not be held without a court order, for more than 24 hours. An exception is made in the case of disciplinary arrests provided for by law in law enforcement bodies. No one may be held incommunicado;

Any person whose guilt has not been declared in a final judgement shall be presumed innocent;

No one may be deprived of the right to defence at any stage or level of the proceedings. The State shall provide public defence counsel for indigenous communities, workers, women and abandoned minors or victims of domestic or sexual violence, and or any person in financial need.”

110. These norms seek to ensure that the authorities comply with the principles of due process in the detention and investigation of aliens suspected of having committed the offence of torture.

111. Should extradition not be applicable, Ecuadorian domestic legislation obliges the competent authorities to initiate prosecution in respect of the offences, as indicated in article 5.4 of the Criminal Code:

“A national or alien who commits any of the following violations outside Ecuadorian territory shall be punished in accordance with Ecuadorian law:

(5) Offences against international law”.

112. The final paragraph of the article states that: “Aliens who commit any of the violations indicated above shall be tried and punished in accordance with Ecuadorian legislation, provided that they are arrested in Ecuador or are extradited.”

### **Article 8**

113. With regard to article 8 consideration must be given to Ecuador’s constitutional and domestic legal provisions on extradition, referred to in this report in connection with article 3, which allow the extradition of foreign citizens who have committed ordinary offences in other States, should there be a convention or treaty in force between the requesting State and Ecuador, or in the case of international reciprocity. These serious ordinary offences include the offence of torture, which, as indicated in this report in connection with article 4, is duly penalized under domestic legislation.

114. Articles 9 to 14 of the Migration Act refer to “Provisions for the exclusion of aliens” and articles 19 to 36 to “Provisions for the deportation of aliens”.

115. Article 19 states that: “The Ministry of the Interior, through the Migration Service of the National Police, shall deport any alien subject to national jurisdiction present in the country, including in the following cases:

4. “Ordinary offenders who cannot be tried in Ecuador in the absence of territorial jurisdiction.”

116. Since 15 April 1998 Ecuador has been party to the Inter-American Convention on Extradition, adopted on 25 February 1981. Article 1 of the Convention reads:

“The States Parties bind themselves, in accordance with the provisions of this Convention, to surrender to other States Parties that request their extradition persons who are judicially required for prosecution, are being tried, have been convicted or have been sentenced to a penalty involving deprivation of liberty.”

“Article 2.1. For extradition to be granted, the offense that gave rise to the request for extradition must have been committed in the territory of the requesting State.”

117. In the context of article 8, paragraph 2, of the Convention, since Ecuador subordinates extradition to the existence of treaties, the Ecuadorian State is willing to consider the Convention against Torture as the requisite legal basis for the extradition of foreign citizens who have committed torture in another State party to the Convention, should the case arise.

118. Further, paragraphs 2 and 4 of article 8 of the Convention served as the basis for Ecuador’s approval of the Statute of the International Criminal Court, published in *Official Gazette* No. 699 of 7 November 2002.



119. Various requests for extradition from the Governments of Greece, Italy, the United States of America, Mexico and Germany have been considered for ordinary offences relating to embezzlement, misappropriation of funds and drug trafficking, and are still being processed. To date no requests for extradition have been addressed to Ecuador in connection with torture.

### **Article 9**

120. Article 4.1 of the Constitution states that:

“Ecuador, in its relations with the international community: 1. Proclaims peace and cooperation as a system of coexistence and legal equality of States.”

121. Under article 9, paragraph 1, Ecuador is obliged to afford the greatest measure of assistance in connection with criminal proceedings in respect of cases of torture. However, as mentioned in connection with article 8, to date such assistance has not been sought by other States in connection with the commission of such offences. Nevertheless Ecuador is party to other multilateral and bilateral treaties and agreements on mutual legal assistance that may be invoked and implemented as needed.

### **Mutual legal assistance instruments ratified**

122. Since the submission of the previous report, Ecuador has ratified the following mutual legal assistance agreements:

The Inter-American Convention on Mutual Legal Assistance in Criminal Matters, adopted by the General Assembly of the Organization of American States on 23 May 1992. Ecuador deposited the instrument of ratification on 3 August 2002. Article 2 reads: “The states parties shall render to one another mutual assistance in investigations, prosecutions, and proceedings that pertain to crimes over which the requesting state has jurisdiction at the time the assistance is requested.” At present the following are parties to the Convention: Canada, Colombia, Ecuador, Grenada, Nicaragua, Panama, Peru, the United States of America and Venezuela;

The agreement between the Republic of Ecuador and the Kingdom of Spain concerning the execution of criminal sentences (1997/03/10);

The treaty between the Republic of Ecuador and the Swiss Confederation on judicial cooperation in criminal matters (1999/01/19);

The agreement between the Republic of Ecuador and the Republic of Peru on the transfer of convicted offenders (2000/05/05);

The agreement between the Republic of Ecuador and the Republic of Colombia on judicial cooperation and mutual assistance in criminal matters (2000/10/05);

The agreement between the Republic of Ecuador and the Republic of Uruguay on mutual legal assistance in criminal matters (2001/03/16);

The agreement between the Republic of Ecuador and the Republic of Paraguay on mutual assistance in criminal matters (2000/02/16).

123. Under these agreements the parties undertake to provide the fullest cooperation with regard to the transfer of convicted offenders with final judgements, and to assist in their full rehabilitation.

124. Judicial cooperation includes measures taken to assist criminal proceedings in the requesting State, such as: receipt of testimony and other statements, exchange of information, effective preventive measures, provision of documentation relating to proceedings, notification of decisions and sentences, examination of evidence and locations.

125. The process of ratifying the agreements that Ecuador has concluded in the reporting period with Costa Rica and El Salvador is under way.

126. In the Andean Charter for the Promotion and Protection of Human Rights, promoted by Ecuador and adopted in the context of the Andean Community of Nations on 26 July 2002, there are provisions relating to mutual cooperation between member States in respect of the protection and exercise of human rights. In the case of torture, the Charter, in article 23, states:

The Andean Community member States “will, with the participation of competent public entities and civil society, launch action plans designed to prevent and eliminate, and also to investigate, try and punish, crimes against humanity, including torture and any other cruel, inhuman or degrading treatment or punishment, forced disappearances and extrajudicial executions”.

#### **Article 10**

127. The obligation of the Ecuadorian State to promote the teaching of human rights, in particular the prohibition of torture, is enshrined in article 66.2 of the Constitution, which provides that:

“Education, based on ethnic, pluralistic, democratic, humanist and scientific principles, shall promote respect for human rights, foster critical thinking, promote civic responsibility, provide skills for efficiency in the workplace and production, stimulate creativity and the full development of the personality and the special skills of each person, and encourage multiculturalism, solidarity and peace.”

128. Since 1993 the Ecuadorian State has promoted the teaching of human rights in the country, including the subject of the prohibition of torture in the professional training of law enforcement personnel, both civilian and military.

### **Human rights training programme for military personnel**

129. Under the agreement signed in October 1993 between the Ministry of Defence, the Ministry of Foreign Affairs, the Latin American Association for Human Rights (ALDHU) and the United Nations Development Programme (UNDP), a programme on training in human rights for members of the Ecuadorian armed forces was initiated,<sup>6</sup> with the fundamental objective of helping to strengthen the role of the armed forces as guarantors of the rule of law and establishing a forum for civilian-military dialogue with regard to democracy, security and human rights.

130. The first phase of the programme, from 1993 to 1996, trained 6,500 members of the armed forces, mainly from the army, who took part in educational activities, incorporating human rights in professional military training.

131. The second phase of the programme, from 1996 to 1997, implemented an emergency plan for human rights training for 8,000 members of the armed forces; 360 members of the air force and navy were trained in this phase. In February 1997, the United Nations Centre for Human Rights conducted an evaluation of the programme, which served as a basis for the third phase.

132. The third phase, from 1997 to 1999, included a diploma course in human rights and security conducted by the Latin American Faculty of Social Sciences (FLACSO - Ecuador); training was given to 12 military professionals who became human rights instructors in armed forces training centres.

133. The programme has helped to change the view of human rights by the military, which initially identified human rights as a subject area that was not of concern to the armed forces.

134. Significant changes have taken place in the military in terms of regulations, in particular in the treatment of the rank and file and personnel performing military service. Channels have been established for military personnel to submit complaints of human rights violations and specific provision has been made for covering human rights in the regular training of the civilian and military personnel of the armed forces.

### **Human rights training programmes for police personnel**

135. The Ecuadorian State has worked closely with civil society on training in human rights. Human rights organizations, in coordination with the National Police, have begun human rights education programmes for police personnel which have raised awareness of human rights, in particular with regard to civil and political rights and the prohibition of torture. One of the most significant programmes was that undertaken by the Ecuador Centre for Multidisciplinary Study and Research (CEIME), which from 1994 on has promoted human rights training for staff at all levels in the National Police. The central elements in the training have been the prohibition of torture and ill-treatment, investigation procedures, and support for victims of domestic violence.

136. There follows a summary of the content and results of the programmes:

**Programme: Justice and development**

**Component: Training for the National Police**

**1. Objectives**

**1.1 General objective of the justice and development programme**

The programme promotes the implementation of government human rights policy in the State and society with the emphasis on improvement of the system for the administration of justice in Ecuador; it gives wide coverage to its administration and achievements; it develops relevant pedagogical approaches in the areas of citizen and professional training, and in the higher education system.

**1.2 Component objective: training programme for the National Police**

The programme offers training so that the police can effectively discharge their role of providing protection for the citizen while ensuring respect for human rights, and, in particular, protection and punishment in respect of gender-based violence (marital violence, domestic violence, ill-treatment of children and sexual violence).

**2. Development of the National Police training programme**

**2.1 Informal training and consultancy subprogramme**

Start date: 1994, with the signing of a cooperation agreement.

**2.1.1 General training: subjects and coverage (1994-2002)**

Subjects:

Criminal procedure law (outlook for reform in the international context of human rights and security of the citizen);

Scientific law (forensic science applied to the system of evidence and forensic skills as a means of eradicating criminal impunity);

Gender-based violence;

Human rights of women;

Violence and Violence against Women Act (Act No. 103);

Role of the police and police procedures (in the international human rights context and current domestic legislation).

Number of events: 853

Number of participants: 16,192 (police authorities, police officers and officials, and cadets at police schools).

### *2.1.2 Relevant publications*

1998: *Police Procedures Manual*; the manual summarizes the duties of a police officer with regard to Act No. 103, which punishes domestic violence (now officially adopted).

2000: *Legal Rights Education Manual* (six fascicles on the subjects noted under 2.1.1; includes audio-visual material); the manual was adopted by the police as mandatory teaching material, within the police education system.<sup>7</sup>

### *2.1.3 Results*

Incorporation of subjects mentioned in the police curriculum.

Adoption of the manuals as compulsory reading for informal police training.

Establishment of citizen protection and guidance services, particularly for women and the family, through the creation in 1994 and subsequent expansion of the Office for the Defence of Women's Rights (ODMU).

Changes in police objectives and conduct with regard to their protection role in situations of marital, domestic and sexual violence.

## ***2.2 Formal education and curriculum reform subprogramme***

Start date: 1996. Formulation, validation and institutionalization of curriculum reform, with a cross-cutting approach and the inclusion of new content with regard to human rights, criminal law, forensic science, protection of the citizen, prevention, and intervention in cases of marital violence (relevant legislation and role of the police).

### *2.2.1. Subjects for inclusion in the curriculum*

Criminal law: International human rights context.

Forensic science: Procedures, protocols and legal certainty system in expert testimony.

Human rights: Legal, ethical and political aspects.

Domestic violence: Focus on social and gender equity.

Protection of the citizen: Cross-cutting approach.

### *2.2.2 Coverage*

National Police Education Department.

Education Department pedagogical advisers.

National Police Headquarters School.

Officers Training and Advanced Training School.

General Alberto Enríquez Gallo Police School.

Nine police training schools maintained throughout the country.

### 2.2.3. *Results*

Decision to institutionalize the curriculum reform proposal (relating to the subjects described) in the police education system.

Incorporation of new content (subjects mentioned) in specific disciplines.

## 3. **Short and medium-term outlook**

Working with police education system authorities and pedagogical staff for the inclusion of new reading lists, curriculum reform and integration of new components.

### **Training programme in the rights of aliens, refugees, stateless and displaced persons**

137. The Ecuadorian State, with the support of the United Nations High Commissioner for Refugees, provided special training for personnel of the National Police and armed forces intended specifically to promote understanding of international and domestic legislation on the rights of aliens, refugees, and stateless and displaced persons. The programme lasted two years (2000-2002).

138. The programme targeted migration police authorities and border military units and the Office of the Ombudsman, at the national and provincial levels, journalists and teachers, as well as civil society and human rights organizations active in this field. The programme conducted seven workshops at Cayame, Azogues, Esmeraldas, Cuenca, Coca, Quito, Guayaquil and Santo Domingo de los Colorados. The programme trained some 2,000 people.

### **Education and human rights in the Ecuador National Human Rights Plan**

139. In 1998 the State adopted the Ecuador National Human Rights Plan,<sup>8</sup> which takes as a cross-cutting theme education in and for human rights. In the part relating to the training of staff responsible for implementation of the law, the National Plan provides:

“Article 33. Provide an incentive for members of the armed forces and National Police to take human rights courses under study programmes set forth in the various agreements signed between the management organs of the various law enforcement bodies and specialized institutions.”

140. The United Nations High Commissioner for Human Rights, in the context of the project on support for the National Human Rights Plan, under component IV of the education and human rights project, initiated training of National Police officers, prosecutors and representatives of the media in a one-year programme (2000-2001) that trained around 1,000 people.

141. In the context of the National Human Rights Plan, the State and civil society formulated the National Human Rights Education Plan, reviewed and approved by the Standing Committee for Follow-Up to the National Plan,<sup>9</sup> which provides for implementation of the National Human Rights Training Plan, which covers teachers, law enforcement officers, prosecutors, media and other professionals and members of civil society. The National Training Plan will start in 2003.

142. Notwithstanding these initiatives, the State is aware that education and training in human rights must be strengthened and must cover, in the context of the National Education Plan, other professional areas related to torture, such as medicine, psychiatry and prison staff. With regard to the latter, in 1999 a human rights training programme was begun for applicants for prison guard positions; the programme lasted only a short while owing to a lack of funding. The prison system has only 220 professionals for 32 rehabilitation centres, of whom 50 are doctors, 22 dentists, 45 social workers, 42 psychologists and 53 workshop instructors.<sup>10</sup> These staff require urgent training in human rights, in view of which the State is hoping to initiate such training as soon as possible.

143. In connection with article 16, comprehensive information is provided on training in preventing other cruel, inhuman or degrading treatment.

#### **Article 11**

144. With a view to improving the norms, instructions, methods and practices involved in questioning, as well as the provisions for the custody and treatment of individuals subjected to any kind of arrest, detention or imprisonment, so as to avoid any cases of torture the 1998 Constitution introduced fundamental norms designed to reduce the numbers of and eradicate cases of torture during criminal detention and investigations:

Article 24.4 (1): “Anyone who is arrested shall have the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest, and the identity of those conducting questioning”;

Article 24.4 (2): “Everyone has the right to remain silent, to request the presence of counsel, and to communicate with a family member or any other person of his choice. Anyone who arrests a person, with or without a written court order, and who fails to provide confirmation that the detainee has been handed over immediately to the competent authority shall be punished”;

Article 24.5: “No one may be questioned, not even for the purposes of an investigation by the Office of the Public Prosecutor, or by any police or any other authority, without the presence of private defence counsel or counsel appointed by the State. Any judicial, pre-trial or administrative proceedings that fail to comply with this requirement shall lack evidentiary effect.”

145. These reforms will make it easier, firstly, in the event of abuse of authority and violation of the rights of detainees, for those concerned to initiate proceedings against the officials involved and to avoid such violations being covered by impunity. Secondly, for the first time, the right to remain silent is recognized. This right did not previously form part of the domestic

order and strengthens the right to consult a lawyer. Thirdly, the reforms establish the lack of evidentiary effect of judicial or administrative acts in which the detainee was questioned without private or State-appointed counsel present. This provision has an impact on reducing torture and cruel, inhuman or degrading practices by police officers during questioning.

146. It is important to recognize that the State still faces major challenges in improving interrogation methods and practices, since, while ill-treatment during questioning has declined with the adoption of the provisions referred to above, investigating officers have still not adequately developed other scientific techniques to determine liability, so that statements by the accused and witnesses remain the most heavily used evidence in judicial proceedings.

### **Ecuadorian penitentiary system**

147. Among the significant changes introduced by the current Constitution, is article 208.2, which provides that detention centres may be administered by private non-profit-making institutions, under State supervision.

148. With a view to monitoring abuse of pre-trial detention, article 167 of the Code of Criminal Procedure imposes restrictions on preventive measures. This provision is in accordance with article 24.8 of the Constitution, already cited in this report in connection with other articles, which establishes the maximum length of pre-trial detention: six months for convicts sentenced to detention and one year for offences punished by longer terms of imprisonment.

149. The penitentiary system, administered by the National Social Rehabilitation Council under the Ministry of the Interior has regulations ensuring that social rehabilitation supervisory staff, before recruitment, must have undergone training and special psychological and physical aptitude tests.

### **Procedures for investigating complaints of torture**

150. Complaints of torture or ill-treatment against prison guards or police officers serving in a penitentiary are submitted through the Ministry of the Interior/Department of Political Coordination (established in October 2002), under which the Human Rights Unit is placed.

151. Complaints are treated in different ways: if it is against a guard, the case is investigated by the Department of Social Rehabilitation under the corresponding summary administrative procedure; if warranted, the most serious administrative penalty is dismissal, subsequent to which criminal proceedings may be initiated.

152. If the complaint is against a police officer, the Ministry of the Interior refers the matter to the police for the corresponding administrative investigation. The administrative penalties are the same as those for prison guards, the most serious being dismissal and subsequent criminal proceedings.



**Ecuadorian penitentiary system indicators<sup>11</sup>**

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: DISTRIBUTION BY REGION AND PROVINCE**

Coast	Men	Women	Total
Esmeraldas	275	14	289
Manabi	411	4	415
Los Rios	399	12	411
Guayas	2 701	156	2 857
El Oro	201	18	219
Sierra			
Carchi	191	15	206
Imbabura	194	32	226
Pichincha	1 632	224	1 977
Cotopaxi	88	5	93
Tungurahua	199	14	213
Chimborazo	163	26	176
Bolivar	48	1	49
Cañar	24	6	30
Azogues	34		34
Azuay	195	34	229
Loja	240	14	254
Oriente			
Napo	100	4	104
Morona Santiago	62	2	64

Most of the prison population is in Guayas province (36.36 per cent) followed by Pichincha (25.16 per cent) and Manabi (5.16 per cent).

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: ANNUAL  
GROWTH RATE 1989-2001**

Year	Number of prisoners: annual average	Percentage
1989	6 978	
1990	7 679	10.05
1991	7 884	2.67
1992	7 998	1.45
1993	8 856	10.73
1994	9 064	2.35
1995	9 646	4.01
1996	9 961	3.27
1997	9 506	-0.19
1998	9 439	-0.7
1999	8 520	-9.74
2000	8 029	-5.76
2001	7 859	-2.12

**NATIONAL POLICE PRISONERS:  
ANNUAL GROWTH RATE 1990-2001**

Year	Number of prisoners: annual average	Percentage
1990	38 040	
1991	43 062	13
1992	42 227	-2
1993	46 985	10
1994	42 340	-11
1995	36 364	-16
1996	36 517	0
1997	38 436	5
1998	41 449	7
1999	49 269	16
2000	48 030	2.6
2001	36 074*	-33.14

*Source:* Department of Planning.

Prepared by: Department of Planning.

Prepared by: Department of Planning.

Date: 2001.

Date: 2001.

\* Includes 2,972 narcotics arrests.

The prison population has decreased by 2.12 per cent since 2000.

The decrease of recent years has slowed.

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: DISTRIBUTION BY CASE STATUS 1989-2001**

Year	Convicted	Percentage	Under investigation	Percentage	Total
1989	2 946	42.22	4 032	57.78	6 978
1990	2 275	29.63	5 404	70.37	7 679
1991	2 373	30.10	5 511	69.90	7 884
1992	2 473	30.96	5 525	69.17	7 998
1993	2 856	32.25	6 000	67.75	8 856
1994	2 745	30.29	6 319	69.72	9 064
1995	3 225	33.43	6 421	66.57	9 646
1996	3 078	31.86	6 883	71.36	9 961
1997	3 094	30.94	6 412	67.46	9 506
1998	2 405	26.56	6 650	73.44	9 439
1999	2 507	30.60	5 688	69.40	8 520
2000	2 946	36.70	5 083	63.31	8 029
2001	2 287	29.10	5 526	70.31	7 859

Prepared by: Department of Planning.

The figure of 7,859 includes the population of CDP with 121 inmates.

Date: 2001.

Classification by case status shows an increase in the numbers of prisoners under investigation to 5,526 (70 per cent), an indication of sluggishness in conducting proceedings. More disquieting is the fact that proceedings are being slowed down by the release of prisoners pursuant to article 24.8 of the Constitution: "Pre-trial detention may not exceed six months in respect of offences punishable by detention, or one year in respect of offences punishable by imprisonment. Should these limits be exceeded, the pre-trial detention order shall be void."

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: MALE OFFENDERS 2001**

	Constitutional freedoms	Public administration	Falsification	Public security	Persons	Honour	Sexual	Civil status	Property	Narcotics	Others	Total
Tulcan					26		8		18	131	8	191
Ibarra		1			38		17		33	97	8	194
Quito Men's No. 1	30	6	20	27	98		35		156	398		770
Quito Men's No. 2		10	2	3	164	1	28		136	169		513
Quito Men's No. 3					84		7		38	162	42	333
Quito Men's No. 4		2			5		1		4	2	2	16
C.D.P.												121*
Latacunga		1			24				45	12	6	88
Ambato					67				91	41		199
Riobamba					38		13		80	19		150
Alausi					6		2		5			13
Guaranda					34		7		6		1	48
Cañar					10		9		4	1		24
Azogues					8		6		19	1		34
Cuenca Men's					36		35		80	30	14	195
Cuenca Women's												
Jipijapa					18		6		34	21	2	81
Bahia												
Portoviejo					38		13		74	51	6	182
El Rodeo					63		2		49	34		148
Quevedo		2			55		20		81	83	2	243
Vinces					22		3		9	8		42
Babahoyo					42		6		44	20	2	114
Machala					33				72	83	3	191
Zaruma							1		7	1	1	10
Guayaquil Men's					285		85		1 535	438	358	2 701
Guayaquil Women's												
Tena		1			47				22	29	1	100
Macas					23		17		20	2		62
Esmeraldas Men's					94		24		105	40	12	275
Esmeraldas Women's												
Loja					49		24		95	61	11	240
Quito Women's												
Total	30	23	22	30	1 407	1	369		2 862	1 934	479	7 157
Percentages	0.42	0.32	0.31	0.42	19.66	0.01	5.16		39.99	27.02	6.69	100

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: BY AGE 2001**

	Men					Women					TOTAL
	18-28	29-39	40-50	50+	Total	18-28	29-39	40-50	50+	Total	
Tulcan	69	76	33	13	191	7	6	2	-	15	206
Ibarra	87	61	35	11	194	11	12	6	3	32	226
Quito Men's No. 1	104	352	217	97	770	-	-	-	-	-	770
Quito Men's No. 2	263	210	33	7	513	-	-	-	-	-	513
Quito Men's No. 3	159	103	57	14	33	-	-	-	-	-	333
Quito Men's No. 4	4	7	3	2	16	-	-	-	-	-	16
C.D.P.	-	-	-	-	-	-	-	-	-	-	121*
Latacunga	46	26	10	6	88	2	2	1	-	5	93
Ambato	82	75	31	11	199	3	4	4	3	14	213
Riobamba	99	42	9	-	150	16	4	3	3	26	176
Alausi	6	5	1	1	13	-	-	-	-	-	13
Guaranda	23	7	11	7	48	-	-	-	1	1	49
Cañar	14	4	3	3	24	5	1	-	-	6	30
Azogues	13	12	4	5	34	-	-	-	-	-	34
Cuenca Men's	125	40	20	10	195	-	-	-	-	-	195
Cuenca Women's	-	-	-	-	-	12	6	12	4	34	34
Jipijapa	43	26	9	3	81	1	2	-	-	3	84
Bahia	-	-	-	-	-	-	-	-	-	-	-
Portoviejo	80	64	23	15	182	-	-	1	-	1	183
El Rodeo	61	39	44	4	148	-	-	-	-	-	148
Quevedo	91	104	40	8	243	3	3	2	-	8	251
Vinces	18	13	6	5	42	1	1	-	-	2	44
Babahoyo	62	40	9	4	115	-	1	-	-	1	116
Machala	71	94	20	6	191	10	5	2	1	18	209
Zaruma	2	5	1	2	10	-	-	-	-	-	10
Guayaquil Men's	1 449	1 136	89	27	2 701	-	-	-	-	-	2 701
Guayaquil Women's	-	-	-	-	-	69	35	41	11	156	156
Tena	55	28	10	7	100	1	1	2	-	4	104
Macas	32	12	8	10	62	1	1	-	-	2	64
Esmeraldas Men's	142	82	37	14	275	-	-	-	-	-	275
Esmeraldas Women's	-	-	-	-	-	5	4	5	1	15	15
Loja	104	89	34	13	240	6	2	4	2	14	254
Quito Women's	-	-	-	-	-	106	96	20	2	224	224
Total	3 304	2 752	797	305	7 157	259	186	105	31	581	7 738
Percentages	46.16	38.45	11.13	4.26	100	44.58	32.01	18.07	5.34	100	100

**DEPARTMENT OF SOCIAL REHABILITATION**

**REHABILITATION CENTRES: PHYSICAL PARAMETERS**

**Minimum space requirement: 20 sq. m/prisoner**

	Capacity: number of prisoners	Average number of prisoners	Total area for prisoners sq. m	Building area per prisoner sq. m	Physical area	
					Shortfall sq. m/prisoner	(+) sq. m/prisoner
Tulcan	100	206	2 552	12.39	7.61	
Ibarra	120	226	20 540	9.09	10.91	
Quito Men's No. 1	708	770	12 590	16.35	3.65	
Quito Men's No. 2	345	513	3 764	10.91	9.09	
Quito Men's No. 3	64	333				
Quito Men's No. 4	16	16	350	21.88		1.88
C.D.P.	92	121*				
Women's Q	384	224	4 294	19.17		0.83
Latacunga	100	93	1 264	13.59		6.41
Ambato	200	213	2 598	12.2	7.8	
Riobamba	108	176	2 940	16.7	3.3	
Alausi	25	13	524	40.31		20.31
Guaranda	70	49	1 690	34.49		14.49
Cañar	40	30	685	22.83		2.83
Azogues	90	34	1 464	43.06		23.06
Cuenca Men's	186	195	2 519	12.92	7.08	
Cuenca Women's	50	34				
Bahia de Carquez	126		118			
Jipijapa	52	84	487	5.08	14.2	
Macas	96	64	1 652	25.81		5.81
Portoviejo	158	183	2 432	13.29	6.71	
El Rodeo	600	148	12 296	83.08	1	63.08
Quevedo	159	251	1 846.5	7.35	12.65	
Vinces	34	44	706.3	16.05	3.95	
Babahoyo	60	116	820	7.07	12.93	
Machala	232	209	1 840.2	8.8	11.2	
Zaruma	25	10	483	48.3		28.3
Guayaquil Men's	2 000	2 701	41 201	15.25	4.75	
Guayaquil Women's	85	156	4 236	27.15	7.15	
Tena	30	104			8	
Esmeraldas Men's	180	275	3 826	13.91	6.09	
Esmeraldas Women's	96	14	1 859	132.5		118.59
Loja	200	254	4 975	19.59		
<b>Total</b>	<b>6 831</b>	<b>7 859</b>	<b>14.83</b>	<b>5.17</b>		

**DEPARTMENT OF SOCIAL REHABILITATION**

**PRISON POPULATION: RELEASED 2001**

	(2x1) Act	(2x1) Act and amnesty	Total
Tulcan	41	98	139
Ibarra	31	134	165
Quito Men's No. 1	58	189	247
Quito Men's No. 2	41	90	131
Quito Men's No. 3	19	48	67
Quito Men's No. 4	4	3	7
C.D.P.			
Women's Q.	26	79	105
Latacunga	33	25	58
Ambato	40	61	101
Riobamba	24	35	59
Alausi	1	5	6
Guaranda	5	21	26
Cañar	4	24	28
Azogues	4	9	13
Cuenca Men's	52	78	130
Cuenca Women's	2	14	16
Jipijapa	15	13	28
Bahia			
Portoviejo	42	68	110
El Rodeo	10	67	77
Quevedo	47	119	166
Vinces	4	11	15
Babahoyo	16	35	51
Machala	57	74	131
Zaruma	1	3	4
Guayaquil Men's	142	264	406
Guayaquil Women's	7	28	35
Tena	13	71	84
Macas	3	11	14
Esmeraldas Men's	25	85	110
Esmeraldas Women's	1	4	5
Loja	143	134	277
Total	911	1 900	2 811

In comparison with 2000, when 1,611 prisoners were released, releases were up by 57.31 per cent, essentially owing to the amnesty year.

153. As the above tables show, since 1997 the rate of increase in the prison population has declined, owing to the application and use of legal mitigation measures for prisoners. Reforms have been introduced under articles 33 and 34 of the Sentence Code, allowing for a reduction in sentences by up to 50 per cent, known as the two for one system; under transitional provision No. 28, and article 24.8 of the Constitution, norms have been introduced allowing for the early release of prisoners. In July 2001 the new Code of Criminal Procedure enters into force with innovative, flexible and streamlined provisions for the investigation of offences. Thus, a further concern of the Committee regarding prison overcrowding is being addressed with these changes and reforms.

154. Nevertheless the State acknowledges that inappropriate, degrading treatment of detainees persists.

155. Accordingly, another of the major challenges facing the State is improvement of the treatment of detainees in penitentiaries.

156. With a view to improving this situation, the National Human Rights Plan, as a State policy, provides for the establishment of appropriate investigation and punishment mechanisms in the penitentiary system, based on the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials, United Nations international instruments accepted by Ecuador.<sup>12</sup>

157. With regard to prisoners the National Plan also embodies a strategic approach of ensuring that detentions are constitutional and legal, and of establishing mechanisms for the immediate release of persons wrongly incarcerated in violation of their fundamental rights.<sup>13</sup>

158. In the context of the Andean Community of Nations, the Andean Charter for the Promotion and Protection of Human Rights provides in its article 57 that member States should address the following main themes, with a view to safeguarding the human rights of persons who are deprived of their liberty: implementation of programmes designed to significantly improve living conditions in detention, penitential centres and prisons in each member State, so that they conform to United Nations principles and regulations applicable to persons subject to any form of imprisonment or detention; educating and training prison personnel, and investigating, trying and punishing those who commit violations of the human rights of detainees; programmes for rehabilitation and social reinsertion, attached to prisons, and consideration of the possibility of alternative penalties such as community work and community service.

159. In accordance with article 16 of the Convention, it should be noted that January 2003 saw the promulgation of the Children's and Youth Code, replacing the earlier 1992 Minors Code. The Code, due to enter into force in July 2003, contains provisions on the protection of the rights of young offenders (12-18) in detention, set forth in articles 305, 306, 312, 321, 322, 326 and 330.

160. These provisions refer to the non-imputability of young persons and, accordingly, to the fact that they may not be tried by ordinary criminal courts and that criminal penalties may not apply to them. In accordance with the provisions of the Code, socio-educational measures are applied to young persons who commit criminal offences. There are provisions governing due



process for the investigation of serious offences committed by teenage offenders (art. 330). The most serious measure that can be applied is preventive confinement, which may not exceed 90 days, following which the official responsible for the establishment to which the offender has been committed must immediately release the young person without there being any requirement for a court order (art. 331).

## **Article 12**

161. Pursuant to the reform of the Constitution and domestic legislation referred to below, the judiciary and the Public Prosecutor's Office are responsible for investigation and criminal penalties in cases of torture.

### **Judiciary**

162. Article 191.1 of the Constitution states that: "Judicial authority is exercised by the organs of the judiciary. There is jurisdictional unity." Article 192 of the Political Charter states that: "The court system shall constitute a medium for the attainment of justice. It shall ensure the effectiveness of guarantees of due process and compliance with the principles of immediacy, swiftness and effectiveness in the administration of justice. Justice shall not be sacrificed for technical errors." Article 193 provides that: "Procedural legislation shall ensure that court proceedings are simple, uniform, effective and expeditious. Delays in the administration of justice attributable to the judge or magistrate shall be punishable by law."

163. These constitutional provisions guarantee that the judiciary will perform quick and impartial investigations into the commission of offences, including torture.

164. Article 24.11 of the Constitution also provides that: "No one may be tried other than in a competent tribunal or judged by emergency tribunals or ad hoc special commissions." In Ecuador there are no emergency tribunals. Civil, military and police courts are regulated by the corresponding legislation. However, as already stated in connection with article 5, the State is taking steps to bring all these courts under the regular judiciary, in accordance with transitional constitutional provision No. 26, noted earlier.

### **Office of the Public Prosecutor**

165. The Constitution, in title X, "On oversight bodies", chapter III, incorporates the Public Prosecutor's Office as an autonomous and independent agency in accordance with its Organization Act, promulgated on 19 March 1997. The Constitution provides that, as part of its attributions: "The Office of the Public Prosecutor shall prepare the hearing of cases, direct and undertake pre-trial and criminal investigations. Where there are grounds, it shall bring charges against the presumed offenders before the competent courts and tribunals and shall conduct the prosecution in the criminal trial." This provision clearly represents a significant legal advance since the initial investigation of offences is no longer the sole preserve of the police but is the responsibility of the Public Prosecutor's Office, which avoids acts of torture and ill-treatment of detainees.

166. Further, the Constitution delegates authority to the Public Prosecutor's Office, as part of its attributions, to organize a special police body (which, in accordance with the new provisions of the Code of Criminal Procedure, is known as the criminal investigation police) and a forensic science department. Accordingly prosecutors, in cooperation with the technical services of the police, conduct an investigation into facts that may constitute an offence through the gathering of evidence on which to base criminal proceedings; if the existence of a punishable act of omission or commission is not proven, the case will be closed with the intervention of the judge. Thus, on the one hand, the administration of justice will be improved and expedited, and, on the other hand, full respect for human rights be guaranteed, since authority to seek pre-trial detention to allow an individual to be investigated lies solely with the Public Prosecutor's Office, under whose management and oversight the pre-trial and criminal investigation stages are conducted. That is, the Public Prosecutor's Office will ask the judge to order pre-trial detention where the circumstances so warrant.

167. Accordingly, and in response to one of the Committee's observations on the previous report, there is no extrajudicial/legal regime operating in parallel with the court system; rather, there is a single criminal/judicial system, of which the Public Prosecutor's Office and the judiciary form part.

168. In criminal proceedings the Public Prosecutor's Office also ensures protection of the victims, witnesses and other participants; the prosecutor's investigation must cover not only the circumstances attending the charge, but also any that may result in acquittal of the defendant.

169. The Public Prosecutor's Office is also responsible for oversight of the functioning and implementation of the penitentiary system and the social rehabilitation of offenders, so that, through the application of existing legal provisions, it may seek penalties and initiate proceedings against anyone in the system who tortures or occasions cruel or degrading treatment of detainees, defendants and convicted offenders. Article 28 of its Organization Act, relating to the duties and attributions of the Public Prosecutor, provides that he must "conduct, or delegate authority to conduct, at all times, visits to prisons, rehabilitation centres, penitentiaries, pre-trial detention centres, police investigation offices and other public offices with a view to safeguarding individual rights".

170. Issuance of the new Code of Criminal Procedure has strengthened the provisions governing the functioning of the Public Prosecutor's Office. As already stated in connection with article 4, the current Code of Criminal Procedure introduces important reforms relating to "respect for human rights". Article 211 provides that members of the criminal investigation police have an obligation to observe legal and regulatory formalities in the investigations they conduct, and an obligation to refrain, subject to engagement of their own liability, from verification methods that violate human rights, as enshrined in the Constitution, international agreements and laws of the Republic.

171. Regarding one issue raised by the Committee against Torture, regarding the degree of separation between the criminal investigation police, the Public Prosecutor's Office and the judiciary, the three organs are autonomous but cooperate among themselves, in accordance with the provisions of the new Code of Criminal Procedure. As already stated, pre-trial investigations are the responsibility of the Public Prosecutor's Office, assisted by the criminal investigation

police. However, the criminal investigation police do not form part, in administrative terms, of the Public Prosecutor's Office, but of the Ministry of the Interior and the Police, to which the force reports, as it does to the National Council of the Judiciary, a judicial body. The Public Prosecutor's Office and the judiciary are completely independent of each other, and their operations are regulated by their respective organization acts. The degree of autonomy of the three bodies allows them to function more transparently, independently and expeditiously.

### **Law enforcement**

172. Article 185 of the Constitution provides that: "Law enforcement agencies shall confine themselves to complying with orders and shall have no decision-making capacity. Senior officials shall be responsible for the orders they give, but compliance with the orders of a superior shall not exempt those carrying out the orders from liability in the event of violation of the rights guaranteed by the Constitution and the law."

173. The criminal investigation police replaced the Crime Investigation Office. As stated previously, with reform of the Code of Criminal Procedure prosecutors with various areas of specialization have been responsible for investigating acts that are related to human rights complaints. Once the criminal investigation police began to function, there was a marked decrease in the number of complaints of human rights violations, including torture and ill-treatment, during police investigations.

174. Within the criminal investigation police, the National Police Inspectorate is responsible for investigating complaints against police officers who have violated human rights, to which end, depending on the circumstances and level, they will be placed under the jurisdiction of competent police judges when the acts were committed on active duty and under the jurisdiction of civilian judges when the acts were committed off duty, until transitional constitutional provision No. 26 is implemented.

175. In this connection, and in response to the concern expressed by the Committee regarding the existence of administrative courts, noted elsewhere in this report in connection with other articles, the National Human Rights Plan provides that: "The Ecuadorian State will require the implementation of the constitutional provisions relating to ordinary offences committed by law enforcement officers, the trial of whom must be conducted by the ordinary judiciary."<sup>14</sup> As already noted in connection with article 5, the State trusts that the gradual incorporation of administrative courts into the judiciary will take place as early as possible. Financial and budgetary difficulties are impeding attainment of this objective for the time being.

### **Human rights monitoring institutions**

176. The Constitution and domestic legislation have established the following bodies for ensuring respect for human rights:

Constitutional Court. The Constitutional Court Organization Act provides, in its article 1, that: "Constitutional oversight is intended to ensure the effectiveness of constitutional norms, and in particular of individual rights and guarantees, which are fully applicable and enforceable before any judge, tribunal or public authority."

177. Article 12 of the Act includes amongst the attributions and duties of the Constitutional Court the role of hearing and ruling on applications on constitutionality, administrative actions by any public authority, and decisions denying the remedies of habeas corpus, habeas data and *amparo*.

178. National Congress. The Commission on Human Rights has the authority to convene hearings with representation of both the State and victims. It conducts in situ inspections and follows complaints until the end of the proceedings.

179. Office of the Ombudsman. Article 96.1 of the Constitution provides that: “There will be an ombudsman, with national jurisdiction, to initiate or sponsor habeas corpus and *amparo* actions for those so requiring; to defend and promote the observance of the fundamental rights guaranteed by this Constitution; to monitor the quality of public services and to exercise the other functions assigned by law.”

180. Article 8 (i) of the Office of the Ombudsman Organization Act states that his functions include the conduct of periodic visits to social rehabilitation centres, investigation units and police and military installations to verify respect for human rights; paragraph (k) deals with public pronouncements on cases submitted to his office with views that will constitute precedent for the defence of human rights; paragraph (l) refers to the authority to publicly censure those with material or intellectual liability for acts or behaviour that contravene human rights.

181. In accordance with the provisions of article 16 of the Convention, relating to ill-treatment and cruel, inhuman or degrading treatment, legal provisions exist regulating investigations and punishments with respect to such treatment.

182. The Domestic Violence and Violence against Women Act, in force since December 1995, in its chapter IV, “Judgement of offences”, article 23, provides that: “The judgement of acts of physical and sexual violence constituting offences and committed in a domestic context shall be conducted by criminal courts and tribunals, in accordance with the provisions of the Code of Criminal Procedure.”

183. The Children’s and Youth Code contains the following provisions:

“Article 73. Duty to protect in case of ill-treatment. It is the duty of every individual to intervene immediately to protect a child or young person in flagrant cases of ill-treatment, sexual abuse, trafficking and sexual exploitation and other violations of their rights, and to seek the immediate intervention of the administrative, community or judicial authority”;

“Article 79. Protection measures for cases provided for in this title. In the cases provided for in this title and without prejudice to general measures of protection provided for in this Code and other legislation, the competent administrative and judicial authority shall order one or more of the following measures:

1. A search of the place sheltering the child or young person who is a victim of the illicit practice for their immediate removal. This measure may only be decreed by the juvenile judge, who may make such a provision immediately and without further formality;
2. Placement in a family or an institution;
3. Placement of the child or young person and their family in a protection and care programme;
4. Granting of protection orders in favour of the child or young person against the aggressor;
5. Cautioning the aggressor;
6. Placement of the aggressor in a special care programme;
7. Order instructing the aggressor to leave the dwelling if cohabitation with the victim implies a risk to the physical, psychological or sexual security of the victim, and reintegration of the victim, where appropriate;
8. Banning the aggressor from approaching or maintaining any contact with the victim;
9. Banning the aggressor from making any direct or indirect threats against the victim or family members;
10. Suspension of the aggressor from occupational duties or functions;
11. Suspension of the functioning of the institution or establishment where the institutional ill-treatment took place for the duration of the conditions justifying such a measure;
12. Participation by the aggressor or staff of the institution in which institutional ill-treatment occurred in workshops, courses or any other training; and
13. Follow-up by special social welfare teams to monitor rectification of conduct constituting ill-treatment.

In the event of emergencies with serious indications of aggression or threats against the physical, psychological or sexual integrity of the child or young person or in cases of flagrante delicto authorized care institutions may provisionally take the measures indicated in paragraphs 2 to 9, 12 and 13, and bring the situation to the attention of the competent authorities within a maximum period of 72 hours so that the authority may take final measures.”

### Article 13

184. The Constitution establishes as a general principle that: “Every individual has the right to submit complaints or petitions to the authorities and to receive a response and an appropriate answer in an appropriate time frame.”<sup>15</sup>

185. With regard to torture, the final paragraph of article 23.2 provides that: “Genocide, torture, enforced disappearance, abduction and homicide for political reasons or reasons of belief are imprescriptible with regard to both proceedings and penalties. Such offences may not be the subject of a pardon or amnesty.”

186. This constitutional norm guarantees that victims of torture may submit an action or complaint at any time, since the offence may be investigated and punished at any time, since the action and penalty are imprescriptible.

187. Article 24.17 of the Constitution also provides that: “All individuals have the right of access to judicial bodies and to obtain from them effective, impartial and expeditious protection of their rights and interests, without in any circumstances remaining without a defence. Failure to comply with judicial decisions shall be punished by law.”

188. Chapter 6 of the Constitution indicates the constitutional and judicial remedies that may be used by victims of torture to guarantee their rights, such as habeas corpus (art. 93), habeas data (art. 94) and *amparo* (art. 95).

189. Among these guarantees the remedy of *amparo* is of special importance with regard to torture; it allows individuals to bring proceedings, dealt with on a preferential, summary basis, before judicial bodies for the adoption of urgent measures to desist from, prevent the commission of or immediately rectify the consequences of an unlawful act of commission or omission on the part of a public authority that violates or may violate any of the rights enshrined in the Constitution or in a treaty or international agreement in force, and that is likely to cause immediate and serious harm.<sup>16</sup> Accordingly this remedy is directly applicable in cases of torture and other violations of constitutional rights. The remaining remedies, such as habeas corpus or the Ombudsman, may help indirectly in stopping or avoiding torture.

190. Similarly, closely linked to the right to personal freedom guaranteed under domestic legislation, and in response to an observation by the Committee against Torture made in connection with the submission of previous reports, it should be noted that habeas corpus and *amparo* have been strengthened in the new Constitution, article 93 of which reads:

“Article 93. Any person who considers that he has been unlawfully deprived of his liberty may have recourse to habeas corpus. He may exercise this right personally or by proxy, without need for written authorization, vis-à-vis the mayor by whose jurisdiction he is covered or the mayor’s deputy. The mayor, within 24 hours of receipt of the application, shall order the applicant to be brought before him immediately and demand to see the order depriving him of his liberty. He shall be obeyed without comment or excuse by the officials in charge of the rehabilitation centre or place of detention.

The mayor shall take a decision within the following 24 hours. He shall order the immediate release of the applicant if he is not brought before him or the order is not presented, if the order does not comply with legal requirements, if there have been procedural irregularities, or if the application has been substantiated.

Should the mayor not act on the appeal, he shall incur civil and criminal liability in accordance with the law.

Any official or employee who fails to obey the order or decision shall immediately be dismissed from his post without further formality by the mayor, who shall notify the fact to the Office of the State Controller-General and the authority responsible for appointing his replacement.

Once the dismissed official has released the detainee, he may appeal to the competent bodies of the judiciary within eight days of being notified of his dismissal.”

191. While applications for habeas corpus must be made before the mayor in a specific jurisdiction, that is before an administrative authority, if the appeal is denied the decision may be reviewed, as stipulated in article 276.3 of the Constitution, by the Constitutional Court, the supreme constitutional oversight body; thus:

“Article 276. The Constitutional Court shall be competent:

1. To hear and judge applications on constitutionality, substance and form submitted in connection with organization and ordinary acts, decree laws, decrees, ordinances, statutes, regulations and decisions by State institutions, and to suspend in full or in part their effect.
2. To hear and judge the constitutionality of administrative acts by any public authority. A declaration of unconstitutionality implies revocation of the act, without prejudice to adoption by the administrative body of the requisite measures to maintain respect for constitutional norms. To hear decisions denying habeas corpus, habeas data and *amparo*, and appeals available in connection with applications for *amparo*.”

192. The Constitutional Court, while not part of the judiciary, comprises officials who must fulfil the same requirements as judges of the Supreme Court, the highest judicial organ, which ensures that there will be correct legal analysis in accordance with article 275.2 of the Constitution:

“Article 275. The Constitutional Court, with national jurisdiction, shall have its seat in Quito. It shall comprise nine judges, with alternates. The judges shall discharge their functions for four years, and may be re-elected. The Organization Act shall determine its organization and functioning, and its procedures.

The members of the Constitutional Court must fulfil the same requirements as those demanded of Supreme Court justices, and shall be subject to the same prohibitions. They shall not be held liable for their votes and for the opinions they formulate in the performance of their duties.”

193. These provisions, in addition to guaranteeing the independence of those who consider applications for habeas corpus, ensure that the procedure not only observes formality, but also takes into account aspects of law relating to the basis for the appeal. As a background to this attention is drawn to the relevant part of decision No. 182 of the Court of Constitutional Guarantees, published in *Official Gazette* No. 75 of 25 November 1996:

“[...] habeas corpus is a motion which seeks not only to defend only those subject to formal arbitrary detention, but also represents a constitutional guarantee in defence of personal freedom and security both in cases in which there is formal detention in an unconstitutional or illegal manner, and in cases in which detainees are deprived of their freedom, even though their detention was formally correct, as affirmed by Carlos Sánchez Viamonte, in the OMEBA legal encyclopaedia, when he states that: ‘To this is due the enshrinement of habeas corpus as a protection of freedom, including in response to the acts of judges’, since the object of the application, he states, consists in protection of the freedom concerned, and concludes that ‘it is employed in “protection” of an arbitrarily restricted freedom and not “against” illegal detention’.”

194. The Constitutional Court, the body that succeeded the Court of Constitutional Guarantees, approved the Regulations on Proceedings before the Constitutional Court, published in *Official Gazette* No. 492 of 11 January 2002. Articles 40 and 47 of the Regulations read as follows:

“Article 40. Scope of this section. This section governs proceedings in respect of actions for *amparo*, habeas data, habeas corpus, appeals provided for in the Code of Ethics of the Legislature, the Electoral Act and its regulations, and cases under the legislation pertaining to autonomous bodies.”

“Article 47. Remedy of habeas corpus. A chamber hearing an appeal against a decision denying habeas corpus, shall, where appropriate, ask the mayor to submit the file with information on the application to the case of the constitutional provisions relating to due process, and the provisions of articles 24.8 and 93 of the Constitution, within 48 hours.

If habeas corpus is brought in implementation of articles 28.2 and 208 of the Constitution, the chamber, on being seized of the case, shall request, within 24 hours of receipt of the file, the criminal court or tribunal trying the case to certify, within three days, the offence or offences which the applicant is being tried for, the date from which the defendant has been deprived of freedom, and whether or not there is a final judgement, for the purposes of determining compliance with the constitutional provisions cited.

With or without a reply, the President of the Chamber shall order preparation of the report and draft decision within 24 hours. Completion of these formalities shall take precedence over all others.”

195. Thus the guarantees for the remedy of habeas corpus have been extended and the remedy has been given an appropriate legal framework for effective and efficient implementation.



196. In Ecuador there has been broad recognition of the right to submit complaints and constitutional and judicial appeals for acts of torture. In most cases of torture, referred to in connection with article 2, the victims have had complete freedom to appeal to the competent authorities for recovery of their rights, and the protection of witnesses and complainants from ill-treatment and intimidation has been guaranteed.

197. In accordance with article 16 of the Convention, provisions exist to protect the submission of complaints and actions by victims of other cruel, inhuman or degrading treatment.

198. The Domestic Violence and Violence against Women Act provides:

“Article 9. On those who may take action. Without prejudice to the legal capacity of the injured person, any natural or legal person aware of the facts may initiate the actions provided for in this Act.

Violations under this Act may automatically be investigated, without prejudice to the bringing of specific charges.”

“Article 10. On mandatory notification. The following are required to report punishable acts of domestic violence within a maximum of 48 hours of such acts being brought to their attention, subject to penalties for being an accessory:

1. Officers in the National Police;
2. The Public Prosecutor;
3. Health professionals belonging to institutions and to hospital institutions or to private or public clinics who are aware of cases of assault.”

199. Article 72 of the Children’s and Youth Code reads as follows:

“Mandatory notification. Persons who on account of their profession or occupation are aware of an act that presents characteristics suggesting ill-treatment, abuse or sexual exploitation, trafficking, or loss suffered by a child or young person, must report such knowledge within 24 hours to any of the competent prosecutors or judicial or administrative authorities, including the Ombudsman, as the guarantor of fundamental rights.”

#### **Article 14**

200. The Constitution establishes as a general principle that the “supreme duty of the State” is to respect and ensure respect for human rights, one of the fundamental duties being to ensure their effectiveness. The prohibition of torture, the imprescriptibility of proceedings and penalties for torture, and the prohibition of any pardon or amnesty for torture demonstrate the political will of Ecuador to guarantee respect for the integrity of the person.

201. While Ecuadorian legislation still does not contain any specific mechanisms for compensating the victim of an act of torture or providing means for his rehabilitation, reforms of great importance have been introduced to give effect to international agreements in this area.

202. The Constitution has extended the scope of the right to compensation, this representing a significant advance in comparison with the previous reports submitted by Ecuador.

203. Similarly, the reforms introduced to the Code of Criminal Procedure (*Official Gazette* No. 360 of 13 January 2000), especially under title III, book 6, on “Compensation for the accused, defendants and convicted persons”, introduced innovations in the right to compensation of unjustly convicted persons, as well as the concept of rehabilitation for persons who have suffered from such convictions. The reforms to the Criminal and to the Sentences and Social Rehabilitation Codes have introduced elements strengthening application of the various international instruments.

204. One of the fundamental guarantees is without doubt the right to compensation and reparation, with consequent rehabilitation by the State. This right is provided for in various constitutional norms.

205. Article 20 of the Constitution, in addition to maintaining the obligation of the State, its officials and agents to compensate private individuals for any injury occasioned by acts of its officials and employees in the discharge of their functions, introduces a second paragraph, which reads:

“The above institutions have a right of recourse against and a right to make effective the liability of officials and employees who, through judicially declared wilful misconduct or gross negligence, caused the injury. The criminal liability of such employees and officials shall be established by competent judges.”

206. For its part, article 21 of the Constitution provides that: “When a guilty verdict is changed or revoked as a result of an appeal for review the person sentenced pursuant to such a judgement shall be rehabilitated and compensated by the State in accordance with the law.”

207. Article 22 of the Constitution provides that: “The State shall have civil liability for all cases of judicial error, for improper administration of justice, for acts that may have led to the imprisonment of an innocent party or to his arbitrary detention, and for ostensible violations of the norms established in article 24. The State shall have a right of recourse against the judge or official responsible.” Article 24 refers to the basic guarantees of due process.

208. Further, article 120 of the Constitution, on “Liability of members of the public sector”, states that: “No dignitary, authority, official or public servant shall be exempt from liability for acts performed in the exercise of his duties, or for acts of omission. The holding of public rank and discharge of public functions constitute service to the community, and demand capacity, honesty and efficiency.”

209. From the constitutional provisions cited it is apparent that the State has administrative, civil and even criminal liability, depending on the offences committed, which will be determined by the competent courts.

210. With regard to compensation, the Civil Code provides that compensation for injury includes actual harm and loss of earnings arising from a failure to discharge an obligation, or

from imperfect discharge of an obligation, or from having delayed discharge of the obligation. According to this legal precept, compensation is owed from the moment of the contravention, if the obligation is not to perform an act. In the event of wilful misconduct, liability includes all the injury caused as an immediate or direct consequence of failure to discharge the obligation or delay in performing the obligation. Civil obligations shall be extinguished in whole or in part in one of the ways provided for in this legislation, such as by agreement of the parties, by settlement or payment of cash, by compensation, by agreement, and by prescription, among other means. The relevant section of article 29 of the Civil Code provides that gross negligence is equivalent to wilful misconduct, and that this consists in positive intent to occasion injury to the person or property of another.

211. The guarantees provided for by the Constitution with regard to compensation include the right to habeas corpus, habeas data and constitutional *amparo*, under articles 93, 94 and 95 respectively. In the case of habeas corpus, civil and criminal liability are provided for, including dismissal from office of an official who does not comply with an order or decision. In the case of habeas data, the person concerned may demand compensation, if failure to comply causes him injury; in the case of constitutional *amparo*, the law determines the penalties applicable to authorities and individuals who fail to comply with court decisions. To ensure compliance with constitutional *amparo*, the court may adopt the measures it considers appropriate, including assistance by law enforcement agencies.

212. Similarly, the Code of Civil Procedure guarantees the right to compensation. Section 32 of this legislation refers to an action for compensation for damages and injury against magistrates and judges, and judicial officials and employees. Article 1031 provides that there will be cause for action for damages and injury against a judge or magistrate who, in the exercise of his duties, causes financial injury to the parties or to third parties, through delay or denial of justice, through the breaking of specific laws, through the granting of appeals that have been denied, or through the rejection of appeals that have been granted by law. Article 1032 establishes the procedure to be followed against judges of the Supreme Court, the Tax Court and the Administrative Court.

213. Article 213 of the Code of Criminal Procedure establishes the level of penalties to be applied to members of the criminal investigation police for failure to perform their duties, without prejudice to the relevant disciplinary sanctions. Article 31 sets out the rules to be followed in establishing jurisdiction in proceedings relating to compensation for damages and injury occasioned by the violation. The rights of the injured party, under article 69.7, include the right to seek civil compensation once a final judgement has been enforced.

214. The second periodic report submitted by Ecuador (CAT/C/20/Add.1, of 4 June 1993, paragraph 19) provided information on the proposed reform with regard to compensation for those unfairly convicted which it was intended to make to the Code of Criminal Procedure. On 13 January 2000, as part of the reforms to this legislation, under title III, "Compensation for the accused, defendants and convicted persons", of book 6, articles 416 to 421, the right of the unjustly convicted to compensation was established where the Supreme Court, acting on an application for review, amends or revokes a sentence.

215. Such compensation shall be in proportion to the length of imprisonment or to the number of days of deprivation of freedom when the defendant is acquitted or there is a stay of sentence; compensation may be sought within a period of three years from the date on which the decision accepting the application for review is handed down. An administrative appeal must be made in the form provided for by the Office of the Public Prosecutor Organization Act. Further, it is established that the State has an obligation to provide an unjustly convicted person with employment commensurate with his background, training and needs. In this context article 21 of the Constitution, "Rehabilitation by the State", provides that when a final sentence is amended or revoked pursuant to an application for review the person to whom the penalty was applied is to be rehabilitated and compensated by the State.

216. The reforms to the Criminal Code, while they do not establish a specific system of compensation and/or reparation for victims in cases of torture, provide, in chapter III, "On offences against individual freedom", and in chapter VII, "On offences against prisoners or detainees", for such penalties as imprisonment, fines and loss of civic rights for public employees, trustees and government or law enforcement officers who, unlawfully and arbitrarily, arrest or cause to be arrested, detain or cause to be detained, one or more persons in places other than those provided for by law. Article 187 was amended by Act No. 47, published in *Official Gazette* No. 422 of 28 September 2001; it provides that: "When the person arrested or detained has suffered physical torture, the guilty party shall be punished with short-term imprisonment of three to six years. The term of imprisonment shall be from six to nine years if the torture has left any of the permanent injuries detailed in the chapter on injuries. If the torture has caused death, the guilty party shall be punished by special long-term imprisonment of 16 to 25 years."

217. National legislation contains no specific provision that compensation and/or reparation should be equal with regard to nationals and aliens; nevertheless this right may be inferred from the constitutional provisions cited and from the provisions relating to civil and criminal procedure.

218. The Constitution establishes equality of rights between Ecuadorians and aliens, within the limitations established by law, which basically refer to the right to vote and to be elected and the legislation on inheritance. Similarly, all forms of discrimination and segregation are excluded, and in fact article 29 accords aliens the right of asylum when they are persecuted for political offences, in accordance with the law and international agreements. Accordingly, there is no discrimination on the basis of birth or any other kind of difference.

219. Article 2 of the Aliens Act, chapter 1, "Fundamental concepts", provides that aliens who have been admitted to the country have the same rights and obligations as Ecuadorians, with the exceptions provided for in the domestic legislation of the State.

220. With regard to programmes for the rehabilitation of victims of torture, chapter IV of the Constitution, on the penitentiary regime, provides in article 208 that the penal system and imprisonment have the aim of re-educating the convicted offender and providing training for work, so as to secure his rehabilitation and proper social reintegration. The Sentences and Social Rehabilitation Code, in article 1 (b), provides that its provisions apply to the treatment and full rehabilitation of prisoners, and to their post-prison monitoring. Accordingly, the aim of the system is the reintegration of the individual into society.

221. In this context article 21 of the Constitution, “Rehabilitation by the State”, as noted in previous paragraphs, provides that the convicted person will be rehabilitated and compensated by the State. The Code of Criminal Procedure establishes that it is a State obligation to provide an unfairly convicted person with work commensurate with his experience, training and needs. Detention centres have physical resources and appropriate installations to meet the physical and psychological health needs of prisoners. Suspects and defendants in criminal proceedings who are deprived of their freedom are placed in pre-trial detention centres. Only those found guilty and sentenced to imprisonment under a final conviction are placed in social rehabilitation centres.

222. As noted in this report in connection with article 2, the State has provided compensation for victims of torture in the cases referred to through appropriate monetary and non-monetary compensation.

223. In accordance with article 16 of the Convention, attention is drawn to domestic norms on reparations for victims of other cruel, inhuman or degrading treatment.

224. The Domestic Violence and Violence against Women Act provides as follows in its article 22, “Penalties”:

“The judge, in reaching a decision in the case, should liability be established, shall punish the aggressor by ordering payment of compensation for damage and injury equivalent to 1 to 15 days’ minimum wage, depending on the gravity of the acts, which shall constitute a ground for divorce.

Where violence occasions the loss or destruction of goods, the aggressor shall be obliged to restore them in number and in kind. This decision shall be enforceable at law.

Should the convicted party lack sufficient financial means, the monetary penalty shall be replaced by work for the support networks maintained by the Ministry of Social Welfare, for a minimum of one to two months, on a schedule that does not affect the convicted party’s remunerated employment.”

### **Article 15**

225. Every State party must ensure that any statement that has been made as a result of torture is not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

226. Chapter 2, book III, of the Constitution, on “Civil rights”, establishes 17 fundamental guarantees to be observed to ensure due process.

227. Further to the relevant part of the initial report submitted by Ecuador (CAT/C/7/Add.13), the Constitution includes major reforms to promote proper and efficient administration of justice.

228. On the basis of the fact that evidence obtained and acted upon in violation of the Constitution or law has no validity whatsoever (art. 24.14), the Constitution provides that

voluntary statements by victims of an offence are admissible (art. 24.9 (2)). Thus the Constitution reflects the essence of the safeguard enshrined in article 15 of the Convention against Torture, which provides for the possibility of a statement against the person accused of torture.

229. The constitutional guarantees available provide that no one may be deprived of the right of defence at any stage of the proceedings, that no one may be held incommunicado, and that no one may be held for more than 24 hours. Similarly, time limits are established for pre-trial detention and a detainee may, without any exception, regain his freedom once a decision of stay of sentence or acquittal has been handed down.

230. The evidentiary effect of any court proceedings, even if conducted only for the purposes of questioning, is dependent upon the presence of a defence counsel, whether private or State-appointed. Not even the Public Prosecutor can deviate from this formal procedure. It should also be stressed that article 24.10 of the Constitution guarantees the protection of vulnerable groups in Ecuadorian society. To this end the State will appoint public defenders for indigenous communities, workers, women and abandoned minors or child victims of violence, and any other persons without financial means.

231. The Code of Criminal Procedure had introduced various reforms with regard to the inadmissibility of evidence, particularly during 2000 and 2001, relating to strict observance of the constitutional guarantees established for individuals, defendants and victims. Only duly processed evidence, that is evidence sought, submitted and considered in accordance with the law, is valid in court.

232. Title I, "Evidence and its assessment", of the Code, establishes as a fundamental principle that all pre-trial and trial proceedings that violate constitutional guarantees are devoid of evidentiary effect, and the right of every individual not to incriminate himself is recognized, although there may be a request for testimony in the criminal court at the trial stage.

233. The Code emphasizes the strict respect for human rights to be observed by members of the criminal investigation police as an auxiliary body of the Public Prosecutor's Office in all their enquiries, as well as the use of preventive measures as provided for in book 3 of this Code. Among guarantees for the defendant, article 220 of the Code of Criminal Procedure provides that in no circumstance may the defendant be forced, through physical or psychological coercion, to admit to guilt in respect of the violation. Accordingly it is prohibited, before and during the trial, to employ violence, drugs or any methods or means that vitiate the free and voluntary making of a statement by the defendant.

#### **Article 16**

234. Slavery, servitude and forced labour were eradicated from the country in the nineteenth century and their prohibition has been recognized in different constitutions. Ecuador abolished the death penalty in the first years of the Republic.

235. The current Constitution prohibits all procedures that are inhuman or degrading or that involve physical, psychological, or sexual violence or psychological coercion. The State will adopt the necessary measures to prevent, eliminate and punish, in particular, violence against children, young persons, women and the elderly.<sup>17</sup>

236. In this connection the State is transmitting information on violence against women and domestic violence and the ill-treatment of children, and the measures being taken to eradicate such practices. While such acts, in most cases, are not committed by public officials or persons acting in an official capacity, as expressly provided for in article 16 of the Convention, on some occasions they may be committed by public officials or public or private institutions, or with the acquiescence of such officials or institutions, for reasons of gender-based discrimination or cultural practices, for example, ill-treatment of children and young persons in educational institutions.

### **Violence against women**

237. On 11 December 1995 the Domestic Violence and Violence against Women Act was published in *Official Gazette* No. 839; the Act criminalizes and punishes physical, psychological and sexual violence against women and the family, and provides for protective measures for victims of domestic violence.

238. The Act defines “domestic violence” as any act of commission or omission consisting in physical, psychological or sexual ill-treatment performed by a member of a family against a woman or other member of the nuclear family. The act thus covers violence against other vulnerable groups, such as children, young persons and the elderly.

239. The Act also categorizes types of violence as physical, psychological or sexual (art. 4).

240. The Domestic Violence and Violence against Women Act has major provisions. Among other things, it provides that the international instruments on the prevention and punishment of violence against women ratified by Ecuador have the force of the law (art. 6). Its basic principles are that measures under it should be free, readily available, expeditious and confidential (art. 7). Jurisdiction lies with family judges, Commissioners for Women and the Family, mayors, national police commissioners and deputies, and criminal courts and tribunals (art. 8). Under this Act Offices of Commissioners for Women specialized in domestic violence were established.

241. Pursuant to this provision, subject to penalties for being an accessory, and within a maximum period of 24 hours, officers in the National Police, the Public Prosecutor and health professionals belonging to hospital institutions or private or public clinics who become aware of cases of assault must report such cases. Further, the police are obliged to provide assistance, and to protect and convey the woman away from the assailant as a preventive measure.

242. The protection measures provided for in this Act represent one of the most significant advances for the protection of victims of domestic violence (arts. 13-17). These measures must be applied immediately, and, inter alia, provide for removal of the assailant from the house, reintegration of the victim in the home, and a ban on the assailant approaching the workplace of the victim.

243. The Act provides for entry to the home, where appropriate, for the application of protection measures in the following cases: when the aggressor has intimidated victims or family members and they or the aggressor must be removed from the household. The same applies if the aggressor is armed or under the effects of alcohol, narcotic substances or psychotropic drugs, or if the aggressor is attacking the woman, or endangering the physical, psychological or sexual integrity of other members of the family.

244. Further, the Domestic Violence and Violence against Women Act does not recognize any immunity against prosecution, so that no one is exempt from punishment.

245. In 1995 the Office for the Defence of Women's Rights (ODMU) was established in Quito under the National Police. This institution can draw on a unit trained in gender-based violence and human rights; its role is to implement decisions of the Commissioners for Women and the Family.

246. The second title of the Domestic Violence and Violence against Women Act empowers the Department for Women (today the National Council for Women (CONAMU)) to formulate policies, coordinate activities and draft plans and programmes to prevent and eradicate violence against women and the family. In addition, since 1995, a training programme has been conducted for judges and prosecutors. Training, follow-up and assessment programmes for the Offices of Commissioners for the Family, training programmes for local judicial officials, and campaigns to promote awareness of women's rights have also been conducted. So as to attain equity in application of the law and avoid impunity with respect to violence against women a project is being implemented to incorporate gender mainstreaming in the study programmes of legal professionals at 11 universities throughout the country. CONAMU has set up and is operating a data-collection system on reports of domestic violence at each of the Offices of Commissioners for Women and the Family.

247. Under Act No. 103 the National Council for Women has a mandate to establish temporary shelters, refugees and rehabilitation centres for members of affected families. In addition there is a commitment to programme, organize and carry out educational activities for fathers and mothers of families with a view to eradicating violence. To date two shelters have been established in Quito, a welcome house for ill-treated women, run by the National Institute for the Child and Family (INNFA), and the refuge run by the Support Centre for Women (CEPAM). CONAMU supports the functioning of a refuge for ill-treated women in the city of Tena, Napo province.

248. Women's organizations specializing in gender-based violence can position themselves to act as technical counterparts for the Offices of Commissioners for Women and the Family, in accordance with the operating model developed by these offices. They can also submit proposals to CONAMU for the establishment of full legal support offices and refugees offering medical and legal support.

249. Civil society, principally through women's organizations, has designed and implemented campaigns to raise awareness of women's rights, provided training and oversight with regard to implementation of the law, offered professional care in four legal support offices, and secured additional resources for the functioning of the Offices of the Commissioners.



250. Campaigns to raise awareness of women's rights focus on certain cultural practices relating to the fact that domestic violence is still considered, a private matter in many cases.

### **Ill-treatment of children and young persons**

251. As already noted the Children's and Youth Code was approved by the State in November 2002 and published in *Official Gazette* No. 373 of 3 January 2003. Its provisions were to enter into force in July 2003. Article 50 of the Code prohibits torture and other cruel, inhuman or degrading treatment of children and young persons.

252. The provisions prohibiting ill-treatment in educational institutions are:

“Article 40. Disciplinary measures. Teaching methods and discipline in educational institutions shall respect the rights and guarantees of children and young persons and shall exclude all forms of abuse, ill-treatment and disrespect, and, accordingly, any form of cruel, inhuman or degrading punishment.

Article 41. Prohibited punishments. Educational institutions are:

1. Prohibited from using corporal punishment;
2. Prohibited from using psychological punishments that offend the dignity of children and young persons;
3. Collective punishments are prohibited;
4. Also prohibited are measures that involve expulsion or discrimination owing to a personal condition of the student, their parents, legal representatives or those responsible for their care. This prohibition includes discriminatory measures on the grounds of teenage pregnancy or maternity. No child or young person may be denied registration or expelled owing to the status of their parents.

Any form of sexual assault in educational establishments must be brought to the attention of the competent prosecutor, for appropriate legal action, without prejudice to any administrative investigations and sanctions by the education services.

253. Chapter IV of the Code contains legal provisions regulating the ill-treatment of children and young persons in both the family (private) and public spheres.

“Article 67. Concept of ill-treatment. Ill-treatment means any conduct, any act of omission or commission, that causes or may cause harm to the integrity or physical, psychological or sexual health of a child or young person, by any person, including their parents, other relatives, educators and persons responsible for their care, whatever means used, whatever the consequences and whatever time is necessary for the victim to recover. This includes negligent treatment or serious or repeated neglect in the discharge of obligations towards children and young persons with respect to the provision of snacks, food, medical care, education and day-to-day care, or their employment in begging.”

254. Psychological ill-treatment is that which occasions emotional disturbance, psychological change or reduced self-esteem in the child or young person assaulted. This includes threats to harm their person or goods or those of the parents, other relatives or persons responsible for their care.

255. Ill-treatment is institutional when it is committed by an employee of a public or private institution as the result of the implementation of regulations, or of administrative or pedagogical practices expressly or tacitly accepted by the institution, and when the authorities are aware of the situation and have not taken steps to prevent, stop, rectify or punish the violations immediately.

“Article 68. Sexual abuse. Without prejudice to the provisions of the Criminal Code in this respect, for the purposes of this Code sexual abuse is any physical contact or sexual suggestion to which a child or young person is subjected, even with their apparent consent, involving seduction, blackmail, intimidation, deceit, threats or any other means.

Any form of sexual harassment or abuse shall be brought to the attention of the competent prosecutor for appropriate legal action, without prejudice to any appropriate administrative investigations and punishments.”

“Article 69. Sexual exploitation. Sexual exploitation is child prostitution and pornography. Child prostitution is the use of a child or young person in sexual activities in exchange for remuneration or any other reward. Child pornography is any representation in any medium of a child or young person in explicit sexual activities, whether real or simulated, or of their genital organs, with the aim of promoting, suggesting or evoking sexual activity.”

“Article 70. Trafficking in children. Trafficking in children and young persons means their removal, transfer or retention within or outside the country by any means with the purpose of using them in prostitution, sexual or labour exploitation, pornography, drug trafficking, trafficking in organs, servitude, illegal adoption or other unlawful activities.”

“Article 75. Prevention of institutional ill-treatment. The State shall plan and implement administrative, legislative, pedagogical, protection, attention, care and other measures as necessary in public and private institutions with the aim of eradicating all forms of ill-treatment and abuse and improving relations between adults and children and young persons and between children and young persons, especially in the context of their daily lives.”

“Article 76. Cultural ill-treatment. With regard to the practices referred to in this chapter, the claim that they constitute formative experiences or that they are traditional cultural practices shall not be accepted as justification or as mitigation for the purposes of establishing liability.”

## Indicators of child ill-treatment

### *Treatment by teachers*<sup>18</sup>

256. Until 1995 some pedagogical practices in schools and high schools were still based on the threat of violence. A series of interviews with children - "My opinion matters" - brought the problem to light.

257. Nevertheless in recent years there have been significant advances with the "Good treatment" programme - this emphasizes participatory and respectful pedagogical methods which challenge children to show their creativity and promote self-confidence. The household survey for 2000 addressed the treatment of children at school, and sought to quantify "good treatment" by teachers in response to the behaviour of their pupils. The definition adopted opposed "good treatment" to "ill-treatment", that is physical or psychological punishment or lack of attention:

One fifth of children in the country have been exposed to ill-treatment by their teachers when they behaved badly. Children in rural areas were at higher risk of being punished by having recreation withheld or by receiving blows or insults or being the butt of jokes than those in cities (25 per cent and 17 per cent). Similarly, teachers threaten children more frequently with ill-treatment in Amazon and coastal regions than in the sierra (where 22 and 17 per cent of children, respectively, were affected). While the differences are not very marked, it would appear that boys are subjected to ill-treatment by their teachers with greater frequency (21 per cent) than girls (18 per cent);

One out of 10 children stated that their teachers hit them. Twice as many boys in rural areas (14 per cent) as in cities (7 per cent) have received blows from their teachers. Of children of school age, 3 per cent have suffered insults or jokes at the hands of their teachers, and 10 per cent have been punished by having recreation withheld;

In contrast almost half of the children identified good treatment by their teachers. Of the children interviewed, 47 per cent described good treatment by their teachers when they had committed transgressions or failed to behave; that is, their grades were lowered, or teachers talked to their parents or with the children regarding what had taken place. Good treatment by teachers was more common in cities (50 per cent) than in rural areas (41 per cent);

Good treatment is more frequent at school than at home. Teachers, and parents, tend to treat their pupils with respect. The most common response to bad behaviour by their pupils was to speak to the parents (42 per cent of children mentioned this as the response), followed by lower grades (30 per cent) and, lastly, speaking to the child (21 per cent);

In households below the poverty line 22 per cent of children have suffered ill-treatment from their teachers, compared with 16 per cent in homes that were not poor. One third of indigenous children (29 per cent) stated that they had been ill-treated by their teachers.

*Treatment by parents*<sup>19</sup>

258. The innovative survey of children, “My opinion matters”, gave insights into the problem in the 1990s: more than half of the children interviewed stated their parents beat them at least once a week, 6 out of 10 children said that they were reprimanded with insults, jokes or being confined to a room, and more than half of the children who were beaten suffered injuries.

259. Towards the end of the past decade, however, one of the most innovative proposals to address the problem of ill-treatment was implemented in the country: the promotion of the “culture of good treatment”, understood as an improvement in the quality and warmth of relations between children and adults in day-to-day contacts:

Four out of 10 children stated that their parents hit them when they were badly behaved or disobeyed. Parents had confined to a room or bathed in cold water 3 per cent of children; 5 per cent had suffered insults or jokes; and 2 per cent had been expelled from their home or deprived of food. Blows were more frequently used by parents in rural areas than in cities, more in Amazon than in other regions, and more in poor and indigenous homes. Twice as many children in Quito had suffered insults (8 per cent) as in Guayaquil (4 per cent);

The frequency of parental good treatment varied throughout the country. Some 36 per cent of children were well treated by their parents. Figures for measured behaviour and communication by parents when dealing with their children’s naughtiness were better in cities than in rural areas and in coastal regions than in the sierra and the Amazon. In coastal regions, 41 per cent of children reported good treatment, compared with 35 per cent in the Amazon and 31 per cent in the sierra;

More girls than boys were well treated by their parents. Parents behaved differently depending on the sex of their children. Gender-based differences, while not pronounced, are in favour of girls. It appears that a higher percentage of girls (38 per cent) than boys (35 per cent) receive good treatment; correspondingly, a higher percentage of boys (47 per cent) than girls (42 per cent) are ill-treated. Boys and girls suffer equally from lack of attention;

Ill-treatment is more common in low-income households. In households in rural mountain areas and in indigenous households more than half of children reported ill-treatment for bad behaviour or disobedience: 55 per cent and 63 per cent respectively. In indigenous households only one fifth of children reported that they were well treated; in contrast, lack of attention was less frequent than among other groups (encountered by 16 per cent). In general more children in households below the poverty line (49 per cent) than children in households that are not poor (34 per cent) described the behaviour of their parents as violent or punitive.

## **Measures taken to combat ill-treatment of children**

### *A case of inter-institutional cooperation in response to ill-treatment*

260. INNFA, through its citizens action programme for tender care, and the municipal district of Quito through the San José municipal employers association, signed an inter-institutional cooperation agreement for implementation of the project on specialized care in response to ill-treatment of children and young persons, under which two strategically situated centres were opened in the north and south of the city of Quito.

### *Figures for cases dealt with by the system for care of ill-treated children and young persons<sup>20</sup>*

261. In 1997 the eight national INNFA systems for the care of ill-treated children and young persons, located in the cities of Machala, Quevedo, Guayaquil, Esmeraldas, Ambato, Cuenca and Quito, dealt with 3,100 cases of ill-treatment.

262. In 1999 there were 4,044 cases of ill-treatment.

263. In 2000 the INNFA office for emergency care for ill-treated children and young persons dealt with 307 cases.

264. In the first half of 2001 (January-July) in Quito, 227 cases of ill-treatment were dealt with at centres for the care of ill-treated children and young persons (centre for good treatment and tender care).

### *A case of institutional and community response: the ACT-INNFA promotion of good treatment programme<sup>21</sup>*

265. Actors in the communities in which the project is being implemented have the capacity to formulate specific community proposals to improve relations between adults and children in their day-to-day surroundings.

## **Proposal basis**

266. Ownership. This is a process in which social actors, the public interacting in their community, day by day assume ownership of the project, make it their own, strive to improve it and enrich it every day.

Citizenship. The project on local participation for promotion of good treatment, through participation by members of the target community, promotes participation by children and adults in learning to be actors in their day-to-day environment. These are contexts in which citizenship can begin to be exercised.

Prevention. The project on local participation for promotion of good treatment offers a specific avenue for the community, and district organizations, to take responsibility for their children, to protect them, to embrace them and to have the capacity to meet their needs and provide good treatment, as a preventive mechanism against violence, ill-treatment, sexual abuse and abandonment, and in response to the conscious and unconscious demands of children in specific localities.

### **Investments**

267. In 2000 approximately 189,000 dollars was invested for implementation of the project in 23 cities throughout the country.

268. In 2001 the budget for implementation of the project in 23 cities throughout the country was \$375,000.

269. In the current year \$57,000 has been invested in project follow-up and project activities.

### **Alliances and methodological focus**

270. The Street-Educators Training Centre (CECAFEC) is a strategic ally in the specialized training of social educators, who act as facilitators in local participation in promoting good treatment.

271. The local participation project was launched in 1997 with the aim of supporting the promotion of good treatment in communities. It arose out of the work over 10 years of the networks for the specialized care of ill-treated children.

272. The change in focus from prevention of ill-treatment to promotion of good treatment represents an innovation. It is based on enhancement and strengthening of our existing practices of providing affection, tender care and good treatment, and not on focusing on those responsible for ill-treatment, which creates negativism and feelings of guilt.

273. Location. The programme is being implemented in 23 cities throughout the country, in urban areas; the project is aimed at all actors in a community, with a focus on children and young persons.

274. Survey No. 32 by Defence for Children International on violence among children offers data on modalities, frequency, actors and situations resulting in violence among children, reported by children themselves.

### **Notes**

<sup>1</sup> CAT/C/20/Add.1, of 4 June 1993.

<sup>2</sup> The Constitution in force in Ecuador was published in *Official Gazette* No. 1 of 11 August 1998.

<sup>3</sup> Communication No. 57239/GM/DGDHSA, 11 December 2002, signed by the former Minister for Foreign Affairs, Heinz Moeller.

<sup>4</sup> Efraín Torres Chávez, *Breves comentarios al Código Penal Ecuatoriano*, Central University of Ecuador, pp. 259-260.

<sup>5</sup> Efraín Torres Chávez, *ibid.*, p. 209.

- <sup>6</sup> *Source*: Latin American Association for Human Rights, February 2003.
- <sup>7</sup> General Command order No. 99-54-40-CG of 11 November 1999.
- <sup>8</sup> Pursuant to Executive Decree No. 1527, published in *Official Gazette* No. 346 of 24 June 1998.
- <sup>9</sup> Coordinating body for the National Plan, established pursuant to Executive Decree No. 1466, published in *Official Gazette* No. 320 of 17 November 1999.
- <sup>10</sup> *Source*: Statistical Bulletin 2001, Department of Social Rehabilitation, Quito, 2001, p. 53.
- <sup>11</sup> *Source*: “The Penitentiary System in Figures”, Department of Social Rehabilitation Statistical Bulletin, Quito, 2001.
- <sup>12</sup> *National Human Rights Plan, Rights of Detainees, General Outlines*, second edition, Quito, 2000, p. 37.
- <sup>13</sup> *Op. cit.*, p. 36.
- <sup>14</sup> Ecuador National Human Rights Plan, *op. cit.*, p. 39.
- <sup>15</sup> Constitution, art. 23.15.
- <sup>16</sup> Constitution, art. 95.1.
- <sup>17</sup> Constitution, art. 23.2.
- <sup>18</sup> Emedinho, pp. 46-47.
- <sup>19</sup> Emedinho, pp. 57-59.
- <sup>20</sup> *Source*: ACT-INNFA report on ill-treatment.
- <sup>21</sup> ACT-INNFA report on the promotion of good treatment.

-----