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

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Fourth, fifth and sixth periodic reports due in 2001, 2005 and 2009; this report is a response to the list of issues (CAT/C/ECU/Q/4) submitted to the State party in accordance with the optional reporting procedure (A/62/44, paragraphs 23 and 24); it was due for submission in 2009

Ecuador* ** ***

[5 August 2009]

* See CAT/C/39/Add.6 for the third report submitted by the Government of Ecuador and see CAT/C/SR.673 and 675 and CAT/C/ECU/CO/3 for its consideration by the Committee.

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

*** The annexes to this report may be consulted in the archives of the Committee secretariat.

Presentation

The State of Ecuador is pleased to present the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with its combined fourth, fifth and sixth periodic report on compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on the basis of the communication sent by the Committee against Torture to the Ecuadorian State in February 2008 proposing that this information should be prepared on the basis of the list of prior issues (CAT/C/ECU/Q/4); this proposal was officially accepted by Ecuador in April that year.

Ecuador wishes to apprise the Committee of the major advances made by the country as regards policies, actions and measures to eradicate torture and other cruel, inhuman or degrading treatment, particularly since the creation of the Ministry of Justice and Human Rights in 2007 and the steps taken to improve social rehabilitation in Ecuador, the adoption of a new Constitution, in force since October 2008, and the work done by the Truth Commission, created by executive decree in 2007, to investigate human rights violations and acts of torture.

The present report begins with a brief introduction reviewing the recommendations that the Committee produced after considering the third periodic report. This is followed by the responses of Ecuador to the questions the Committee put to the country in 2008.

An annex to this combined report also contains the Rapporteur's questions for the concluding observations of the Committee's review of the third periodic report that Ecuador submitted to it in 2003, which were put to the State in May 2009.

This report was prepared by the Ministry of Justice and Human Rights with input from the Secretariat of the Commission for Public Coordination of Human Rights (Human Rights and Social Affairs Department of the Ministry of Foreign Affairs, Trade and Integration), and incorporates information from a number of the country's institutions, as well as civil society.

As the Committee will see, this report contains the fullest information on the various measures undertaken by the Ecuadorian State in the recent period covered by it.

The Ecuadorian State is grateful to the national and civil society institutions that have contributed to the preparation of this periodic report.

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Institutions participating in the preparation of the combined fourth, fifth and sixth report of Ecuador

Institutions of the Ecuadorian State

National Assembly

Afro-Ecuadorian Peoples Development Council (CODAE)

Truth Commission

National Council for Women (CONAMU)

Constitutional Court

National Court of Justice

National Police

Ombudsman's Service

National Judicial Police Bureau

National Migration Service

National Social Rehabilitation Service

Office of the Public Prosecutor

Ministry of Economic and Social Inclusion

Ministry for the Coordination of Internal and External Security

Ministry of Defence

Ministry of the Interior, Police, Worship and Municipalities

Ministry of Justice and Human Rights

Ministry of Foreign Affairs, Trade and Integration

Ministry of Health

Ministry of the Attorney General

Plan Ecuador

Secretariat for Peoples, Social Movements and Civic Participation

Secretariat of the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE)

National Secretariat for Migrants (SENAMI)

Public Criminal Defence Unit

Civil society institutions

Foundation for the Rehabilitation of Victims of Violence (PRIVA)

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Acronyms used

AIDS	Acquired immunodeficiency syndrome
CODENPE	Council for the Development of the Nationalities and Peoples of Ecuador
CONSEP	National Council on Narcotic and Psychotropic Substances
CT	Constitutional Tribunal
GIR	National Police Intervention and Rescue Group
HIV	Human immunodeficiency virus
ICRC	International Committee of the Red Cross
SCESPN	Subcommission for the Preparation and Follow-up of Draft Legislation
STD	Sexually transmitted disease
UNHCR	United Nations High Commissioner for Refugees

I. Introduction

1. The Ecuadorian State is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention). In accordance with paragraph 1 of article 19 of the Convention, Ecuador is submitting its combined fourth, fifth and sixth periodic report to the Committee against Torture, with data up to 2009, following the questionnaire provided by the Committee in February 2008.

2. The present report by the Ecuadorian State addresses the concerns and recommendations formulated by the Committee in 2005 when considering the third periodic report (see CAT/ECU/CO/3). Among the most important of these are the following:

3. *Adequate provision for the crime of torture in the domestic legislation of the State party* (observations of the Committee on the third periodic report, para. 14). As will be seen later in the information on article 1, the National Constituent Assembly introduced a principle into the country's current Constitution whereby international human rights instruments are accorded constitutional status, thereby obliging the country to make provision in national law for the crimes established by the Convention. This process is now being implemented, as will be described in the relevant section.

4. *Steps to eliminate impunity for those suspected of torturing and ill-treating prisoners; prompt, impartial and thorough investigations; trial and punishment of those committing torture and inhuman treatment; compensation for victims* (ibid., para. 16). As will be seen in the information provided in articles 12 and 14 of the present report, members of the National Police involved in actions of this type have been subjected to disciplinary measures and criminal penalties in the ordinary courts so that they do not go unpunished.

5. *Slowness and delays in the processing of court cases*; *allocation of resources; measures for the future* (ibid., para. 18). The Ecuadorian State has taken all necessary measures to increase the number of judges and provide training for them while improving existing mediation centres and creating new ones, all with a view to ensuring that justice is done promptly, as will be seen from the information provided in articles 12 and 13 below.

6. *Legislative improvements to shorten periods of pretrial detention; removal of the concept of* detención en firme *from the Code of Criminal Procedure* (ibid., para. 19). In 2007, the legal concept of *detención en firme* was declared unconstitutional. The new Code of Criminal Procedure approved on 17 March 2009 and published in *Registro Oficial* No. 555 of 24 March 2009 regulates pretrial detention in accordance with the parameters laid down by the new Constitution, which also establishes penalties for criminal justice officials who delay proceedings, as will be seen in the information relating to the Committee's article 2 below.

7. *Fundamental legal safeguards applicable to persons held by the police, guarantees for their rights. In the case of minors, presence of their legal representatives during questioning* (ibid., para. 21). This concern has already been dealt with by the Ecuadorian State; the current Constitution of the Republic of Ecuador guarantees a number of fundamental safeguards for those taken into police custody, namely the right to be questioned in the presence of their own lawyer or a public defender made available by the State; in addition, they are to have unrestricted opportunities for access to and private consultation with their defence counsel; furthermore, all police officers are obliged to inform those taken into custody of their right to remain silent, to request the assistance of a lawyer or of a public defender if they are unable to appoint their own counsel, and to communicate with a family member or any person of their choice. This information is

expanded upon in article 2. The National Police now provides its members with a card setting out these rights, which they are obliged to read out to anyone taken into custody.

8. *Situation in detention centres; rehabilitation centres; overcrowding; corruption and poor physical conditions prevailing in prisons; hygiene, proper food and appropriate medical care* (ibid., para. 24). The Ecuadorian State has declared a state of emergency for prisons, as a result of which a number of measures have been taken to improve the situation, such as the building of new prisons, improvements to existing ones and the creation of the Public Criminal Defence Unit, information on which is provided in article 11 of the present report.

9. *Existence of military and police courts* (ibid., para. 25). Military and police courts disappear in the new Constitution, being absorbed into the judiciary through the introduction of a specialized tribunal, as discussed in articles 12 and 13. The matter is also regulated by the new Organic Code of the Judiciary, approved on 3 March 2009 and published in *Registro Oficial* No. 544 of 9 March 2009.

10. *Specific regulatory framework covering compensation for acts of torture; design and implementation of programmes of all-round care and support for victims of torture* (ibid., para. 26). The current Constitution introduces the concept of comprehensive redress, providing the basis for the Victim and Witness Protection Programme, which has been created to cater to the needs of victims of human rights violations, among others, by making available medical, psychological, social and other services as described in the information relating to article 14 of the Convention in this document.

11. In addition, the bill for the organic law on jurisdictional guarantees and constitutional oversight, drafted jointly by the Constitutional Court in its transition period and the Subsecretariat for Legislative Development of the Ministry of Justice and Human Rights, establishes a specific procedure for ensuring comprehensive redress for victims of human rights violations of every kind. This will be submitted to the National Assembly for approval.

12. In 2007, furthermore, during the administration of President Rafael Correa, the National Police modernization programme began, focusing on human rights and citizen security; this process started with human rights training for National Police officers provided by experts from the United Nations in the region.

II. Information relating to each article of the Convention

A. Article 1

1. With reference to the previous concluding observations of the Committee against Torture, are all acts of torture referred to in articles 1-4 of the Convention considered offences under domestic criminal law? Please indicate whether the prohibition of such acts is contained in a single provision.

13. Ecuadorian constitutional law underwent a radical change with the National Constituent Assembly of 2008, which laid greater emphasis on guaranteeing and protecting the rights enshrined in the Constitution itself and in international human rights instruments, one of the guiding principles introduced being that of protecting and guaranteeing the

fundamental human rights and freedoms of the country's inhabitants, as established in article 3 (1) of the 2008 Constitution itself:[1]

"*Article 3.* The State has a fundamental duty to:

1. Guarantee without discrimination of any kind the exercise and enjoyment of the rights laid down in the Constitution and in international instruments [...]."

14. In accordance with these criteria, Ecuadorian law clearly and explicitly prohibits acts of torture and other cruel, inhuman or degrading treatment or punishment, as established by article 66 (3), letter c of the Constitution:

"*Article 66.* The following rights shall be recognized and guaranteed:

3. The right to integrity of the person, including:

(c) The prohibition of torture, enforced disappearance and cruel, inhuman or degrading treatment or punishment."

15. Following on from the above, it is important to realize that the current Constitution of Ecuador attaches the very highest importance to the rights established in international human rights instruments, raising them to the category of constitutional rights that prevail over other laws, as established by article 424:

"*Article 424.* The Constitution is the supreme law and takes precedence over any other class of law. The acts and regulations of the public authorities must be consistent with constitutional provisions, failing which they will be without legal effect. The Constitution and international human rights treaties ratified by the State that recognize rights more favourable than those contained in the Constitution shall prevail over any other legal regulation or act of the public authorities."

16. Ecuador is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is published in *Registro Oficial* No. 924 of 28 April 1988 and *Registro Oficial* No. 786 of 21 September 1995. It is also a party to the Rome Statute of the International Criminal Court, published in *Registro Oficial* No. 699 of 7 November 2002; under the articles of the Constitution cited earlier, the rights established in such international instruments acquire constitutional status once they have been fully ratified, which means that provision needs to be made in lower-ranking legislation for all acts of torture covered by these instruments so that they can be duly prosecuted.

17. At the same time, the acts of torture defined in articles 1 to 4 of the Convention are liable to direct and immediate prosecution before State authorities without any other formalities than those required by the Constitution and laws, as established in article 11 (3) of the Constitution:

"*Article 11.* Rights will be exercised in accordance with the following principles:

3. **The rights and guarantees prescribed in the Constitution and in international human rights instruments will be directly and immediately applicable by and before any public servant**, administrative or judicial, ex officio or at the request of the interested party. No conditions or requirements other than those prescribed by law or by the Constitution need be met for constitutional rights and guarantees to be exercised. These rights will be fully enforceable at law. Lack of statute provision will not constitute a justification for violating or disregarding them, for dismissing prosecutions to enforce them or for withholding recognition of them." (Emphasis added).

[1] The current Constitution of the Republic of Ecuador can be found in *Registro Oficial* No. 449 of 20 October 2008.

18. The constitutional provisions cited are to be taken together with the provisions of current substantive criminal law, where torture is characterized in different ways; first, as an aggravating circumstance to be taken into account when sentencing, as follows:

Current Criminal Code:[2]

"*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 perpetrators, as in the following cases:

1. When the act is treacherous, deceitful or underhand or takes advantage of the victim's defenceless state; or it is committed for a price, reward or pledge; or by means of flooding, shipwreck, fire, poison, mining, derailment of trains, prohibited weapons or other methods that endanger other persons besides the victim; or by employing guile, dissimulation or fraud; or with viciousness or cruelty, making use of any form of torture or other means to increase and prolong the victim's pain; or by depriving the victim of the opportunity of defence, either by depriving him or her of the use of reason, or by employing assistants in the commission of the offence; or committing it as a means to committing another; or abusing the perpetrator's position of authority to commit the act; or deliberately entering the victim's home; or after receiving some benefit from the victim.

[...]

First unnumbered article added after article 30 of the Criminal Code. In the case of sex offences and human trafficking, the following will be deemed aggravating circumstances, when not constituting or modifying the offence, and will be applied without prejudice to the general aggravating circumstances identified in the previous article:

[...]

10. If the sex offence has been committed as a form of torture, or for the purposes of intimidation, degradation, humiliation, discrimination, revenge or punishment.

[...]

Article 187. Where the person arrested or detained has suffered physical torture, the perpetrator 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 perpetrator shall be sentenced to 16 to 25 years' special imprisonment.

[...]

Article 205. Anyone who issues or executes an order to torture prisoners or people in custody, 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."

19. Police criminal law also contains some provisions that categorize torture as a crime, and these are transcribed below:

[2] Published in the *Registro Oficial*, supplement No. 147, 22 January 1971.

Current Police Criminal Code:[3]

"*Article 29.* Aggravating circumstances, when not constituting or modifying the offence, are those that increase the maliciousness of the act, or the alarm caused in society or the Institution by the violation, or that establish the dangerousness of the perpetrators, as in the following cases:

1. When the act is treacherous or premeditated or takes advantage of the victim's defenceless state, or is committed with guile, fraud or dissimulation; or for a reward or pledge; or by means of flooding, shipwreck, fire, poison, mining, derailment of trains or other methods that endanger other persons besides the victim; or with viciousness, cruelty or torture, or in a way that prolongs the victim's pain."

20. In the Operating Regulations for Maximum Security Wings at Social Rehabilitation Centres:

"*Article 67.* When punishments are applied, torture or ill-treatment that harms the physical or mental health of the inmate is forbidden. Any breach of this provision will be subject to the penalties provided for in current laws and codes, without prejudice to any criminal and administrative liability of centre staff."

21. It is important to inform the Committee that two bills have been presented in Ecuador to reform the Criminal Code by making statutory provision for the crime of torture.

Table 1
Bills to reform the Criminal Code
Statutory provision for the crime of torture

Name	Reformatoria al Código Penal: Tipificación de la tortura y otros tratos o penas crueles, inhumanos o degradantes
Code	25-412
Sponsor	H. María Augusta Rivas
Commission	De lo Civil y Penal
Date registered	22 July 2004
Date sent to commission	29 July 2004
Published	*Registro Oficial* No. 395 of 9 August 2004
Name	Reformatoria al Código Penal
Code	27-1206
Sponsor	H. Soledad Aguirre de Rengel
Commission	De lo Civil y Penal
Date registered	11 July 2006
Date sent to commission	14 July 2006
Published	*Registro Oficial* No. 327 of 3 August 2006

[3] Published in the *Registro Oficial*, supplement No. 1202, 20 August 1960.

22. Lastly, the project to reform the Criminal Code is a priority within the Annual Operating Programme of the Subsecretariat for Legislative Development of the Ministry of Justice and Human Rights. Work on this began in mid-February this year and is expected to finish in August 2009. Part of this plan is to make statutory provision for all the acts of torture mentioned in articles 1 to 4 of the Convention and all the offences contained in the Rome Statute.

23. In conclusion, the Constitution of Ecuador lays it down as a principle that international human rights instruments are to have the rank of constitutional law and makes them fully enforceable before the appropriate authorities. Accordingly, and in compliance with the recommendations of the Committee against Torture, the Ecuadorian State is committed to making statutory provision for the offences established by the Convention, and is now doing so.

B. Article 2

2. To what extent does the constitutional process provide for strengthening the protection of human rights?

24. The current Constitution of Ecuador lays it down as a fundamental principle that Ecuador is a constitutional State governed by rights and justice, one of whose primordial duties is to guarantee without discrimination of any kind the exercise and enjoyment of the rights laid down in the Constitution and international instruments in force in the country; it also asserts that rights are enforceable and immediately applicable without discrimination, and that they are progressive and may under no circumstances be regressive.

25. Regarding the enforceability of rights, they can be invoked either individually or collectively, on the strict understanding that all rights are indivisible, interdependent, absolute and universal and that none must be given precedence over any other.

26. Rights are enforceable in the general interest and may also be enforced against individuals, a precept that is reflected in the "action for injunction" [*acción de protección*] guarantee to ensure that offences do not go unpunished in the private sphere, as established in article 88 of the current Constitution, which states:

"*Article 88.* The purpose of action for injunction is to provide a direct and effective safeguard for rights recognized in the Constitution, and it may be lodged when constitutional rights have been breached by the actions or omissions of any non-judicial public authority; against public policies when they entail deprival of the exercise or enjoyment of constitutional rights; and when the violation is committed by a private individual, if the violation of the right causes severe prejudice, if he or she is providing State-regulated services or acting on a representation or concession basis, or if the person affected is in a state of subordination, defencelessness or discrimination."

27. With regard to the prohibition of discrimination, the Constitution provides for new areas of protection such as gender identity, criminal background, migration status, HIV carrier status, physical difference, etc.

"*Article 11.* The exercise of rights will be governed by the following principles:

2. All persons are equal and will have the same rights, duties and opportunities.

No-one may be discriminated against on the basis of his or her ethnicity, birthplace, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, criminal background, socio-economic status, migration status, sexual orientation, state of health, HIV carrier status, disability or physical difference, or on the basis of any other distinction, be it personal or collective, temporary or permanent, whose

aim or effect is to diminish or nullify the recognition, enjoyment or exercise of rights. All and any discrimination will be punishable by law. The State will take affirmative action measures to promote substantive equality for those who, notwithstanding their rights, are in a situation of inequality.

The content and scope of each right will be determined on the basis that rights are inalienable, absolute, indivisible, interdependent and equal in status."

28. Strengthened protection for human rights is also reflected in the specific attention given by heading II, chapter III of the Constitution to the rights of persons and groups with priority needs, such as older adults, the young, people in a situation of mobility, pregnant women, children and adolescents, the disabled, people with catastrophic diseases, people deprived of liberty, users and consumers. This approach ensures that rights are dealt with in a comprehensive manner, with each group being treated as its requirements dictate.[4]

29. Another important aspect of the human rights protection provided for by the new Constitution are the constitutional guarantees incorporated into heading III, which covers statutory guarantees, public policies, public services and citizen participation, and jurisdictional guarantees.[5]

30. The new Constitution incorporated a new legal remedy whose object is to safeguard the human rights of the inhabitants of Ecuador against acts and omissions by the authorities of the non-judicial public sector or private individuals. This is a new feature in the country's legal system, and is established by article 88, which stipulates:

"**Second section**
Action for injunction [*acción de protección*]

Article 88. The purpose of action for injunction is to provide a direct and effective safeguard for rights recognized in the Constitution, and it may be lodged when constitutional rights have been breached by the actions or omissions of any non-judicial public authority; against public policies when they entail deprival of the use or enjoyment of constitutional rights; and when the violation is committed by a private individual, if the violation of the right causes severe prejudice, if he or she is providing State-regulated services or acting on a representation or concession basis, or if the person affected is in a state of subordination, defencelessness or discrimination."

31. In addition, the Ecuadorian State has agreed to abide by the finding of the Inter-American Court of Human Rights[6] enjoining Ecuador to bring its domestic law into conformity with the American Convention in respect of action for habeas corpus, with the last National Constituent Assembly establishing that such actions would no longer be heard by the mayor but by a judge, as established by articles 89 and 90:

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[4] See annexes. Constitución de la República del Ecuador (2008), heading II, Derechos, third chap. Derechos de las personas y grupos de atención prioritaria (art. 35); first section: Adultas y adultos mayores (arts. 36 to 38); second section: Jóvenes (art. 39); third section: Movilidad humana (arts. 40 to 42); fourth section: Mujeres embarazadas (art. 43); fifth section: Niñas, niños y adolescentes (arts. 44 to 46); sixth section: Personas con discapacidad (arts. 47 to 49); seventh section: Personas con enfermedades catastróficas (art. 50); eighth section: Personas privadas de libertad (art. 51); ninth section: Personas usuarias y consumidoras (arts. 52 to 55).

[5] See heading III, Garantías constitucionales, Constitution of Ecuador, arts. 84 to 87.

[6] Inter-American Court of Human Rights, case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, 21 November 2007.

"**Third section**
Action for habeas corpus

Article 89. Action for habeas corpus has the object of restoring the liberty of anyone who has been illegally, arbitrarily or illegitimately deprived of it by order of a public authority or any person, and of protecting the life and physical integrity of those deprived of liberty.

As soon as the action is lodged the judge will convene a hearing, to be held within twenty-four hours, where the detention order must be presented with the legal formalities and the legal and factual considerations justifying the measure. The judge will instruct that the person deprived of liberty appear before the court, together with the authority at whose orders the person is being detained, the public defender and whoever ordered or caused it, as the case may be. If necessary, the hearing will be held in the place where the person is being detained.

The judge will issue a ruling within twenty-four hours following the conclusion of the hearing. In cases of illegitimate or arbitrary detention, the judge will order that the person be set at liberty. Rulings to this effect shall be complied with immediately.

In cases where any form of torture or inhuman, cruel or degrading treatment has occurred, the victim will be set at liberty and receive comprehensive and specialist care, and alternatives to detention will be ordered where applicable.

When the custody order was made in a criminal trial, the action will be lodged with the court of justice of the province concerned.

Article 90. When the place of detention is unknown and there is evidence for the involvement of any public official or other agent of the State, or of persons acting with their authorization, support or acquiescence, the judge must summon the most senior official of the National Police and the minister responsible to a hearing. After they have been heard, the necessary measures will be taken to locate the person and those responsible for his or her detention."

32. The right of access to public information was also included in the Constitution as a guarantee of constitutional rank, as set forth in article 91:

"**Fourth section**
Action for access to public information

Article 91. The purpose of actions for access to public information will be to guarantee access to this when it has been explicitly or tacitly withheld, or when the information provided is unreliable or incomplete. Such actions may be initiated even when the grounds given for the refusal are the secret, confidential or otherwise classified nature of the information. The confidential nature of the information must have been declared prior to the action by a competent authority and in accordance with the law."

33. Another of the reformed guarantees in the Constitution is that of "habeas data", which establishes more advantageous conditions for petitioners, such as the right to have data updated, rectified, removed or deleted at no charge and the opportunity to seek redress through the courts when applications for information, among others, are disregarded, as per article 92:

"**Fifth section**
Action for habeas data

Article 92. Everyone will be entitled, whether acting for themselves or as representatives authorized for the purpose, to ascertain the existence of and obtain access to documents, genetic data, personal data banks or files and reports held on them or their property by public or private organizations on any physical or electronic storage medium. They will

also be entitled to ascertain the purpose of these and the uses to which they are put, the origin and destination of personal information and the time for which such data banks or files are to be held.

Those in charge of personal data banks or archives may disclose the stored information with authorization from the owner of the data or the law.

Upon application to those holding the data, their owner may access them free of charge and have them updated, rectified, removed or deleted. In the case of sensitive data, which may only be held with the authorization of their owner or the law, the necessary security measures must be adopted. If the application is disregarded, the owner of the data may seek a court order. The person affected may sue for damages.

34. As a mechanism to protect human rights and guarantee compliance and enforceability, the Ecuadorian State has adopted a specific remedy as established in article 93 of the Constitution:

"**Sixth section**
Action for non-compliance

Article 93. Action for non-compliance [*incumplimiento*] will have the purpose of enforcing application of the statutes making up the system of laws and implementation of rulings or reports by international human rights organizations when the statute or decision whose implementation is sought contains a clear, explicit and enforceable obligation to act or refrain from acting. The petition will be lodged with the Constitutional Court."

35. The National Constituent Assembly also made provision in the Constitution for a remedy against decisions by the public authorities that infringe people's human rights, as established in article 94:

"**Seventh section**
Extraordinary action for injunction

Article 94. Extraordinary action for injunction [*acción extraordinaria de protección*] may be taken against final rulings or edicts that by action or omission violate rights recognized in the Constitution, and will be brought before the Constitutional Court. They may be brought when all ordinary and extraordinary remedies have been exhausted within the statutory period, unless failure to seek these remedies was not attributable to negligence on the part of the person whose constitutional rights have been violated."

36. In conclusion, the Ecuadorian State has made provision in its Constitution for appropriate and effective guarantees to enhance protection for human rights, together with significant improvements reflecting the principle of progressive development of human rights.

3. What measures has the State party taken to shorten the period of pretrial detention, including removal of the concept of *detención en firme* from the Code of Criminal Procedure? Please provide information on any pending measures in this respect.

37. The Ecuadorian State has taken a number of steps to reduce the use of pretrial detention. First, *detención en firme* was declared unconstitutional. Second, oral remand hearings [*audiencias de control de flagrancia*] were established by the resolutions adopted by the former Supreme Court of Justice and published in *Registro Oficial* No. 221 of 28 November 2007, No. 316 of 15 April 2008 and No. 423 of 11 September 2008. The third step was the recent reform of the Code of Criminal Procedure, carried out on 17 March 2009 and published in *Registro Oficial* No. 555 of 24 March 2009. The fourth was the establishment of the Interim Public Criminal Defence Unit.

38. Regarding the first measure, *detención en firme* was declared unconstitutional by a resolution of the then Constitutional Tribunal (now the Constitutional Court), No. 0002-2005-TC, published in *Registro Oficial* No. 382-S of 23 October 2006. As a result of this measure, prison congestion began to ease and the index of overcrowding to decline.

39. Regarding the second measure, the resolution of the former Supreme Court of Justice requiring that oral remand hearings be held has meant that since November 2007, public prosecutors have had to make the case to the criminal magistrate for a custody order in cases where people are arrested in flagrante, this being done at an oral hearing where the public prosecutor must show the need for pretrial detention and the judge must determine whether this is justified.

40. Regarding the third measure, the recent reform of the Code of Criminal Procedure has now established a requirement for hearings to determine the most appropriate precautionary measure for the particular case on hand:

"*Article 159.* To ensure that the defendant and the parties to the case attend the proceedings, and that the injured party is paid compensation for damages, the judge may order one or more precautionary measures of a personal and/or substantive character.

At every stage in the proceedings, only exceptional and restricted use will be made of measures involving loss of liberty, which should be reserved for cases where the use of other measures of a personal character as alternatives to pretrial detention are insufficient to prevent the defendant from evading justice.

Precautionary measures not provided for in this Code are prohibited."

41. The Code also provides for the possibility of the public prosecutor applying for and the judge granting alternatives to pretrial detention such as:

"*Article 160.* Precautionary measures of a personal character are:

(1) The obligation to avoid specified places;

(2) The obligation not to approach specified persons;

(3) Surveillance by a specified authority or institution, which will report periodically to the criminal trial judge [*juez de garantías penales*] or whoever the latter may designate;

(4) Prohibition on travel outside the country;

(5) Suspension of those charged with assault from their duties or functions when these entail any influence over victims or witnesses;

(6) Ordering defendants to leave their homes when their continued presence there represents a risk to the physical or psychological safety of victims or witnesses living with them;

(7) Injunctions to prevent defendants themselves, or third parties acting on their behalf, from persecuting or intimidating the victim, witnesses or any member of their families;

(8) Restoring the victim or witness to his or her home while at the same time ordering the defendant to leave it, in the event that the former shares a home with the latter and requires physical and/or psychological protection;

(9) Removing underage victims from the defendant's custody, following the provisions of article 107, rule 6 of the Civil Code and the provisions of the Children's and Youth Code in cases where it is necessary to appoint a suitable person;

(10) Ordering the defendant to appear periodically before the *juez de garantías penales* or whatever authority the latter may designate;

(11) House arrest, which may involve police surveillance or oversight;

(12) Arrest; and

(13) Pretrial detention.

Substantive precautionary measures are:

(1) Sequestration;

(2) Attachment; and

(3) Distraint."

42. Lastly, in the context of the state of emergency in the prison system the national Government implemented the Transitional Management Unit for the Public Criminal Defence Service[7] as a deconcentrated, administratively and financially independent agency attached to and dependent on the Office of the President of the Republic. Its purpose is to defend people who have been charged with or accused of a crime or offence when their financial and social situation means they are unable to retain their own counsel to provide them with legal assistance and may therefore face the prospect of pretrial detention.

43. The Unit was attached to the Ministry of Justice and Human Rights by Executive Decree No. 748, published in the supplement to *Registro Oficial* No. 220 of 27 November 2007, thereby making it possible for people held in the country's social rehabilitation centres to obtain access to justice and mount a defence.

44. Exercising the powers vested in it by article 3 of Executive Decree No. 563, the Transitional Management Unit for the Public Criminal Defence Service compiled the *Reglamento de parámetros y estándares mínimos de calidad para la selección de personas jurídicas que prestan servicios profesionales de defensa penal* [Regulations on parameters and minimum quality standards for the selection of legal persons providing professional criminal defence services]. This was issued by the Unit under Resolution No. 001-UTGDPP-2007 of 31 August 2007, whose purpose was to procure the services of legal persons or organizations that were in a position to provide criminal defence services to people charged with or accused of participation in crimes and adolescent offenders whose financial and social position prevented them from retaining their own defence counsel. These legal persons and organizations were invited to tender for such services, which include appearances in remand and arraignment hearings.

45. A total of 240 public criminal defenders have been engaged by the State across the country and have dealt with about 3,000 cases of people committed to pretrial detention, of whom 12 per cent have been sentenced and the remaining 88 per cent have been released for different reasons, such as expiration of the pretrial detention time limit, revocation of the precautionary measure, the posting of bail, etc., as a result of which the overcrowding caused by pretrial detention has been eased.

46. The current Constitution of Ecuador guarantees that judicial proceedings will be carried out with dispatch and diligence and establishes the liability of officials whose actions are prejudicial to defendants, as stipulated in article 172:

"*Article 172.* Judges will administer justice in accordance with the Constitution, international human rights instruments and the law.

[7] Executive Decrees Nos. 441 and 563, published in *Registro Oficial* Nos. 121 and 158 of 6 July and 29 August 2007, respectively.

Justice officials, including judges and all others involved in the administration of justice, will apply the principle of due diligence in the performance of their duties.

Judges will be liable for prejudice caused to the parties by delay, negligence, denial of justice or violations of the law."

47. Since *detención en firme* was declared unconstitutional, lastly, legal reforms have been undertaken to limit the use of pretrial detention and promote the use of alternative precautionary measures, together with the implementation of mechanisms to make criminal proceedings more balanced, via the presence of public defenders, and responsive, via the establishment of hearings at every stage of proceedings.

4. Please provide information on all precautionary measures prescribed by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

48. Article 1 of Executive Decree No. 1317, issued on 9 September 2008, makes the Ministry of Justice and Human Rights responsible for "coordinating the execution of sentences, precautionary measures, provisional measures, friendly settlements, recommendations and resolutions originating in the Inter-American Human Rights System and in the universal system of human rights, together with any other obligations arising out of international commitments in this area", while article 2 (3) establishes that the Ministry is to "reach agreement with the competent State authority on the implementation of any measures necessary for full compliance with these obligations".

49. Against this background, the Subsecretariat for Human Rights and Public Defence Coordination institutionalized a mechanism designed to ensure effective compliance with the international human rights obligations of the State. This falls into four phases:

(a) Once cognizance has been taken of a case, it is subjected to a legal diagnosis that establishes certain parameters of analysis: review of the background, analysis of the human rights violation in the light of the provisions of the Constitution and international human rights instruments, the current state of implementation of reparation/protection measures, any actions to secure reparation/protection proposed by the Subsecretariat for Human Rights and Public Defence Coordination, and identification of the public institutions with which actions are to be coordinated; and lastly, establishment of tentative deadlines for executing the proposed measures.

(b) The second stage in this mechanism is to make contact with the victim/beneficiary of reparation/protection measures to establish his or her actual needs and the most appropriate and effective forms of reparation/protection so that these can be fully satisfied, ensuring real and effective involvement of the victim/beneficiary. During these discussions, a number of agreements are reached on the proposal produced by the Subsecretariat for Human Rights and Public Defence Coordination; this does not mean, however, that the victim/beneficiary cannot suggest others that he or she feels will provide genuine satisfaction and more comprehensive redress; these will then be analysed by the Subsecretariat for Human Rights and Public Defence Coordination.

(c) This is followed by the drafting of a formal undertaking to implement international obligations, incorporating the commitments agreed upon jointly with the victim/beneficiary and laying down timetables for fulfilment. This document must be signed by the Subsecretariat for Human Rights and Public Defence Coordination and the victim/beneficiary of the measures.

(d) Lastly, there is the stage of implementing the reparation/protection agreements in coordination with other State institutions.

50. On the basis of this Executive Decree, and once the implementation mechanism was in operation, the Subsecretariat for Human Rights and Public Defence Coordination took cognizance of those cases where precautionary measures were required as a result of international obligations, which were formerly implemented and monitored by the Office of the Procurator-General.

Precautionary measures

51. During the first quarter of 2009, the Subsecretariat took cognizance of 15 precautionary measures prescribed by the Inter-American Human Rights System and the result was that the mechanism for implementing international obligations was activated in four of these, namely:

(a) Shushufindi;

(b) Luis Alberto Sabando Véliz;

(c) Tagaeri and Taromenani indigenous peoples;

(d) Jhony Gómez Banda.

Provisional measures

52. During 2008 and the first quarter of 2009, the Subsecretariat took cognizance of one provisional measure prescribed by the Inter-American Human Rights System, the result being that the mechanism for implementing international obligations was applied in that case.

1. The Sarayaku case

53. The process whereby the Ecuadorian State implemented the precautionary measures prescribed by the Inter-American System is detailed in the following table, showing each of the stages of implementation.

Table 2
Precautionary measures prescribed by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights

	International obligations		*Settlement stage*			*Implementation stage*			
							Reparations begin		
	Total	*Discharged*	*Preparation of legal diagnosis*	*Contact with beneficiaries/ victims*	*Signing of formal commitments to implement obligations*	*Coordination with other State institutions*	*Other*[8]	*Public apologies*	*Provision of entitlement documents*
Precautionary measures	14	4	3	4	2	4	3	-	37
Provisional measures	1	1	1	1	-	1	1	-	35
Total	**15**	**5**	**4**	**5**	**2**	**5**	**4**	**0**	**72**

[8] Reparations vary depending on the case, but may include payment of monetary compensation, restoration of property, publication of public apologies in the highest-circulation newspaper, measures to perpetuate the victim's memory, unveiling of a plaque bearing the victim's name, investigation and punishment of those responsible for the human rights violation, search for victims' bodies, psychological assistance for victims and/or beneficiaries, police protection, improvements to infrastructure such as landing strips and community clinics, issuing of cards entitling the bearer to police protection, etc.

54. Most measures have been included in the comprehensive redress mechanism implemented by the Ministry of Justice and Human Rights and the rest will be implemented progressively. The Ecuadorian State is therefore in the process of meeting this international human rights obligation.

5. Please provide information on the constitutional and legal norms and practice with regard to the non-derogable nature of the prohibition of torture and other forms of cruel, inhuman or degrading treatment during a state of emergency. Is the right of habeas corpus valid during a state of emergency?

55. A number of articles in the Constitution of the Republic of Ecuador contain relevant information on torture, with article 76 (4), for example, referring to the inadmissibility of evidence obtained through violations of rights, in this case torture, and establishing that:

"*Article 76.* The right to due process will be assured in any proceedings in which rights and obligations of any kind are determined, including the following basic guarantees:

4. Evidence obtained or applied in violation of the Constitution or the law will be null and void and without evidentiary effect."

56. This constitutional provision is supported by other legal provisions such as those contained in the Code of Medical Ethics, issued under Ministerial Agreement 14660-A, *Registro Oficial* No. 5 of 17 August 1992, article 27 of which provides that "No doctor may participate directly or indirectly in prescribing, abetting or conducting torture on persons deprived of their liberty", while article 28 establishes that "No doctor may contribute his or her knowledge and expertise to the questioning of persons deprived of their liberty, or certify that these are in a fit state to undergo any form of treatment, experimentation or punishment that may unfavourably affect their physical or mental health", while confessions obtained from medically assisted torture are inadmissible.

57. Regarding the Committee's concern about the application of habeas corpus during a state of emergency, one of the purposes of this remedy is to protect the lives and physical integrity of persons deprived of liberty, and should any form of torture or inhuman, cruel or degrading treatment occur, instructions will be given for the victim to be set at liberty and receive comprehensive and specialist care, and alternatives to imprisonment will be ordered where applicable. Accordingly, habeas corpus is valid during states of emergency, as laid down by article 89 of the Constitution:

"**Third section**
Action for habeas corpus

Article 89. Action for habeas corpus has the object of restoring the liberty of anyone who has been illegally, arbitrarily or illegitimately deprived of it by order of a public authority or any person, and of protecting the life and physical integrity of those deprived of liberty.

As soon as the action is lodged the judge will convene a hearing, to be held within twenty-four hours, where the detention order must be presented with the legal formalities and the legal and factual considerations justifying the measure. The judge will instruct that the person deprived of liberty appear before the court, together with the authority at whose orders the person is being detained, the public defender and whoever ordered or caused it, as the case may be. If necessary, the hearing will be held in the place where the person is being detained.

The judge will issue a ruling within twenty-four hours following the conclusion of the hearing. In cases of illegitimate or arbitrary detention, the judge will order that the person be set at liberty. Rulings to this effect shall be complied with immediately.

In cases where any form of torture or inhuman, cruel or degrading treatment has occurred, the victim will be set at liberty and receive comprehensive and specialist care, and alternatives to detention will be ordered where applicable. When the custody order was made in a criminal trial, the action will be lodged with the court of justice of the province concerned."

58. As can be seen, the provisions cited clearly define the purpose and procedure of habeas corpus, and there is a paragraph referring exclusively to cases in which torture or inhuman, cruel or degrading treatment has occurred, obliging the judge hearing the case to set the victim at liberty immediately and provide for comprehensive and specialist care.

59. There is no constitutional provision restricting the right of habeas corpus during a state of emergency. The rights that may be suspended or limited during a state of emergency are specified with complete clarity in article 165 of the Constitution:

"*Article 165.* During a state of emergency, the President of the Republic may only suspend or limit the exercise of the right to inviolability of the home, inviolability of correspondence, freedom of movement, freedom of association and assembly and freedom of information, in the terms set forth by the Constitution."

60. It can therefore be concluded that habeas corpus is valid at all times and may not be limited, let alone restricted under any extraordinary circumstances, such as a state of emergency.

61. Against this background, it is necessary to emphasize the progress being made by the Ecuadorian State towards effective enforcement of constitutional guarantees protecting the human rights enshrined in the Constitution and in the international treaties and conventions ratified by the State.

62. Article 90 of the Constitution provides that this constitutional guarantee can also be activated for a person whose whereabouts or place of detention are unknown, whereupon the criminal trial judge [*juez de garantías constitucionales*] must take the necessary steps to ascertain the person's whereabouts:

"*Article 90.* When the place of detention is unknown and there is evidence for the involvement of any public official or other agent of the State, or of persons acting with their authorization, support or acquiescence, the judge must summon the most senior official of the National Police and the minister responsible to a hearing. After they have been heard, the necessary measures will be taken to locate the person and those responsible for his or her detention."

63. Lastly, it should be noted that the Subsecretariat for Legislative Development of the Ministry of Justice and Human Rights conducted a diagnosis of the current National Security Act, commissioned from an Ecuadorian specialist in security matters. In addition, staff from the Subsecretariat have attended and participated in the meetings and workshops held by the Ministry for the Coordination of Internal and External Security with a view to drafting the new security bill. They will be seeking to ensure that this bill reflects international standards on human rights and guarantees.

64. We can conclude that the Ecuadorian State acts to prevent torture of every kind and guarantees the validity of habeas corpus in states of emergency as part of its constitutional law, and that it plans to improve minimum guarantee conditions to comply with international human rights standards.

6. With reference to the bill on public defenders prepared by the Commission for the Implementation of Criminal Procedural Reform (hereinafter "the Commission") [CAT/C/ECU/CO/3/Add.1, paragraph 18], please indicate how the independence of the Commission will be ensured and how it will cooperate with the Ombudsman's Service in efforts to bring those responsible to trial. Please also provide information concerning the status of the bill.

65. By virtue of Executive Decree No. 1179 of 30 June 2008, the Commission for the Implementation of Criminal Procedural Reform became the Interinstitutional Coordination Commission for Implementation of the Criminal Procedural System, whose object is to implement criminal procedures in a way that ensures effective compliance with due process guarantees. The Commission is formed by:

(a) The President of the Supreme Court of Justice, now the National Court of Justice, or his or her representative;

(b) The Attorney General or his or her representative;

(c) The Minister of the Interior or his or her representative;

(d) The Minister of Justice and Human Rights or his or her representative, who also chairs the Commission;

(e) The National Director of the Judicial Police or his or her representative;

(f) The National Public Defender or his or her representative;

(g) The Legal Secretary of the Office of the President of the Republic or his or her representative.

66. It thus plays a coordinating role between the different actors involved in criminal proceedings, its purpose being, among other things, to decide what public policy measures are required for proper implementation of the Criminal Procedural System and the financial resources needed to implement them.

67. Two aspects of the proposed public defence bill are important here; the first is the introduction of the institution of the public defender in the new Constitution, and the second is the approval of the article relating to this institution in the new Organic Code of the Judiciary.

68. The Public Criminal Defence Service has been included in the current Constitution as a mechanism for protecting people who are not in a position to retain defence counsel to guarantee their rights, as established in article 191:

"*Article 191.* The Public Defence Service is an independent organ of the judiciary whose purpose is to ensure full and equal access to justice for persons whose vulnerability or economic, social or cultural situation prevents them from retaining defence counsel to protect their rights.

The Public Defence Service will provide professional, appropriate, efficient and effective legal services at no charge, counselling people on their rights and upholding these on all matters and wherever required.

The Public Defence Service is indivisible and will operate on a deconcentrated basis, being administratively, economically and financially independent; it will be represented by the General Public Defender and will have human and material resources and working conditions equivalent to those of the Office of the Public Prosecutor."

69. The Legislation and Oversight Committee of the Ecuadorian State approved the Organic Code of the Judiciary,[9] published in the supplement to *Registro Oficial* No. 544 of Monday 9 March 2009. The articles of this law contain a number of provisions that develop the constitutional precept described in the previous paragraph, thus:

Chapter II
The Public Defence Service

"*Article 285*
Legal status

The Public Defence Service is an economically, financially and administratively independent branch of the judiciary, based in the capital."

70. This law establishes the functions to be performed by this unit, thus:

"*Article 286*
Functions of the Public Defence Service

The Public Defence Service will be responsible for:

1. Providing legal guidance, assistance, advice and representation services promptly and at no charge, as stipulated by this Code, to persons who cannot obtain them for themselves because of their financial or social situation.

2. Guaranteeing the right to a high-quality, comprehensive, uninterrupted, professional and competent defence.

3. Providing a criminal defence for people who have no lawyer of their own, at the request of the interested party or when appointed by the competent court or judge.

4. Informing the person accused or charged or the alleged offender of their right to choose their own defence counsel. In other cases, services will be provided when, in accordance with the relevant regulations, the economic or social situation of those applying for them is determined to justify the intervention of the Public Defence Service.

5. Ensuring that those responsible for providing the public defence offer legal guidance, assistance, advice and representation to those whose cases they have been assigned, assist with administrative or legal formalities and enforce the rights of those they are assisting. The interests of the person defended will always be paramount.

6. Ensuring that women, children and adolescents, victims of violence and indigenous nationalities, peoples, communities and communes receive a specialized public defence.

7. Ensuring that the person concerned is free to choose his or her defence and apply to the Public Defence Service, where appropriate, for a different defender to be appointed.

8. Engaging private legal professionals to deal with matters requiring specialist support; in these cases the special regime provided for by the National Public Procurement System Act and whatever procedure is established in the regulations drawn up by the General Public Defender are to be applied.

9. Authorizing and supervising the operation of legal services provided for the benefit of low-wealth individuals or of groups requiring priority assistance from persons or institutions other than the Public Defence Service.

[9] See annexes.

10. Establishing quality standards and operating rules for the provision of public defence services by persons or institutions other than the Public Defence Service and conducting periodic assessments of these. Observations made by the Public Defence Service must be complied with.

11. Providing professional support to people carrying out internships in the Public Defence Service.

12. Any other constitutional or legal requirements."

71. There is also the Public Defender, the most senior official in the Unit, who has a number of responsibilities, as described in the provision cited:

"*Article 288*
Responsibilities of the Public Defender

The Public Defender is responsible for:

1. Representing the Public Defence Service for legal, judicial and non-judicial purposes;

2. Deciding on institutional policies in the light of the general policies of the judiciary and implementing them through the appropriate administrative units;

3. Using resolutions to produce internal regulations, guidelines, circulars, organization and procedure manuals and any instrument required for efficient operation;

4. Overseeing administration of the financial resources of the Public Defence Service;

5. Authorizing spending by the Public Defence Service and allocating expenditure amounts to the relevant administrative units and the regional and provincial directors, as provided by the Organic Act of the National Public Procurement System;

6. Issuing and maintaining the relevant organizational and operating regulations;

7. Signing such contracts as are strictly required for the institution to operate;

8. Signing cooperation agreements with public or private persons the better to perform the functions assigned by the Constitution and the law;

9. Preparing the draft budget and respective four-year budgeting plan, in accordance with the general policies of the judiciary, and submitting it to the Judiciary Council for inclusion in the budget of the judiciary;

10. Preparing bills or draft regulations on matters relating to the exercise of institutional functions and submitting them to the National Assembly or the serving President of the Republic;

11. Drafting quality and efficiency standards for the services provided by the institution, and implementing them; the Public Defender may create, modify or close public defence offices as necessary and decide on the number of public defenders; this decision will then be notified to the Judiciary Council so that it can proceed to select and appoint the officials required;

12. Presenting the National Assembly and Judiciary Council with an annual report of work done, which must include an account of the judicial cases and proceedings engaged in, classified by subject; the type and number of applications received and the measures taken to deal with them; and statistical information providing a clear overview of the activities undertaken;

13. Presenting the Constitutional Court or Judiciary Council with reports and complaints on alleged lack of dispatch or any other act in breach of the law or regulations by persons responsible for the procedures in which they are institutionally engaged.”

72. To conclude, the Constitution of the Republic of Ecuador and the Organic Code of the Judiciary have given effect to the institution of the Public Criminal Defence Service, which is now being implemented to comply with the Committee’s requirement, as will be discussed further on.

7. What kinds of effective operational mechanisms have been put in place to allow civil society organizations to participate in implementing the National Human Rights Plan?

73. Ever since its creation by Executive Decree No. 1527, published in *Registro Oficial* No. 346 of 24 June 1998, the National Human Rights Plan has taken the position that an all-round approach involving both the State and civil society is needed for human rights to be realized. The National Plan came to be designed after a national consultation process involving over 1,500 people from all over the country and from a variety of organizations, and this was followed years later by the creation of the Ecuadorian Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans, with a bipartite membership of five State institutions and five civil society representatives chosen by a nationwide vote.

74. From the creation of the Permanent Commission until 2007, three elections were held for the civil society members of the Commission. The legal basis for these were the Internal Election Regulations for Civil Society Representatives. The elections were held publicly across the country, with strong local participation in the different provinces.

75. Another mechanism for participation in the Commission responsible for implementing the National Plan is provided for in the same Commission regulations, which state that the Commission will be chaired for alternate six-month periods by representatives of the State and civil society, ensuring the equitable and active participation of both.

76. It is also important to inform the Committee that the Commission has operated on a basis of continuous interaction between State and civil society institutions. From the start, it has been a working policy of the organization for the State to provide resources and disseminate initiatives from different sectors of civil society.

77. By 2008, the National Human Rights Plan had been in operation for 10 years. In view of the new directions taken by the Ecuadorian State, however, the recently created Ministry of Justice and Human Rights conducted a working consultation to evaluate the Plan and Operating Plans and the institutional arrangements governing it. This brought forth a recommendation for adapting the Plan and the Commission to the new institutional arrangements determined by the recently approved national Constitution (October 2008), which is now being done.

78. Under articles 156 and 157 of the current Constitution, this reform process requires the creation of National Equality Councils, which will be responsible for ensuring full application and exercise of the rights enshrined in the Constitution and international human rights instruments. These councils will have responsibilities for the formulation, mainstreaming, enforcement, follow-up and evaluation of public policies dealing with gender, ethnic, generational, intercultural, disability and human mobility issues, in accordance with the law. It has also been established that, to achieve their purposes, the Equality Councils will coordinate with the overseeing and implementing authorities and with agencies specializing in the protection of rights at every level of government.

79. Thus, the Equality Councils will be the new institutions driving the creation and implementation of public policies to secure full application of human rights. Their

membership will be equally divided between representatives of civil society and the State, and they will be chaired by whoever is representing the Executive. The Constitution states that the structure, functioning and appointment of its membership will be governed by the principles of alternation, democratic participation, inclusiveness and pluralism.

80. The structure of these Equality Councils is currently being designed, the intention being that civil society organizations should not only be equally represented in their membership, but should be able to make their views known through consultative committees and in other ways.

81. The expectation is that in future the actions once undertaken by the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans will come to form part of the new functions determined by the 2008 Constitution and the National Development Plan.

8. Please provide statistics and detailed information on the implementation of fundamental legal safeguards applicable to persons held by the police, including the right to notify a family member, to consult a lawyer and a doctor of their choice and to be notified of their rights during questioning, as referred to in the Committee's previous concluding observations [CAT/C/ECU/CO/3, para. 21]. If training has been provided, please indicate what measures have been taken to evaluate its impact.

82. Among the provisions of the Constitution of the Republic of Ecuador in force since 2008 are a number of safeguards applicable to people in custody, namely the right to a lawyer, the right to unconstrained communication and the right to communicate with a family member, among others, thus:

"*Article 76, point 7.*

(e) No-one may be questioned, even for the purposes of investigation, by the Office of the Public Prosecutor or by a police or any other authority except in the presence of a private lawyer or public defender and in the venues authorized for the purpose.

(g) Assistance in legal proceedings from a lawyer of his or her choice or a public defender; there may be no restrictions on access to counsel or on unhindered, private communication with counsel."

"*Article 77, point 4.* At the time of the arrest, the person arrested will be informed by the arresting officer of their right to remain silent, to seek the assistance of an attorney (or a public defender if they are unable to appoint their own counsel) and to communicate with a family member or any other person."

83. These provisions are elaborated upon in the current Code of Criminal Procedure, published in *Registro Oficial* No. 360 of 30 January 2000, which states:

"*Article 12*
Informing the accused of his or her rights

Any authority involved in the proceedings must ensure that the accused is immediately informed of his or her rights under the Constitution and this Code. The accused will be entitled to appoint defence counsel. Failing this, the judge must make the appointment ex officio before the accused's first statement. The judge or court may authorize the accused to conduct his or her own defence. In this case, the role of the defender will be limited to overseeing the technical effectiveness of the defence."

"*Article 166*
Notification

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 or her right to remain silent, to request the presence of counsel, and to communicate with a family member or any other person of his or her choice. Anyone making an arrest, with or without a written court order, who fails to provide confirmation that the person arrested has been handed over immediately to the competent authority shall be subject to penalties.

The same notification must be given to a person of the accused's choice and to the accused's counsel."

84. The National Judicial Police Bureau has implemented the safeguards thus provided for by creating a card setting out the rights of arrested persons and issuing a copy to all members of the police force. When the Judicial Police make arrests they are required to read out this card, which explains the right of the arrested person to communicate with a family member and employ the services of counsel, as the following illustration shows.

Table 3
Card setting out the rights of arrested persons*

* [Constitutional Rights, art. 24 # 4 and art. 3 of Judicial Police regulations when making an arrest.
I am an officer/police officer/agent (name).
You are being arrested by order of the magistrate/while committing a crime. You will be placed at the orders of the public prosecutor and the duty criminal magistrate.
(1) You have the right to remain silent.
(2) You have the right to an attorney. If you do not have one, a public defender will be provided by the State.
(3) You have the right to contact a person of your choice.
(4) Your physical, moral and mental integrity will be respected.
Authorities and citizens to whom this credential is presented have a duty and responsibility under point 15 of Art. 97 of the Constitution to "contribute to the maintenance of peace and security" by providing whatever collaboration and assistance may be required for the bearer to carry out his or her investigative functions.]

85. Before being taken to a prison facility or police cell, arrested persons are seen by the duty doctor or whoever is standing in for the duty doctor at a health clinic operated by the National Police or Office of the Public Prosecutor. The Ministry of the Interior has instructed the National Police to move anyone arrested in flagrante to a public health centre immediately so that they can undergo a medical examination, with a view to guaranteeing their human rights.

86. Between July and December 2008, the Ministry of Justice and Human Rights, under an accord with the National Headquarters of the National Police, provided 2,420 members of the National Police across the country with training on human rights as applying to police work, including the following topics:

(a) Human rights and non-discrimination;

(b) Human rights and citizen security;

(c) Human rights and gender diversity;

(d) Human rights and human trafficking;

(e) Human rights and migration.

87. The purpose of the training was to impart knowledge of police procedures in a way that mainstreamed human rights on the basis of the standards laid down in international human rights instruments. Evaluation is currently being conducted via a number of mechanisms. Also being evaluated is the form completed at the end of each training course by National Police members attending, which established, first, the commitments accepted by them on the basis of the knowledge acquired during each training session and, second, what they believed was required to improve their professional performance.

88. Lastly, the Ecuadorian State, as represented by the Ministry of Justice and Human Rights, is in the process of implementing a human rights manual in National Police training colleges. This will contain principles for police procedures based on international human rights standards. It will also present subjects relating to vulnerable groups, minorities, non-discrimination, citizen security, gender diversity, human trafficking and migration, among other areas. This manual is currently at the printing stage, after which it will be distributed nationally, with the aim of professionalizing and enhancing the work of the National Police.

9. Please provide statistics and detailed information on the minor's right to have his or her lawyer present during questioning, as referred to in the Committee's concluding observations [CAT/C/ECU/CO/3, para. 21].

89. The Children's and Youth Code, published in *Registro Oficial* No. 737 of 3 January 2003, guarantees the right of adolescents under questioning to communicate with a family member or any person of their choice, and also establishes that hearings must be held in the presence of their legal representatives and of a family member or other person of their choice if they so request, as follows:

"*Article 312*
Right to be informed

All adolescents who are investigated, arrested or questioned are entitled to be informed immediately, personally and in their mother tongue, or by sign language in the event of communication difficulties:

1. Of the reasons for the investigation, questioning or arrest, the authorities ordering it, the identity of those investigating, questioning or holding them and the actions undertaken against them; and

2. Of their right to remain silent, to have an attorney present and to communicate with a family member or any other person of their choice.

Adolescents will be provided with the assistance of an interpreter at no charge if they do not understand or do not speak the language used.

In all cases, the legal representatives of the individual being investigated, questioned or held will be informed without delay."

"*Article 317*
Guarantee of confidentiality

The adolescent's right to privacy will be respected at every stage of the process. The proceedings in which the adolescent is involved will be conducted in confidence. Apart from the court officials present at the judge's discretion, hearings may only be attended by the procurator for adolescent offenders, defenders, the adolescent, his or her legal representatives and a family member or other person of the adolescent's choice, if he or she so requests. Anyone else whose presence is required as a witness or expert shall attend the hearing for just the time required to provide his or her testimony or report and to answer the parties' questions.

Information that could identify the adolescent or members of his or her family may not be disclosed in any way. Natural or legal persons contravening the provisions of this article shall be subject to the penalties provided for in this Code and other laws.

Criminal justice, administrative and police officials shall observe the duty of secrecy and confidentiality regarding the criminal and police records of adolescent offenders, who if discharged will be entitled to have their files closed and destroyed.

It is forbidden to include any information on offences committed by a person as an adolescent on his or her police record. Anyone doing so will be subject to the penalties prescribed by law."

90. The data now held on this subject by the Ministry of the Attorney General go back only to 2008, and are as follows:

Table 4
Statistics on the right of minors to have legal representatives present during questioning in the 2008-2009 period
Report on children and adolescents (national), 2008-2009

Offence notified	*Preliminary inquiry*	*Criminal investigation*	*Arraignment*	*Charges dismissed*	*Proceedings otherwise curtailed*	*Preliminary hearing*	*Stay*	*Acquittal*	*Socio-educational measures*	*Dismissals*	*Injunctions (for other institutions)*
5 476	3 750	1 882	1 228	457	448	496	61	39	568	1 758	159

91. From the detailed information, we can see that 5,475 offences were reported to have been committed by adolescents between 2008 and 2009, of which 1,882 reached the criminal investigation [*instrucción fiscal*] stage, where the procurators for minors question the adolescents concerned; a legal representative was present in all these cases, whether the parents, older siblings or someone designated by these to attend the questioning or, where no such representatives were present, questioning was carried out in the presence of officers from the National Children's and Adolescents' Special Police Bureau (DINAPEN). The Committee's recommendation that minors be questioned in the presence of legal representatives has thus been complied with.

C. Article 3

10. Please provide information concerning the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:

(a) The number of persons seeking asylum and the number of returnees

92. The Refugee Department of the Ecuadorian Ministry of Foreign Affairs, Trade and Integration deals with some 1,200 applications for refugee status a month. Applicants are provided in the first instance with an asylum applicant's identity document, which is valid for three months and renewable, while a final decision is taken on their asylum application. As part of this procedure, a number of cases have been identified in which applicants have been tortured, specifically in their countries of origin. These people have received psychological counselling prior to the eligibility interview conducted by Refugee Department officials with a view to preserving their rights and the confidentiality they demand. Torture victims also receive psychological counselling during the interview and, if they so request, may receive psychological assistance afterwards as well.

93. One of the most important of the basic guarantees to which all refugees and asylum-seekers are entitled is the inviolability of and unconditional respect for the principle of non-return or "non-refoulement" to their country of origin, or the country where the life, physical integrity and security of the asylum-seeker is endangered. This principle has been introduced into the Constitution of Ecuador, article 41, so that compliance with it has been emphasized, as follows:

"*Article 41*. The right of asylum is recognized in accordance with the law and international human rights instruments. Refugees will be entitled to special protection to guarantee the full exercise of their rights. The State will respect and guarantee the principle of non-refoulement and provide emergency humanitarian and legal aid.

Asylum-seekers shall not be liable to criminal penalties for having entered or remained in the country illegally.

Exceptionally, and where circumstances warrant, the State will grant refugee status to a group, in accordance with the law."

94. Likewise, in accordance with article 13 of Executive Decree No. 3301 of 6 May 1992, which contains the domestic provisions of the Republic of Ecuador relating to asylum: "No one shall be refused entry at the border, returned, expelled, extradited or subjected to any measure whatsoever that requires him or her to return to a territory in which his or her physical integrity or personal liberty may be at risk …". This brings Ecuadorian law into line with the obligations accepted by the Ecuadorian State as a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1951 Geneva Convention Relating to the Status of Refugees.

95. The statistics recorded from 2000 to 2008 for the number of asylum applications accepted, rejected and pending, the number cancelled or discontinued by the applicants and the number of cases dismissed because of legal and/or regulatory provisions (for example, voluntary relinquishment of refugee status or changes in migration category) are as follows:

Table 5
Statistics on the numbers of asylum applications accepted, rejected and pending, 2000-2008

Year	*App.*	*Acc.*	*Rej.*	*Lap.*	*Can.*	*Res.*	*Rep.*	*Pnd.*	*Applications outstanding*
2000	475	390	60				36		
2001	3 017	1 406	394	999			87		
2002	6 766	1 578	1 199	1 586		4	7		
2003	11 463	3 270	4 392	3 606		200	4		
2004	7 935	2 420	4 200	1 930		530	4		
2005	7 091	2 435	2 673	1 312	11	587	0	168	
2006	7 638	2 026	2 691	2	3	472	3	23	
2007	11 306	2 882	4 299	0	16	339		74	
2008	12 853	4 242	3 942	0	16	339		399	
2000-2008	**68 544**	**20 649**	**23 850**	**9 435**	**46**	**2 471**	**141**	**664**	**11 288**
Percentage	**100.00**	**30.13**	**34.80**	**13.76**	**0.07**	**3.60**	**0.21**	**0.97**	**16.47**

Lap. Lapsed
Can. Cancelled (proven falsehood or continual travel to the country where persecution was experienced)
Res. Resettlement (refugees taken in by a third country)
Rep. Repatriation (voluntary return to country of origin)
Pnd. Pending

TOTAL APPLICATIONS 2000-2008	**REJECTED 2000-2008**	**ASYLUM GRANTED 2000-2008**
68 544	**23 850**	**20 649**
	34.80	**30.1**

(b) Whether and how the probable risk of torture is assessed in reaching a decision and in procedures to appeal the decision

96. The legal framework established principally by Executive Decree No. 3301 of 6 May 1992, which regulates the procedure for asylum applications presented to the Ecuadorian State, is very clear in the way it incorporates the precepts of international instruments dealing with asylum applicants and refugees. In determining asylum status, all the implications the decision will have on the individual concerned are taken into account, i.e., there is always an assessment of the risk of torture or cruel, inhuman or degrading treatment to which a person may be exposed if forced to return to the country where he or she suffered persecution or is at risk of it. These are cross-cutting principles that require specific analysis from the perspective of proportionality. Fundamentally, when individual applications are analysed, an assessment is made of the risk of torture that the person claims to be exposed to or that the decision-making body has considered the person might actually have suffered or potentially could suffer given the situation in the country. All this is grounded in paragraph 1 of article 3 of the Convention against Torture, which states: "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture", and in the principle of non-refoulement enshrined in article 33 of the 1951

Convention Relating to the Status of Refugees, which determines: "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."

(c) The procedure for the examination of asylum requests submitted at the border

97. People claiming to be persecuted or to have fled their homes because their lives, safety or freedom have been threatened by violence are not prevented from entering Ecuadorian territory at the border. Indeed, all applications submitted to the migration authorities of the Republic of Ecuador, international organizations or non-governmental organizations (NGOs) working with refugees are forwarded straight on to the Refugee Department so that all asylum applicants can be documented in accordance with article 8 of Executive Decree No. 3301/1992. It should be mentioned that most applicants are interviewed in the city of Quito; however, periodic registration rounds are carried out for applicants, followed by rounds of interviews to ascertain eligibility, in 84 different towns and localities on Ecuadorian territory, such as Tulcán, Ibarra, Santo Domingo de los Tsáchilas, San Lorenzo, Esmeraldas, Nueva Loja (Lago Agrio), Chical, Lita and El Coca, in order to cover needs in border areas and away from the capital. The Refugee Department has offices in Quito, Cuenca and Lago Agrio.

98. In September 2008, the Ecuadorian Government established the country's asylum policy in response to the needs of thousands of people of Colombian nationality requiring international protection. These are known as "invisible" asylum-seekers because, whether owing to economic constraints, ignorance or mistrust stemming from their experiences in their home country, they have never presented themselves to the Ecuadorian authorities to regularize their migration status.

99. Against this background, a policy was designed to guarantee Colombian refugees' rights and legalize their status. The Ecuadorian Government decided to adopt another mechanism for recognizing refugee status, and accordingly set up the "extended registration" [*registro ampliado*] system for people of Colombian nationality in need of international protection who are present in the country but have not been recognized as refugees.

100. Extended registration is a mechanism for collective recognition of people in need of international protection based on the development and application of the refugee concept established in the 1951 Convention Relating to the Status of Refugees and the 1984 Cartagena Declaration on Refugees, which establishes a presumption of need for international protection based on the place of residence and the place from which the person has been expelled. In this context, the country of origin is a very important element in the State's decision, and this information is supplemented by questions put to asylum-seekers to ascertain the causal links in the determination of refugee status, violations of people's human rights and the risks they have been exposed to because of the Colombian conflict.

101. To ensure that asylum applications submitted to the extended registration process are resolved quickly and effectively, the Ecuadorian Government has created temporary eligibility commissions that work simultaneously and in parallel in geographical areas of the country requiring priority attention. People are registered and interviewed by officials from the Refugee Department of the Ministry of Foreign Affairs, Trade and Integration and the Eligibility Committee rules on the asylum application that same day.

102. The extended registration system allows asylum applications for which there is not a presumption of need for international protection to be referred to the standard mechanism

and analysed again, with the possibility of further interviews so that this analysis can take place.

103. People granted refugee status in Ecuador obtain the 12-IV visa and enjoy the same rights as any other foreigner in Ecuador under the Constitution and laws and those provided for in the 1951 Convention.

104. Lastly, it should be noted at this point that thousands of Colombian citizens have been forced to apply for asylum in Ecuador because of the domestic armed conflict that has riven Colombia for over 30 years. This conflict has meant a heavy humanitarian responsibility for Ecuador, as well as the financial burden of providing refugees with human security and decent conditions of sustainable development. For this reason, in 2008 the regional representative of UNHCR publicly acknowledged and highlighted the humanitarian role played by the Ecuadorian State in Latin America.

11. Please indicate what specific administrative measures have been put in place in the country's police stations to guarantee respect for due process during deportation, in particular the right to a defence, the presence of a diplomatic agent from the detainee's country and, in the case of refugees, the presence of a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), as recommended in paragraph 20 of the Committee's previous concluding observations.

105. In response to the concern expressed by the Committee in point 20 of its consideration of the third report by Ecuador,[10] the Ministry of the Interior, Police and Worship has undertaken a number of measures to ensure that minimum procedural guarantees are complied with during the deportation stage, namely:

(a) The country's police authorities [*intendencias* and *subintendencias*] have been instructed not to deport foreign citizens who have family ties to Ecuadorian citizens;

(b) The country's police authorities have been asked to observe due process in deportation hearings, something that is being monitored by the Human Rights Department of the Ministry;

(c) A protocol for deportation procedures is being prepared and is now being redrafted in the light of the new Constitution.

106. Meanwhile, the Ecuadorian State has acted through the Refugee Department of the Ministry of Foreign Affairs, Trade and Integration to guarantee the principle of non-refoulement. This has been applied to deportation procedures, with deportations being blocked or halted because the people involved have applied for asylum. In accordance with the international instruments signed by Ecuador and current legislation in the country, the deportation procedure is now suspended until the competent authorities can take a final decision about the asylum application. Applicants who receive a favourable response and are granted refugee status in Ecuador have the fundamental assurance that they will not be refouled to the place where their physical integrity or personal freedom is in jeopardy, for the reasons set out in the 1951 Convention Relating to the Status of Refugees.

12. Please indicate whether the police and administrative officials responsible for handling deportation procedures throughout the country have been trained in international refugee law, with an emphasis on the content and scope of the principle of non-refoulement.

107. Between July and December 2008, the Subsecretariat for Human Rights and Public Defence Coordination of the Ministry of Justice and Human Rights provided 2,420

[10] Document CAT/ECU/CO/3 of 8 February 2006.

members of the National Police across the country with training in human rights as applying to police work, one of the subjects covered being "Human rights and migration", where the following issues were analysed:

(a) Human mobility;

(b) Human mobility in the Ecuadorian context:

(i) Constitutional norms;

(c) Asylum:

(i) Constitutional norms;

(ii) Convention Relating to the Status of Refugees;

(iii) Additional Protocol to the Convention;

(d) Asylum application process:

(i) Role of the migration police;

(ii) Principle of "non-refoulement";

(e) Immigration:

(i) Constitutional context;

(ii) Role of the migration police;

(f) Deportation process:

(i) Constitutional context;

(ii) Role of the police;

(g) Regularization agreement between Ecuador and Peru;

(h) Emigration:

(i) Constitutional context;

(ii) Role of the migration police.

108. In addition, because the subject matter is bound up with the goal of ensuring that migration is not criminalized, the National Secretariat for Migrants contributed to the workshops held in Quito for national migration heads and deputies with a view to placing the emphasis on steering migration practices towards undifferentiated respect for all migrants; changing the perception that foreigners and Ecuadorians returning home after deportation or exclusion from other countries are "dangerous", criminal and untrustworthy; and understanding the different migration categories dealt with in international rules: immigration, emigration and asylum.

109. In these training processes, special emphasis was placed on the content and scope of the "non-refoulement" principle, given that article 41 of the current Constitution speaks of compliance with this principle and of the comprehensive protection the State should provide to people in an asylum or refugee situation on Ecuadorian territory:

"*Article 41*. The right of asylum is recognized in accordance with the law and international human rights instruments. Refugees will be entitled to special protection to guarantee the full exercise of their rights.

The State will respect and guarantee the principle of non-refoulement and provide emergency humanitarian and legal aid.

Asylum-seekers will not be liable to criminal penalties for having entered or remained in the country illegally.

Exceptionally, and where circumstances warrant, the State will grant refugee status to a group, in accordance with the law.”

110. In parallel with this, the Refugee Department of the Ministry of Foreign Affairs, Trade and Integration is in constant contact with the Ecuadorian migration authorities, as experience has shown the need to keep the migration and police authorities informed of and familiarized with the basic rights of people entering the country in search of asylum. The actions that have been undertaken through the Refugee Department have originated in individual cases that this unit has become aware of through different inquiries from people granted refugee status and asylum-seekers. Accordingly, a number of training processes have been implemented for officers in the three branches of the armed forces with a view to acquainting them with the basic principles of international humanitarian law and the rights of refugees and asylum-seekers. One institutional objective of the foreign ministry for the current year (2009) is to improve training for National Police personnel working in border areas.

111. In addition, the Ministry of the Interior, Police and Worship held three regional workshops on human rights, human mobility and the deportation system for the staff of national and provincial migration bureaux and police inspectors and officials from the country’s *intendencias*.

112. Another significant initiative in this area is the one implemented by the National Migration Service of the National Police which, to ensure that the rights of Ecuadorians and foreigners as laid down in the Constitution of Ecuador and international agreements signed by the country are respected, is providing constant training to its staff in the form of lectures and seminars held by staff from the Service and organizations with expertise in migration and human rights, including refugee issues. It has also developed the *Manual de procedimientos* [procedures manual], which is distributed to staff working in migration service offices and sub-offices nationwide and lays down the following procedure:

Migration control procedure for asylum-seekers and refugees

1. Any foreign citizen who reaches the border or is present in the country either legally or illegally may apply for asylum via the National Police, the armed forces or the UNHCR, in cities where this has branch offices.

2. A basic principle for this type of asylum is “non-refoulement”, especially at the border, as the assumption is that the person is fleeing from a situation in which his or her life, physical integrity or freedom is endangered.

3. Once the UNHCR has completed its pre-application formalities it will notify the foreign ministry, specifically the Refugee Bureau, where processing will continue.

4. The asylum-seeker will undergo a preliminary check involving interviews and analysis of his or her documents. While this is happening the Refugee Bureau will provide him or her with an asylum-seeker’s credential valid for three months, but renewable until the person’s status has been determined by the State.

5. Once the asylum-seeker has been accepted as a refugee, the Refugee Bureau will issue a new refugee credential containing the 12-IV visa and individual details.

6. Foreign citizens holding the asylum-seeker or refugee card who are discovered in the course of a migration check to be carrying out remunerated activities may not be detained insofar as they are protected by the 1951 Vienna Convention, the 1967 Protocol or the 1984 Cartagena Declaration.

7. If an application is not approved, the applicant will be notified by the Ministry of Foreign Affairs and given 30 days to change his or her migration status.

8. Any asylum-seeker or refugee apprehended in the course of committing a criminal offence is to be detained and tried in the same way as an Ecuadorian national.

9. Any foreign citizen granted refugee status is entitled to carry out any legal activity on Ecuadorian territory.

10. Refugees are required to participate in an annual census, presenting their up-to-date credential and the Ministry of Foreign Affairs confirmation form.

11. Any refugee citizen wishing to leave the country must present his or her travel documents and the authorization provided by the Ministry of Foreign Affairs.

13. Please provide the most recent official statistics on the number of applications for asylum and/or refugee status, indicating also the number of persons who have been granted refugee status and the number of those rejected (articles 4 and 6).

113. This has been analysed in the answer to question 10.

D. Articles 4 and 6

14. Please provide information on efforts made by the State party to ensure that, within its jurisdiction, all acts amounting to torture are criminalized.

114. The current Criminal Code[11] contains a number of articles in which acts of torture and cruel, inhuman or degrading treatment are defined as offences which are punishable as follows:

"*Article 204*. Any judge or authority extracting statements or confessions implicating the persons 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**.

Agents of the police or security services committing the offence indicated in the previous paragraph will be subject to the same penalty." (Emphasis added).

"*Article 205*. Anyone who issues or executes an order to torture prisoners or people in custody, 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."

"*Article 187*. Where the person arrested or detained has suffered physical torture, the perpetrator 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 perpetrator shall be sentenced to 16 to 25 years' special imprisonment" (article reformed by Act No. 47 published in *Registro Oficial* No. 422 of 28 September 2001).

115. In addition, as the Committee will observe, information was given in the first response to this questionnaire about all prohibitions relating to torture that the Ecuadorian

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[11] Published in the *Registro Oficial*, supplement No. 147, 22 January 1971.

State included in the current political Constitution, as a guarantee to all the country's inhabitants that they will not fall victim to this.

E. Article 10

15. Further to paragraph 22 of the Committee's concluding observations and the State party's extensive comments, please provide more detailed information on the number of training programmes organized and the ways in which these have improved the conduct of law enforcement personnel in practice. Please provide information on training in such areas as non-coercive investigatory techniques. What monitoring and evaluation mechanisms are used to assess the impact of these programmes, if any.

116. One of the goals of the Ecuadorian State is to modernize the technical capabilities of officials responsible for observing and enforcing the law, and accordingly the Training Department of the National Judicial Police Bureau implemented a training process for police officers employed within the judicial police force with the general aim of enhancing their professional and personal capabilities in the five basic areas (criminal investigation, information gathering and handling, the law, all-round human development, and skills and capabilities).

Table 6
National Police training up to February 2009

Number	*Course*	*Participants*
4	Basic courses in environmental crimes	191
8	Basic judicial police courses	2 145
Total police officers trained		**2 336**

117. The curricular subjects belonging to the study syllabus of judicial police courses reflect the latest thinking based on the research and working experience of Ecuadorian and international professionals committed to human rights, and they accordingly deal with investigation techniques designed to remove any need for physical coercion.

118. The Operations Directorate of the National Police General Headquarters has stated that one of the objectives of its Strategic Plan for Modernization and Comprehensive Transformation is to raise the human, cultural and technical standards of the institution's members, in order to improve police services (Objective IV, Strategic Plan). For this reason, a fundamental mission of the Human Rights Department of the National Education Directorate of the National Police since 2004 has been to disseminate, raise awareness of and internalize human rights knowledge and its application to police work.

119. One development of great importance in creating a human rights outlook in the Ecuadorian National Police was the approval by the Council of Generals under Resolution No. 2007-036-CsG-PN dated 16 January 2007 of the "Educational programme for human rights mainstreaming in the curricula for all relevant subjects at police system education, specialization and training centres and police training colleges", whereby the subject of "Human rights as applied to police work" has been made compulsory in all the curricula of police education, training and specialization centres. In this human rights training as applied to police work, particular emphasis is laid on the rights of people held in custody.

120. The National Police training process began in 2005 and is ongoing. During this time, the Human Rights Department of the National Education Directorate of the National Police has trained 27,286 members of the institution. This subject-matter is taught at every level

(basic and ongoing training and specialization), which means that knowledge of it is periodically reinforced and refreshed.

121. It is also important to note the constant concern at the highest levels of the police to see that human rights are respected in operational activities. Thus, in Telegram No. 0925-CG-2008 of 16 May 2008, the Commissioner of the National Police reminded all police units in the country of "your obligation to respect the human rights of all those in custody, regardless of their origin or status, by applying legal procedures and refraining from any form of torture or other cruel, inhuman or degrading treatment".

122. Furthermore, in Circular Telegram No. 2009/037/DGO/PN of 14 January this year, the Director General of Operations of the National Police instructed that all major police operations be filmed and photographed so that there would be a record of how the police have acted, particularly where unconditional respect for human rights, good police practices and due process are concerned.

123. An evaluation is planned for 2009 to measure the results of the training process both quantitatively and qualitatively, the aim being thereby to establish parameters of effectiveness and quality for police work that meet international standards of respect for human rights.

F. Article 11

16. Please provide information on the measures taken by the State party to implement the Committee's previous concluding observations [CAT/C/ECU/CO/3, para. 24] in which the State party was asked to improve physical conditions in detention centres, in particular through the presence of independent medical personnel who are qualified to carry out periodic examinations of prisoners.

124. On 22 July 2008, the National Constituent Assembly passed the Sentencing Implementation Code Reform Act, published in *Registro Oficial* No. 393 of 31 July 2008, which reformed the membership of the Social Rehabilitation Council. At present, this body is chaired by the Ministry of Justice and Human Rights and its membership includes the Ministry of Public Health, among other institutions.

125. The purpose of bringing the Ministry of Public Health into the Social Rehabilitation Council is to ensure that the right to health of people in custody is respected and guaranteed, and this goal has begun to be realized thanks to a number of initiatives, including:

(a) In January 2009, a tripartite agreement was signed between the Ministry of Public Health, the National Social Rehabilitation Service and the Ministry of Justice and Human Rights, in response to the health problems experienced in detention centres across the country. The Interinstitutional Plan for human rights-oriented comprehensive health care for people in custody (2009-2013) is currently being structured, together with the comprehensive health-care model and treatment protocols for detention centres, as an organizational framework for the provision of high-quality care.

(b) January 2009 also saw the signing of the Specific Interinstitutional Cooperation Agreement between the Ministry of Justice and Human Rights, the Ministry of Public Health and the National Social Rehabilitation Service, the goal of which is progressively to provide people in custody across the country with free medicines and supplies, fully apply Ministry of Public Health protocols and rules when medicines are prescribed by health-care professionals at social rehabilitation centres and ensure that people in custody are accepted and treated by Ministry of Public Health clinics and hospitals. It is valid for five years and renewable for further five-year periods.

(c) In cases where surgery or specialist treatments are urgently required, people in custody are likewise transferred to public hospitals operated under the authority of the Ministry of Public Health.

126. As part of the agreement signed between the Global Fund (Ministry of Public Health) and the National Social Rehabilitation Service, a subproject for HIV/AIDS/STD prevention among people in custody has been implemented since 2005 in the context of the Millennium Development Goals, involving activities like the following:

(a) In 2007, 1,335 people in custody received training and 160,905 condoms were issued;

(b) In 2008, 2,283 people in custody received training and 150,000 condoms were issued.

127. As part of the agreement, training on issues of syndrome management and counselling before and after voluntary HIV testing was provided in 2008 to health-care professionals working with people in custody.

128. Where infrastructure-related changes are concerned, the Transitional Unit for Prison Construction of the Ministry of Justice and Human Rights is currently refurbishing areas destined for health-care purposes in the social rehabilitation centres of Guayaquil, the psychiatric prison unit at the El Rodeo social rehabilitation centre in Manabí province, and the therapeutic communities of the social rehabilitation centres in the provinces of Esmeraldas and Guayas, with a view to treating addictions at these centres and progressively improving the 12 communities that exist across the country.

129. In addition, the Social Rehabilitation Coordination Subsecretariat of the Ministry of Justice and Human Rights, in coordination with the Ministry of Public Health, the National Institute of Hygiene, UNDP and the National Social Rehabilitation Service, has carried out a number of activities to improve the capabilities of health-care personnel and the care these provide to people in custody, from 2008 to the present:

(a) In 2008:

(i) Syndrome management training;

(ii) Training in counselling pre- and post-voluntary AIDS testing;

(iii) International seminar on HIV/AIDS in the Ecuadorian prison system, the ultimate outcome of which was the HIV/AIDS, STD and tuberculosis prevention and treatment policy for the Ecuadorian rehabilitation system;

(iv) Refresher course in pre- and post-voluntary AIDS test counselling at the Quito and Guayaquil social rehabilitation centres;

(v) Training of health-care personnel in sample-taking for HIV and tuberculosis testing, at the Quito and Guayaquil social rehabilitation centres;

(b) Since mid-January 2009, 834 voluntary HIV tests have been conducted out of a planned total of 5,500 for inmates at the social rehabilitation centres of Guayaquil, Quito, El Rodeo in Manabí, and Machala, the intention being to progressively extend testing to the other centres.

17. Please provide information on the outcome of efforts to reduce overcrowding in prisons.

130. Having acknowledged a serious problem with overcrowding and the substandard conditions in which inmates were held at social rehabilitation centres, on 26 June 2007 the Ecuadorian State issued Executive Decree No. 441 declaring a state of emergency in the

prison system, and this was followed by a number of urgent measures to mitigate the situation, including the creation of the Transitional Management Unit for the Public Criminal Defence Service, attached originally to the Office of the President of the Republic and now to the Ministry of Justice and Human Rights, which was given responsibility for organizing free legal representation for defendants who lacked the resources to retain counsel. The following advances have been made:

(a) The services of 14 law centres (9 in Guayaquil and 5 in Quito) have been retained following a public tendering process, and these are now working with 240 defence lawyers. The Unit engaged 40 lawyers to participate in oral remand hearings [*audiencias de flagrancia*] and arraignment hearings (7 in Quito and 5 in Guayaquil) and the rest to expand defence coverage to 21 provinces and participate in preliminary hearings and adolescent offender issues.

(b) To date, assistance has been provided in 7,386 cases (2,897 in Quito, 3,617 in Guayaquil and the remainder in the other provinces). In other words, since 17 September 2008 almost 7,400 low-wealth individuals had benefited from the services provided by the State in the form of representation by a defence lawyer.

(c) Of these 7,386 cases, 3,224 have been resolved, with about 3,000 inmates being released and about 220 sentenced. It should be pointed out that about 88 per cent of the releases took place because the time limit for pretrial detention had expired, in accordance with article 24 (8) of the previous Constitution.

131. Where infrastructure building and improvement are concerned, meanwhile, the Transitional Unit for the Construction of Social Rehabilitation Centres of the Ministry of Justice and Human Rights acted to improve conditions in existing centres and create new ones, meeting all relevant Ecuadorian and international requirements and architectural standards, with a view to ensuring decent treatment for inmates. The following work has been carried out:

(a) The first stage of the halfway house, with a capacity of 142 people, and the therapeutic community, with a capacity of 88 people, were built at the men's social rehabilitation centre in Guayaquil;

(b) The day-care area for the cell block at the women's social rehabilitation centre in Guayaquil was refurbished (capacity of 92 people);

(c) The fourth floor of the residential wing at the Esmeraldas social rehabilitation centre was built, with a capacity of 82 people;

(d) Infrastructure improvements were carried out at the Manabí social rehabilitation centre, including toilet blocks, perimeter fencing and refurbishment of the pretrial detention centre block in the city of Jipijapa, with a capacity of 28 people;

(e) A new medium-security wing, with a capacity of 324 people, and a new maximum-security wing, with a capacity of 115 people, were built at the Santo Domingo de los Tsáchilas social rehabilitation centre;

(f) A new social rehabilitation centre with a capacity of 576 people was built in Nueva Loja.

132. For its part, during the prison emergency decreed in 2006 the National Social Rehabilitation Service drew up 25 projects which were implemented in 2007. Of these, 80 per cent of planned works have been implemented while 20 per cent are awaiting completion due to a payroll budgetary shortfall.

133. The projects completed have provided new installed capacity for 360 inmates and 200 residential places have been remodelled, while living conditions for inmates have been

improved at five social rehabilitation centres by the installation of new electrical, telephone and sound systems. Security has also been improved at centres, with security fencing at Tulcán, Macas, block F in Quito and the women's wing in Quito. In addition, counselling facilities were built at Riobamba, Azogues and Quito No. 1.

134. The Ecuadorian State is taking out a loan to complete the remaining 20 per cent of projects, providing an increase in new installed capacity sufficient for 120 inmates and 200 remodelled places.

135. It is also important to inform the Committee that on 15 May 2008 the National Constituent Assembly passed a resolution pardoning terminally ill people serving sentences for criminal offences. So far 13 terminally ill inmates have been pardoned at the country's various social rehabilitation centres.

136. Furthermore, on 4 July 2008 the National Constituent Assembly passed a resolution pardoning individuals found carrying small quantities of narcotic and psychotropic substances. This resolution was a response to a general outcry from inmates and their families over the lack of proportion between their sentences and the offence, as the law on narcotic and psychotropic substances is repressive in intent. This measure secured the freedom of 2,228 male and female inmates, thereby reducing overcrowding in the country's social rehabilitation centres, thanks to the coordinated work of the Subsecretariat for Social Rehabilitation Coordination of the Ministry of Justice and Human Rights, the Public Criminal Defence Unit and the National Social Rehabilitation Service.

137. It is important to mention to the Committee that one of the reforms to the Sentencing Implementation Code approved by the National Constituent Assembly on 22 July 2008 was the replacement of articles 32 and 33 of the Code to allow sentences to be reduced on the basis of a merit system used to evaluate good behaviour and active collaboration by inmates in their own rehabilitation, as demonstrated by participation in cultural, educational, occupational or addiction treatment activities, among others, with sentence reductions of up to 50 per cent. On 26 September 2008, the National Social Rehabilitation Council approved the regulations on sentence reductions under the merit system, whose operation has so far secured the release of 1,573 inmates.

138. The Committee should also be aware that, in accordance with the Convention on the Transfer of Sentenced Persons, which Ecuador subscribed to in 2005, and the bilateral agreements signed by Ecuador with El Salvador, the Dominican Republic, Spain, Peru and Colombia, 169 foreign inmates have been repatriated, relieving crowding in Ecuadorian prisons.

139. In addition, 2,227 incarcerated people have been released since July 2007 by application of articles 24 and 77, Nos. 8 and 9 of the previous Constitution of 1998 and article 77 (9) of the current Constitution, which establish that pretrial detention may not exceed set periods for offences carrying a prison term (six months in the case of *prisión* and one year in the case of *reclusión*), becoming void if these deadlines are exceeded.

140. Another of the measures taken by Ecuador to reduce overcrowding has been to apply the benefits stipulated for inmates in the Sentencing Implementation and Social Rehabilitation Code,[12] including pre-release [*prelibertad*] and parole [*libertad controlada*], which are defined in articles 19, 22 and 23 of the Code and in articles 36 to 40 of the Regulations for the Code. This is a State law of universal and compulsory application for all those who meet the conditions and documentation and other requirements laid down by the National Social Rehabilitation Service.

[12] Published in the supplement to *Registro Oficial* No. 399 of 17 November 2006.

141. With the abolition of automatic sentence reductions of 180 days per year, known as the “2 x 1”, on 28 September 2001, and the implementation of reductions of up to 180 days for each five-year period for 2003, 2004 and 2005, the pre-release option became very popular among the prison population of Ecuador. An average of over 2,500 pre-release applications were processed during those years, helping to bring down overcrowding levels in the country and reintegrate inmates into their natural, family, social and economic environment.

142. Over the past year, following review of records and archives, 758 pre-release applications have been processed (358 for common offences) and 151 rejected.

143. Each month, inmates benefiting from pre-release status are allowed longer stays outside prison and are granted medical leave and rest, on the basis of the reports issued by social rehabilitation centres across the country. A total of 2,743 pre-release extensions to the time inmates are allowed to spend outside have been processed in the past year.

144. With this procedure, the National Social Rehabilitation Service, as the agency responsible for prison administration, is not only reducing levels of overcrowding in the country’s different prison facilities but is also contributing to the reintegration of inmates into their family and social environment.

145. As the Committee can see, it is fair to say from the information given above that, thanks to the political determination of the current Government, Ecuador has made considerable progress in reducing prison overcrowding and providing access to defence counsel. Crowding has fallen by 22.2 per cent, with the number of inmates declining from about 18,000 in 2006 to 13,700 at present.

18. Please provide details of action taken to follow up reports lodged by individuals [CAT/C/ECU/CO/3, para. 24] of human rights violations in the prison system. Please indicate whether the operational plan has been implemented and what results have been achieved.

146. The Ecuadorian State takes immediate and appropriate action to deal with complaints of human rights violations in the prison system, with the National Social Rehabilitation Service conducting investigations and ensuring that due process is followed; the appropriate administrative sanctions are applied where appropriate, for example:

(a) Three complaints were made against staff in 2006, resulting in one employee being dismissed and another fined 10 per cent of salary, while the case against the third was dismissed;

(b) Six complaints were made in 2007, resulting after investigation in four employees having pay docked, with one receiving a written warning and three receiving verbal warnings, while two cases were dismissed;

(c) Four complaints were presented in 2008, as a result of which one officer at the Tena social rehabilitation centre was dismissed, while investigations into the other three cases are not yet complete;

(d) In the present year, the National Social Rehabilitation Council has received one complaint of ill-treatment of inmates at the Varones de Esmeraldas social rehabilitation centre, and this is currently under investigation.

147. The Ecuadorian Ombudsman’s Service is also assisting with the work of ensuring that human rights violations do not occur at prison facilities, in compliance with the requirement in article 215 (4) of the Constitution to prevent and halt any cruel, inhuman or degrading treatment, in accordance with letter I of article 8 of the Organic Act of the Ombudsman’s Service:

"*Article 215*. The functions of the Ombudsman's Service will be to protect and safeguard the rights of the inhabitants of Ecuador and to defend the rights of Ecuadorians abroad. Its responsibilities will include, in addition to those prescribed by law:

4. Overseeing and enjoining respect for due process and preventing or immediately halting any form of torture or cruel, inhuman or degrading treatment."

148. Accordingly, the Ombudsman's Service maintains commissions in all 24 of the country's provinces, whence periodic visits to all the country's social rehabilitation centres are coordinated. This monitoring is conducted fortnightly, and consists in checking how inmates are being treated and whether the provisions of article 51 of the Constitution, quoted below, are being complied with:

"People in custody

Article 51

People in custody will be entitled:

1. Not to be placed in solitary confinement as a disciplinary sanction.

2. To communicate with and receive visits from family members and counsel.

3. To report the treatment they have received during their confinement to a judicial authority.

4. To have access to the human and material resources needed to ensure they remain in good all-round health in detention facilities.

5. To have their educational, occupational, productive, cultural, nutritional and recreational needs attended to.

6. To receive specialized and preferential treatment in the case of pregnant and nursing women, adolescents, older adults and the sick or disabled.

7. To have protective measures put in place for children, adolescents, the disabled and older adults cared for by and dependent upon them."

149. At the end of each month, commissions around the country must report any developments to the Ombudsman and take action as provided by law.

19. Please provide information on the mandate and functions of the Unidad Transitoria de Gestión [transitional management unit], including the human and financial resources allocated to it and its achievements thus far.

150. Under Executive Decree No. 441 of 26 June 2007, published in *Registro Oficial* No. 121 of 6 July the same year, the President of Ecuador, Rafael Correa, declared a state of emergency for the prison system throughout the country and in this context created the financially and administratively independent Transitional Management Unit for the Public Criminal Defence Service.

151. The Unit was created with the object of implementing policies and actions and organizing, implementing and directing public defence activities for arrested persons and inmates at the country's social rehabilitation centres, especially in cities where a higher concentration of arrested and incarcerated persons had no professional legal assistance. The Unit was subsequently attached to the Ministry of Justice and Human Rights by Executive Decree No. 748, published in the supplement to *Registro Oficial* No. 220 of 27 November 2007.

152. Resolution No. 001-UTGDPP-2007 of 31 August 2007, published in *Registro Oficial* No. 167 of 11 September 2007, laid down the Regulations on Parameters and

Minimum Quality Standards for the Selection of Legal Organizations Providing Professional Criminal Defence Services.

153. In accordance with these regulations, the services of 14 law centres (9 in Guayaquil and 5 in Quito) have been retained following a public tendering process, and these are now working with 240 defence lawyers. The Unit engaged 40 lawyers to participate in oral remand hearings [*audiencias de flagrancia*] and arraignment hearings (7 in Quito and 5 in Guayaquil) and the rest to expand defence coverage to 21 provinces and participate in preliminary hearings and adolescent offender issues.

154. So far, assistance has been provided in 7,386 cases (2,897 in Quito, 3,617 in Guayaquil and the rest in the remaining provinces); in other words, as of 17 September 2008 almost 7,400 low-wealth individuals had benefited from the services provided by the State in the form of representation by a defence lawyer.

155. Of these 7,386 cases, 3,224 have been resolved, with about 3,000 inmates being released and about 220 sentenced. It should be pointed out that about 88 per cent of the releases took place because the time limit for pretrial detention had expired, in accordance with article 24 (8) of the Constitution.

156. The functions of the Public Criminal Defence Unit are laid down in article 3 of Executive Decree No. 563 of 17 August 2007,[13] under which it was created and required to:

(a) Exercise control over the Public Criminal Defence Service.

(b) Invite applications and select and recruit organizations to provide professional and appropriate criminal defence services across the country, observing the quality parameters laid down in the regulations that will be issued for this purpose and setting minimum standards to ensure a high-quality service. In this recruiting process, preference will be given to the cities with the highest prison concentration in the country.

(c) Analyse, process and classify information on people who have been arrested or incarcerated, as the case may be, and establish technical criteria for prioritizing case submission on the basis of time in custody, the nature of the offence being tried and the condition of the person held.

(d) Follow up the procurement of criminal defence services across the country, the mission of which will include resolving the procedural situation of those in custody and/or the corresponding administrative resolution regarding implementation of sentences for inmates at the country's social rehabilitation centres who lack professional legal assistance.

(e) Hold events to familiarize organizations qualifying to provide legal defence services, organs of the judiciary and the Office of the Public Prosecutor with current criminal trial procedures, criminal defence models, information technology tools and quality management parameters.

(f) Develop the information technology tools needed to systematize and evaluate the monthly progress reports prepared by public defence services to show whether the minimum quality standards laid down for their work have been met.

(g) Apprise the other agencies involved in the Ecuadorian prison system of the programme follow-up and evaluation findings.

157. In the current fiscal year, the Public Criminal Defence Service Management Unit has received a budget of US$ 2,108,182.13 from the central Government for the following items:

[13] Published in *Registro Oficial* No. 563 of 29 August 2007.

(a) Staff costs;

(b) Consumption goods and services such as consultancy, advice and investigation;

(c) Other current expenses;

(d) Durable goods.

158. With this information, the Ecuadorian State has set out the steps it has taken to implement and support the successful functioning and work of the Public Criminal Defence Service Management Unit by providing it with the necessary human and financial resources and with the regulatory framework required for its proper functioning.

20. With reference to information submitted by the State party on investigations into allegations of torture of women between 2001 and 2003, please indicate the outcome of these investigations, particularly in cases involving sex offences and domestic violence.

159. The information from 2001 to 2003 available at the Research and Information Management Service of the Office of the Public Prosecutor shows that 1,775 complaints were made in the first year but there were no convictions, while there were 2,626 complaints in the second year, resulting in 90 convictions, and 5,176 in the third year, resulting in 107 convictions, as shown below.

Table 7
Statistics on sex offences, 2001

					Public prosecutor		*Preliminary hearing*		*Criminal court hearing*		
Offence	*Prelim. inquiry*	*Dismissal*	*Crim. invest.*	*Conversion*	*Drops charges*	*Presses charges*	*Trial proceeds*	*Stay*	*Acquittal*	*Guilty verdict*	*Fast track procedure*
Indecent assault	237	42	10	0	1	9	4	1	0	0	0
Rape	941	221	14	1	10	32	10	1	1	0	0
Statutory rape	96	8	7	0	1	0	0	0	0	0	0
Procuring and corruption of minors	96	9	1	0	1	0	0	0	0	0	0
Abduction	405	17	8	0	4	1	0	0	0	0	0
Total	**1 775**	**297**	**40**	**1**	**17**	**42**	**14**	**2**	**1**	**0**	**0**

Source: Office of the Public Prosecutor.

Table 8
Statistics on sex offences, 2002

						Public prosecutor		*Preliminary hearing*		*Criminal court hearing*	
Offence	*Reported*	*Prelim. inquiry*	*Dismissal*	*Crim. invest.*	*Conversion*	*Drops charges*	*Presses charges*	*Trial proceeds*	*Stay*	*Acquittal*	*Guilty verdict*
Indecent assault	472	526	68	73	0	39	83	25	12	4	13
Rape	2.030	2.042	260	316	1	148	148	143	66	12	76
Statutory rape	104	104	17	19	0	12	12	12	11	2	0
Procuring and corruption of minors	20	31	4	6	0	1	1	1	0	0	1
Total	**2 626**	**2 703**	**349**	**414**	**1**	**200**	**200**	**181**	**89**	**18**	**90**

Source: Office of the Public Prosecutor.

Table 9
Statistics on sex offences, 2003

						Public prosecutor		Preliminary hearing		Criminal court hearing	
Name of offence	*Reported*	*Prelim. inquiry*	*Dismissal*	*Crim. invest.*	*Conversion*	*Drops charges*	*Presses charges*	*Trial proceeds*	*Stay*	*Acquittal*	*Guilty verdict*
Indecent assault	514	640	70	131	0	42	66	34	23	6	6
Rape	2 570	2 566	216	673	0	154	399	250	78	29	95
Statutory rape	128	116	21	29	0	7	32	13	11	1	2
Procuring and corruption of minors	78	99	7	9	0	8	5	1	1	0	3
Abduction	1 886	1 521	101	48	0	14	13	4	6	0	1
Total	**5 176**	**4 942**	**415**	**890**	**0**	**225**	**515**	**302**	**119**	**36**	**107**

Source: Office of the Public Prosecutor.

160. This information shows that cases of violence, degrading treatment and sex crimes against women have been investigated and, where appropriate, punished.

21. Please indicate what percentage of the staff assigned to units established by the Office of the Procurator-General to handle sex crimes and domestic violence are women.

161. Women form a majority of staff at the units established by the Office of the Public Prosecutor to handle sex crimes and domestic violence, accounting for no less than 78 per cent of the total as against 22 per cent for men.

22. Please provide information on the conditions to be met by non-governmental organizations and human rights defenders before they can be granted access to places of detention.

162. With a view to preventing film or still cameras being taken into facilities and avoid situations in which information might be misused to satisfy personal interests, and considering that these facilities are part of the State security apparatus, the National Social Rehabilitation Service has guidelines for authorizing access to social rehabilitation centres for NGO representatives and human rights defenders. These regulations have been applied since 1995 with minor changes over time. One requirement is to submit an application to the National Director of Social Rehabilitation, containing:

(a) Evidence of legal personality and copy of articles of association, in the case of NGOs wishing to become involved in prison work;

(b) Copy of ministerial approval agreement;

(c) Presentation of a working plan compatible with the Sentencing Implementation and Social Rehabilitation Code, specifying the planned activities, services and timetable;

(d) Details of trained and suitable personnel;

(e) Project implementation financing;

(f) List of people wishing to enter the social rehabilitation centre, attaching a copy of each person’s identity card and two photographs apiece;

(g) List of social rehabilitation centres they wish to enter.

163. The National Social Rehabilitation Service reviews the application and, if this is approved, issues the necessary access credentials and coordinates with the authorities of the social rehabilitation centres to ensure the safety of the staff from the applicant organization and the provision of all the facilities necessary for it to achieve its purpose. It is important to stress that the Ecuadorian State provides NGOs with all the facilities they need for their inspection and monitoring work at social rehabilitation centres.

G. Articles 12 and 13

23. Please indicate how allegations of excessive use of force by law enforcement officials during criminal investigations have been investigated, how many such officials have been brought to trial and how many convicted, including details of the rank of those found guilty and the enforcement of sentences.

164. The information from 2003 to 2008 available at the Office of the Public Prosecutor indicates that only two trials for offences against individual freedom and torture have resulted in convictions, as detailed in the following table:

Table 10
Statistics on crimes against freedom and crimes against individual freedom, and the crime of torture, 2003-2008

Year	*Offences notified*	*Preliminary inquiry*	*Criminal investigation*	*No charges brought*	*Charges brought*	*Trial proceeds*	*Stay of proceedings*	*Conviction*
2003	-	-	-	-	-	-	-	1
2004	2	2	-	-	-	-	-	-
2005	2	-	1	-	1	-	-	-
2006	14	9	-	1	-	-	1	-
2007	1	1	1	-	1	1	1	1
2008	6	6	-	-	-	-	-	-

Source: Office of the Public Prosecutor.

165. The first of the cases concerned the disappearance and death of Elías López Pita at the hands of members of the police force. The perpetrators were sentenced in 2003 to 16 years' extraordinary imprisonment and their accomplices to eight years' ordinary imprisonment, and they are currently serving their sentences. It is important to note that the extradition of one of those convicted, Luis Abelardo Criollo Puma, was sought from the Italian authorities. He was extradited to Ecuador on 11 February 2009, and is currently serving his sentence.

166. The second case described is that of Paúl Guanuña Sanguña, an adolescent who was murdered by law enforcement officials. These were sentenced to 20 years' special imprisonment by the Fourth Criminal Court of Pichincha in 2007. The case is currently being appealed.

167. Regarding allegations of professional misconduct and police abuse presented to the police courts from 2003 to 2008, details of cases heard and rulings issued are given below.

Table 11
Statistics on allegations brought before police courts

Year	*National Court (1)*	*Resolutions archived*
2003	0	0
2004	0	0
2005	6	6
2006	7	7
2007	2	2
2008	4	4
Total	**19**	**19**

Source: Office of the Public Prosecutor.

Table 12
Statistics on allegations brought before the criminal tribunal

	Criminal tribunal		*Verdict*	
Year	*First*	*Second*	*Guilty*	*Not guilty*
2003	0	15	709	6
2004	0	32	15	17
2005	0	18	11	7
2006	0	41	21	20
2007	0	6	3	3
2008	0	5	2	3
Total	**0**	**117**	**61**	**56**

Table 13
Statistics on allegations brought before the criminal tribunal

	Criminal tribunal				*Verdict*		
Year	*I*	*II*	*III*	*IV*	*Guilty*	*Not guilty*	*Total*
2003	2	3	7	3	7	8	15
2004	4	8	4	4	8	12	20
2005	1	2	2	1	3	3	6
2006	1	3	10	8	10	12	22
2007	2	2	2	1	3	4	7
2008	2	2	2	1	4	3	7
Total	**12**	**20**	**27**	**28**	**35**	**42**	**77**

Table 14
Statistics on allegations brought before circuit courts

	Circuit court								*Verdict*			
Year	*I*	*II*	*III*	*IV*	*V*	*VI*	*VII*	*VIII*	*Guilty*	*Not guilty, criminal tribunal*	*Not guilty, sent for review*	*Total*
2003	12	11	13	40	39	2	1	32	45	43	62	150
2004	0	2	8	22	26	3	2	17	34	26	20	80
2005	0	1	9	17	29	4	5	23	35	31	22	88
2006	0	0	9	23	34	6	4	12	24	28	26	88
2007	0	0	10	26	32	7	3	11	29	27	33	89
2008	1	0	3	32	11	6	8	3	25	19	21	69
Total	**13**	**15**	**52**	**160**	**171**	**28**	**23**	**98**	**192**	**174**	**194**	**560**

168. As can be seen, cases of torture in Ecuador have been investigated and punished by the ordinary courts and also by the police courts. Since the entry into force of the new Constitution, published in *Registro Oficial* No. 449 of 20 October 2008, the police and military courts have disappeared from the equation and all cases will be heard by ordinary judges, as can be seen in the answer to question 24 of this report.

169. The number of allegations of ill-treatment and torture has increased since 2007 because the current Government was concerned about underreporting of violations and provided the population with trustworthy mechanisms for presenting allegations.

170. In consideration of all this, the Committee should know that the Truth Commission was set up by Executive Decree No. 305 of 3 May 2007[14] to investigate and elucidate acts of violence and human rights violations alleged to have been committed by agents of the State between 1984 and 1988 and in other periods, and to bring their perpetrators to justice. The Commission is expected to report in mid-2009 on its investigation of human rights violations, including cases of torture.

24. With reference to the Committee's observation that the existence and activities of the military and police courts are not in keeping with the international treaties to which Ecuador is a party, due to their sometimes overly extensive reach, please indicate what steps, including in relation to the allocation of human, material and economic resources, the State party is taking to strengthen the ordinary courts [CAT/C/ECU/CO/3, para. 25] in order to enable them to fully exercise their powers. Please also provide information about the specific duties assigned to such courts and the manner in which these have been interpreted. Please specify whether the jurisdiction of the military and police courts is restricted to acts committed by military and police personnel in the performance of their duties.

171. To give some background on the reforms and changes affecting military judges and tribunals, the Ecuadorian State is amending its domestic legislation to reflect international treaties and conventions ratified by it. In point of fact, resolution No. 0042-2007-TC of 10 June 2008[15] issued by the former Constitutional Tribunal, now the Constitutional Court, declared articles 145 and 147 of the National Security Act unconstitutional. These provisions stipulated that for the duration of the state of emergency adopted by the President of Ecuador, it would be permissible, by application of the National Security Act,

[14] Published in *Registro Oficial* No. 87 of 18 May 2007.
[15] Published in the *Registro Oficial*, supplement No. 371, 1 July 2008.

for military tribunals to judge and pass sentence on civilians, thereby disregarding the basic guarantees of due process and restricting their right to be heard by their natural judge. On this basis, the then Constitutional Tribunal, in the light of the 1996, 1997, 1998, 1999 and 2005 annual reports of the Inter-American Commission on Human Rights, in which the Committee explicitly urged the Ecuadorian State to use the normal courts rather than military or police courts in cases of human rights violations, adjusted its positive provisions to reflect the new international standards of constitutional guarantees.

172. In consideration of the Committee's observation regarding the incompatibility of police and military courts with international treaties, it is important to note that the current Constitution has abolished them (see provisions of article 160, last paragraph), with all the powers formerly possessed by these courts passing to the judiciary, which has been wholly regulated by the new Organic Code of the Judiciary since this came into force.

"*Article 160*. Members of the Armed Forces and National Police will be tried by the organs of the judiciary; in the case of offences committed in the course of their specific missions, they will be tried by courts specializing in military and police matters that likewise form part of the judiciary. Disciplinary offences will be judged by the competent authorities as provided by law."

173. Article 188 of the Constitution also establishes that members of the security forces, whether police or military, will be tried by the ordinary courts:

"*Article 188*. In application of the principle of unity of jurisdiction, members of the Armed Forces and National Police will be tried by the ordinary courts. Transgressions of a disciplinary or administrative nature will be subject to their own rules of procedure.

Cases of special jurisdictional competence [*fuero*] will be regulated by law in accordance with administrative responsibility and rank."

174. The issue has also been dealt with by Constitutional Court interpretative judgement No. 001-08-SI-CC[16] for the 2008 transitional period and by the National Court of Justice resolution of the present year,[17] both of which establish that the military and police tribunals are to cease to operate and cases formerly dealt with there are to be transferred to the National Court of Justice, provincial courts, criminal courts and other types of court as appropriate given the subject-matter of the case, so that the necessary procedures can be followed.

175. Meanwhile, the Organic Code of the Judiciary, which is now in force, lays down clear rules stipulating the areas of jurisdiction of the court for military and police criminal offences and contraventions, as follows:

"*Article 188*
Jurisdiction of the court for military and police criminal offences and traffic contraventions

The special court for military and police criminal offences and traffic contraventions will hear:

1. Appeals on points of fact and law in criminal proceedings for offences committed by members of the Armed Forces in the performance of their specific duties;

2. Appeals on points of fact and law in criminal proceedings for offences committed by members of the National Police in the performance of their specific duties;

3. All other matters as provided by law."

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[16] Published in *Registro Oficial* No. 479 of 2 December 2008.
[17] Published in *Registro Oficial* No. 511 of 21 January 2009.

"*Article 231*
*Jurisdiction of contraventions magistrates [*juezas y jueces de contravenciones*]*

Each district will have the number of contraventions magistrates determined by the Judiciary Council, which will also determine where they will be based and the geographical extent of their jurisdiction; if no such determination is made, jurisdiction will be deemed to be cantonal. Their powers will be as follows:

5. The Judiciary Council will determine which of these magistrates are competent to judge military, police and traffic contraventions, cases of domestic violence in accordance with the provisions of the law on violence against women and the family, or contraventions of any other kind, and will determine their territorial jurisdiction in accordance with the needs of the service."

176. The human, material and financial resources required to set up these courts will be allocated once the process of creating the military and police criminal court has begun, which will be in the next few months.

177. From what has been said, it can clearly be inferred that the military and police jurisdictions will no longer be part of the equation. In future, crimes and contraventions by security forces personnel will be judged by members of the judiciary.

25. Please provide information on the current status of the 2007 National Defence Act regarding the reform of military judges and courts.

178. The Organic National Defence Act was published in *Registro Oficial* No. 4 of 19 January 2007, and is now in force. Article 54 of the Act states: "The administration of military criminal justice will be subject to unity of jurisdiction, by virtue of which it will be subject to the provisions of the Constitution and the organic laws of the judiciary and the public prosecution service…"

179. Accordingly, point 18 of Constitutional Court interpretative ruling No. 001-08-SICC of 28 November 2008 states: "… To guarantee the principle of unity of jurisdiction, and in accordance with the derogation provided for by the Constitution, this Court confirms that the former military and police courts ceased to exist when the 2008 Constitution came into force. Other bodies administering military and police justice remain in being and will continue to exercise their functions until the law makes relevant provision…"

180. Although article 54 of the Organic National Defence Act provides that unity of jurisdiction will only become effective once provision is made for this procedure in the organic laws of the judiciary and the public prosecution service, the Constitutional Court has expressly enjoined immediate compliance with the constitutional provision by stripping the Military Court of Justice of its functions, providing only that the military courts are to continue operating until the laws referred to undergo the necessary reforms, to ensure that military justice is not paralysed.

26. Please provide information on complaints received after 2003 of torture or ill-treatment and on any steps taken by the State party to adequately investigate persons suspected of committing acts of torture or ill-treatment against minorities and women. Please also provide information on the treatment of human rights defenders and cases of sexual abuse. Please indicate the number of prosecutions, convictions and sentences handed down.

181. The Inspectorate General of the National Police has information only from May 2005, since when it has received 299 complaints of alleged ill-treatment, torture or physical assault. Following investigation by internal affairs offices at the national level, these were brought before the different judicial and regulatory authorities as shown in the following statistical table.

Table 15
Statistics on allegations brought before offices of internal affairs at the national level

Type of complaint	*2005**	*2006*	*2007*	*2008*	*Total*
Human rights	4	8	10	10	32
Torture	1	-	-	1	2
Ill-treatment	2	-	10	2	14
Physical assault	11	44	64	132	251
Total	**18**	**52**	**84**	**145**	**299**
Action taken	*2005*	*2006*	*2007*	*2008*	*Total*
Complaint dismissed	11	33	52	80	176
Considered by General Command	0	2	1	3	6
Disciplinary sanctions	3	13	16	18	50
Dealt with by police magistrates	2	4	13	35	54
Dealt with by ordinary magistrates	2	-	-	3	5
Professional misconduct procedure	-	-	1	-	1
Disciplinary tribunals	-	-	1	1	2
Pending	-	-		5	5
Totals	**18**	**52**	**84**	**145**	**299**

* Information is available from May 2005.

182. To resolve the Committee's concern about allegations of torture and ill-treatment of minorities, the Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE) reports that from 2001 to the present, the National Bureau for the Defence of Indigenous Peoples' Rights, now the National Commission for the Human Rights of Indigenous Peoples, has considered and processed only three cases of ill-treatment. One concerned indigenous migrants working in large cities and experiencing ill-treatment at the hands of metropolitan police security personnel, another concerned people being assaulted because of alleged disrespect for authority, and the third concerned ill-treatment of demonstrators from indigenous communities in popular protests.[18]

183. Regarding the treatment of human rights defenders, on 5 August 2008 the Rapporteur on the situation of human rights defenders made an urgent appeal to the Ecuadorian State on behalf of an activist, Esther Landetta, asking it to "adopt all necessary measures to protect the rights and freedoms of the person named".

184. In consideration of this appeal, the Subsecretariat for Human Rights and Public Defence Coordination of the Ministry of Justice and Human Rights contacted Esther Landetta to discuss her case and agree on certain comprehensive protection measures. The first meeting was held on 26 September 2008 and was followed by others at which an anthropological and juridical evaluation of the case was carried out and a number of commitments were entered into with the beneficiary in the light of her needs and requests, including the following:

(a) Provision of a card identifying her as the beneficiary of a precautionary measures and entitling her to 24-hour police protection whenever she considers this

[18] See annex for case details.

necessary. This card has not been delivered to the beneficiary because the system of protection to which it provides entitlement is still in the process of implementation.

(b) Provision of police protection if required by the beneficiary when wishing to travel. This protection must be requested with at least 72 hours' notice from the Ministry of Justice and Human Rights so that it can coordinate with the Victim and Witness Protection Programme and National Police. The beneficiary has already made use of this protection on a number of occasions when travelling to carry out judicial procedures and activism work in her community. Police personnel have been detailed to accompany and protect Ms. Landetta for the duration of these, taking whatever protective measures are required in each case.

(c) She is to be maintained in the city of Quito while her and her family's (and particularly her son and daughter's) rights to life and to integrity of the person are in imminent danger of being violated. Ms. Landetta has now been living in Quito for six months to protect her life and the safety and integrity of her person, with the requisite guarantees of protection for her rights to life and integrity of her person.

(d) Police protection is to be maintained in Tenguel parish for her son, daughter and relatives, with patrols and escorts for her children when they go to their place of education. This protection is active and is being constantly monitored and evaluated by the Subsecretariat.

(e) Coordination with a number of institutions so that she can find employment while she is in Quito, since when she left her home because of the constant threats against her she also had to relinquish her livelihood based on agriculture. Contact has been made and steps have been taken with the Victim and Witness Protection Programme so that the comprehensive protection it provides to the beneficiary can be transferred to Quito and a start can be made on procuring some kind of work for Ms. Landetta to subsist on.

(f) Coordination with a number of institutions to find a way for her to complete her secondary schooling through distance learning. This possibility is being explored so that Ms. Landetta can receive a study grant.

(g) Coordination with the Ecuadorian Social Security Institute to see if the financial assistance provided to her by the campesino social insurance programme can be maintained, since by remaining in Quito she is at risk of losing that social benefit. A meeting has already been held with a representative of the Director of Campesino Social Insurance and there is now a commitment to maintain the assistance, given that the beneficiary is under the protection of measures prescribed by the Special Rapporteur on the situation of human rights defenders.

(h) On 13 January this year, Ms. Esther Landetta was the subject of a risk analysis carried out by the National Police with a view to coordinating with this ministry and optimizing protection measures more effectively.

185. Constant, regular contact is maintained with Ms. Esther Landetta, either by telephone or in person, so that the progress and effectiveness of these measures can be discussed with her.

186. Other requests have been submitted for consideration by the Office of the Public Prosecutor and dealt with by it promptly, which is evidence of the respect for activists and human rights defenders shown by the Ecuadorian State.

27. What specific measures has the State party taken to address the slowness and delays in the processing of court cases, which was noted in paragraph 18 of the Committee's previous concluding observations.

187. The Ecuadorian State has taken steps to deal with the lack of expedition in the processing of court cases. The criminal procedures system in operation since 2000 has explicit deadlines, set out as follows in article 206 of the Code of Criminal Procedure:

(a) *Criminal investigation* [instrucción fiscal]: under article 223 of the Code of Criminal Procedure, this is to be completed within a maximum of 90 days, with no extensions, from the date notification is given to the accused or, where appropriate, the public defender or the official defender appointed by the judge. If the public prosecutor does not declare the investigation complete at the end of this period, the judge must declare it complete. Steps taken after the deadline will be invalid, and the final paragraph of article 224 of the Code of Criminal Procedure provides:

"*Article 224.* If this is not done, the judge will notify the Attorney General, who will fine the junior prosecutor the equivalent of five months' minimum living wage and grant a new deadline of three days for the obligation to be complied with. If it is still not complied with when the new deadline expires, the prosecutor will be dismissed from his or her post and the case transferred to another prosecutor, who must report within the period, not exceeding 30 days, allowed for the purpose by the senior prosecutor."

This refers to the fact that there is a penalty for unjustified delay exceeding the time limit laid down by law.

(b) *The intermediate stage*: article 228 of the Code of Criminal Procedure establishes that the summons to attend a preliminary hearing will be issued to the parties within 10 days following notification by the prosecutor's report [*dictamen fiscal*]. The judge will summon the parties to the preliminary hearing, which is to take place no less than 10 days and no more than 20 after the date of the summons. At this stage the proceedings may end with a stay or with sanctions, either of a procedural nature such as a declaration of invalidity, or in the form of actions such as an order to open a new prosecution over acts that contravene the Constitution or laws.

(c) *The trial*: this essentially takes the form of a public hearing (except in cases of sex offences) which must be held within 30 days from the time the summons is executed.

(d) *The appeals stage*: this is the period during which the parties to the case can appeal to the Higher Court to have the judgement of the lower court reviewed or overturned, again within clearly established time limits.

188. It is also important to note that the Legislation and Oversight Committee of the National Assembly approved the bill to reform the Code of Criminal Procedure and other statutes, which reaffirms the oral adversarial system, i.e., it introduces oral procedures at every stage of a trial so that the principles of concentration, challenge, legal applicability, simplification, uniformity, effectiveness, directness, dispatch and procedural economy are satisfied and due process can be guaranteed.

189. Another important point is that article 127 of the Organic Code of the Judiciary referred to earlier establishes the liability of court secretaries and other officials who unjustifiably or negligently delay the execution of cases in their charge or the provision of material they are required to produce. In the event of such delay, compliance will be compelled by a personal injunction and their conduct will be treated as a disciplinary offence liable to a financial penalty or warning.

190. All statutory provision has been made to ensure that court procedures are expeditious, from the establishment of deadlines for the start and end of a procedural stage to the imposition of financial or disciplinary sanctions in the event of non-compliance.

191. To ensure that the statutory provisions to expedite procedures described in the previous paragraphs are complied with, the Ecuadorian State, as represented by the Subsecretariat for Interinstitutional Coordination of the Ministry of Justice and Human Rights, acted on two fronts with respect to this concern of the Committee's:

(a) New judgeships were created through the Unit for the Coordination of Reform to the Administration of Justice in Ecuador (PROJUSTICIA):

(i) Plans were made to create 40 children's and adolescents' courts, of which 13 are in operation.

(ii) Plans were made to create and improve 18 mediation centres, of which 17 are ready.

(iii) Five courtrooms were planned in the Guayaquil circuit tax tribunals, all of which are now ready.

(b) Public policy action has been taken by the Subsecretariat for Interinstitutional Coordination:

(i) The Interinstitutional Coordination Commission for Implementation of the Criminal Procedural System has delivered the reformed text of the Code of Criminal Procedure and developed an information campaign to apprise citizens of the workings of the criminal procedural system, while testing for connectivity among actors in the criminal procedural system is now in progress.

(ii) A study on implementation of the system of multiple jurisdiction judges has been produced as part of the Justice Services and Access Improvement Programme. In addition, a social audit of the judicial system has been carried out (its website is currently being set up) and civic observatories are now up and running, with 268 people receiving training in four cities.

192. By carrying out these actions, the Ecuadorian State aims to make court cases really expeditious and resolve the concern expressed by the Committee in paragraph 18 of its earlier concluding observations.

H. Article 14

28. Please inform the Committee of measures taken to provide compensation and/or reparation and rehabilitation for victims of acts of torture [CAT/C/ECU/CO/3, para. 26], including the establishment of a regulatory framework to govern compensation for acts of torture. What types of programmes to provide comprehensive care and support for victims of torture have been devised and implemented?

193. The National Constituent Assembly introduced a novel provision into the current Constitution to allow appropriate and effective measures to be taken for the benefit of torture victims. Article 78 establishes the importance of providing comprehensive redress for such people on a number of fronts, which is a great step forward in Ecuadorian legislation:

"*Article 78.* Victims of crime will enjoy special protection, including measures to ensure that they do not fall victim to further crimes, especially in the process of gathering and assessing evidence, and they will be protected from threats and any other form of intimidation. Mechanisms will be introduced to provide comprehensive redress, including

immediate measures to obtain accurate knowledge of the events and provide restitution, compensation, rehabilitation, assurances of non-repetition and satisfaction of the right violated."

194. In view of the above, mention should be made of the newly created "system of protection and assistance for victims, witnesses and participants in criminal proceedings" approved by the Constituent Assembly in May 2008 on the model of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, an international instrument adopted by the General Assembly of the United Nations in November 1985. This system is run by the Office of the Public Prosecutor.

195. This system of protection and assistance for victims, witnesses and participants in criminal proceedings is governed by the principles of accessibility, responsibility, complementarity, timeliness, effectiveness and efficiency, with the State guaranteeing that it will be appropriately, adequately and consistently financed. The system has two aspects:

(a) A protection aspect, the purpose of which is to provide:

(i) Immediate attention;

(ii) Community police protection;

(iii) Permanent police protection;

(iv) Police escort operations;

(v) Change of domicile;

(vi) Assistance in leaving the country;

(vii) Security measures at social rehabilitation centres;

(b) An assistance aspect comprising:

(i) Medical care;

(ii) Psychological counselling;

(iii) Social assistance;

(iv) Assistance in finding employment;

(v) Assistance to continue studying.

196. By means of these two aspects, the Office of the Public Prosecutor is to establish a mechanism for providing torture victims with comprehensive redress.

197. In addition, as noted earlier, the Truth Commission was set up on the initiative of the President of Ecuador to investigate and elucidate acts of violence and human rights violations and bring their perpetrators to justice. The Commission has carried out its work in accordance with the principles of the United Nations Istanbul Protocol for dealing with cases of torture.

198. In 2009, the Commission completed its second gruelling year of operations, interacting directly with victims in a process that includes taking testimony from victims, relatives and witnesses, with specialist interdisciplinary teams comprising psychologists, lawyers and social communicators who act in strict accordance with the ethical codes of their professions, as provided by paragraphs 48, 50 and 51 of the Istanbul Protocol. The work also involves obtaining case files from the country's courts and compiling all the necessary information from the press and National Police and Armed Forces files, thereby fulfilling the requirements of chapter III, section D of the Istanbul Protocol. The idea is to use this information to develop recommendations for comprehensive redress of victims and their families.

199. Alleged victims are familiarized with the work of the Truth Commission before interviews are conducted. Their sensitivities are respected and they are informed about the potential consequences of participating in the investigation and about any new feature of the case that could affect them. They are told about the nature of the procedure, why their testimony is important and how the information provided will be used. All this is then summarized in an informed consent document which the victims, witnesses or relatives sign in token of their full or partial consent, thereby following the prescriptions of chapter III of the Istanbul Protocol, after which interviews proceed as laid down in chapter IV of the Protocol.

200. Among its many actions to investigate human rights violations and reparation measures this year, the Truth Commission has held roving workshops around the country dealing with the question of redress, called "Opinion and proposals regarding redress for victims and discussion of the psychosocial impact of different human rights violations", with over 150 people giving their testimony. The conclusions and the arguments of those testifying will be taken into account in the final report to be presented by the Truth Commission in mid-2009.

201. Another important aspect of the work being done by the Ecuadorian State to provide redress for torture victims is the reparation mechanism established by the Ministry of Justice and Human Rights, which is being implemented in compliance with the international obligations arising from the Inter-American Human Rights System and the universal system of human rights. Information on this was given in the response to question 4 of this report.

202. As part of this mechanism, which encompasses the implementation of measures to give satisfaction to victims, there was a national round of public apologies for human rights violations on 10 December 2008, marking the sixtieth anniversary of the Universal Declaration of Human Rights. The Ecuadorian State thus fulfilled an outstanding international obligation vis-à-vis the Inter-American Human Rights System, namely that of making "public apologies to men and women whose human rights were violated by the actions or omissions of the Ecuadorian State".[19]

203. The apologies were made to the following victims of human rights violations: Consuelo Benavides Cevallos, whose disappearance and murder were the work of members of the Ecuadorian Navy; Laura Susana Albán Cornejo, a victim of medical malpractice, whose death was left unpunished by the Ecuadorian courts; Wilmer Zambrano Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo, who were victims of extrajudicial executions by the Armed Forces; Daniel Tibi, who was incarcerated and tried for a crime he did not commit; Rafael Iván Suárez Rosero, who was incarcerated in subhuman conditions, held incommunicado and tried without guarantees of due process; Juan Carlos Chaparro and Freddy Lapo Íñiguez, businessmen who were arrested, held incommunicado and linked to crimes that were never proven; and Rigoberto Acosta Calderón, whose right to due process was violated by the institutions of the Ecuadorian justice system.

204. Public apologies were also made posthumously to Luz Elena Arismendi, Pedro Restrepo and María Fernanda Restrepo Arismendi for the torture, disappearance and death of Carlos Santiago and Pedro Andrés Restrepo Arismendi, crimes for which the State was shown to be responsible, even though there was no international obligation requiring this.

[19] The cases in which the Ecuadorian State was called upon to apologize publicly were: *Consuelo Benavides, Zambrano Rada, Chaparro Lapo, Suárez Rosero, Daniel Tibi, Zambrano Vélez* and *Albán Cornejo*.

205. The Ecuadorian State recognizes that no amount of public apologies and indemnities will ever suffice to remedy the harm caused to victims and their families. Nonetheless, they do represent major progress in respecting and guaranteeing the fundamental rights of human beings.

206. Beginning in 2006, the Ecuadorian Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans designed and developed the Istanbul Protocol[20] Implementation Project as part of the work of the Subcommission for the Human Rights of People in Prison and in collaboration with international NGOs such as Denmark's International Rehabilitation Council for Torture Victims (IRCT) and PRIVA Foundation of Ecuador, and this was put into effect from February 2007 until late 2008.

207. Ecuador was chosen as one of the 10 target countries for the implementation of this project, which involved 54 lawyers, doctors, psychologists and psychiatrists from different cities around the country receiving training at two face-to-face seminars and one distance seminar held especially for them. This training was designed to familiarize independent professionals in Ecuador with the Istanbul Protocol.

208. In 2007, a television and press campaign for the International Day in Support of Torture Victims was also designed with assistance from the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans and the Ministry of Foreign Affairs, Trade and Integration. This was rolled out on 26 June this year with the airing of the campaign's advertising spot.

209. Among other initiatives to help torture victims and eradicate this crime, in 2008 two publications dealing with the eradication of torture were brought out with the backing of the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans and the International Sciences Postgraduate Institute of the Central University of Ecuador. These were the *Manual del Protocolo de Estambul adaptado a Ecuador* [Manual of the Istanbul Protocol adapted to Ecuador] and *A Manual for Prevention*, published by the Inter-American Institute of Human Rights and dealing with the Optional Protocol to the Convention against Torture.

210. With these activities, the Ecuadorian State has given firm evidence of its commitment to implementing actions for the eradication of all kinds of torture and cruel, inhuman or degrading treatment and to ensuring full redress for victims not only of this crime, but of all types of ill-treatment that represent an affront to human dignity. It is also committed to ensuring that such crimes are not repeated.

29. With regard to cases of amicable settlements for the crime of torture and ill-treatment, please provide information on the measures taken to ensure that alleged perpetrators are held accountable for such acts and the form these have taken, with details of the nature of the cases and the action taken against the alleged perpetrators.

211. As things stand, the Ecuadorian State has reached "friendly settlements" before the Inter-American Human Rights System on 17 cases of torture and ill-treatment. These are detailed below.

[20] A United Nations manual providing medical, psychological and legal guidelines for dealing with torture victims.

Table 16
Current status of friendly settlements for crimes of torture and ill-treatment

Case	*Torture to obtain information or a confession*	*Torture as punishment for an act the person has or is suspected of having committed*	*Torture for the purpose of intimidation or coercion*	*Prosecutions against those carrying out the torture*
Juan Clímaco Cuéllar, Carlos Cuéllar, Alejandro Aguinda, Leonel Guinda, Demetrio Pianda, Henry Machoa, Carmen Bolaños, Josué Bastidas, José Chicangana, Froilán Cuéllar and Harold Paz	X	-	-	X
Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Morales Rivera and Segundo Morales Bolaños	X	-	-	-
Washington Ayora Rodríguez	X	-	-	-
Marco Vinicio Almeida Calispa	X	-	-	X
Ángel Reiniero Vega Jim		X	-	
Wilberto Samuel Manzano	X	-	-	X
Vidal Segura Hurtado	X	-	-	X
Byron Roberto Cañaveral	X	-	-	
Carlos Juela Molina	X	X	-	X
Joffre José Valencia Mero and his daughters Ivonne Rocío Valencia Sánchez and Priscila Zobeida Valencia Sánchez	X	-	-	-
Dayra María Levoyer Jiménez	X	-	-	-
Manuel Inocencio Lalvay Guamán	X	-	X	X
Marcia Irene Clavijo	X	-	X	-
Kelvin Vicente Torres Cueva		-	X	-
Fausto Mendoza Giler and Diógenes Mendoza Bravo	-	-	X	-
Joaquín Hernández Alvarado, Marlon Iván Loor Argote and Hugo Jhoe Lara Pinos	-	-	X	-
Angelo Javier Ruales Paredes	X	-	-	X

212. Of these 17 cases of friendly settlements for crimes of torture and ill-treatment, legal proceedings have been started in just 7 and no effective comprehensive redress has been agreed on for the victims.

213. Article 1 of Executive Decree No. 1317, issued on 9 September 2008, confers upon the Ministry of Justice and Human Rights the responsibility for "coordinating the implementation of sentences, precautionary measures, provisional measures, friendly settlements, recommendations and resolutions originating in the Inter-American Human

Rights System and the universal system of human rights, and any other obligations arising from international commitments in this area", while article 2 (3) establishes that the Ministry must "act in coordination with the competent State agency to implement measures as required to comply fully with these obligations".

214. On the basis of this decree, the Subsecretariat for Human Rights and Public Defence Coordination of the Ministry of Justice and Human Rights took responsibility for implementing all the international obligations of the Ecuadorian State, including friendly settlements. Many of these are now at the stage where certain of their determinations are being implemented, following the methodology already set out in the answer to question 4 of this report. The obligation to "investigate and punish those responsible" has yet to be discharged.

215. This effort to investigate and punish the perpetrators will be undertaken in the light of experiences in Argentina (Massera case), Peru (cases of Barrios Altos, La Cantuta and the Army Intelligence Service basements) and Chile (Pinochet case). A strategy is being prepared for reopening torture cases in Ecuador where the alleged perpetrators have gone unpunished, on the basis that human rights violations are not subject to prescription.

30. Please provide information on compliance with the reports and decisions of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

216. As already noted in the answer to question 4 of this report and mentioned previously, the Subsecretariat for Human Rights and Public Defence Coordination of the Ministry of Justice and Human Rights has begun to implement the mechanism for implementing international obligations emanating from the Inter-American Human Rights System, namely:

(a) Judgements. During the fourth quarter of 2008 it took cognizance of 8 judgements handed down by the Inter-American Court of Human Rights, with the result that the mechanism for implementing international obligations was applied in 7 of them:

(i) Consuelo Benavides;

(ii) Juan Carlos Chaparro Álvarez – Fredy Hernán Lapo Íñiguez;

(iii) Iván Suárez Rosero;

(iv) Daniel Tibi;

(v) Wilmer Zambrano Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña;

(vi) Laura Susana Albán Cornejo;

(vii) María Salvador Chiriboga;

(b) Recommendations. During 2008 and the first quarter of 2009, it took cognizance of two recommendations handed down by the Inter-American Human Rights System, and the mechanism for implementing international obligations was applied in both:

(i) Dayra María Levoyer;

(ii) Nelson Iván Serrano Sáenz.

217. The current status of compliance with judgements, recommendations and friendly settlements which the Ecuadorian State is obliged to execute can be clearly observed in the following table setting out the different stages of the reparation process.

Table 17
Current status of compliance with judgements, recommendations and friendly settlements

	International obligations		*Settlement stage*			*Implementation stage*			
							Reparations begin		
	Total	*Discharged*	*Preparation of legal diagnosis*	*Contact with beneficiaries/ victims*	*Signing of formal commitments to implement obligations*	*Coordination with other State institutions*	*Other*[21]	*Public apologies*	*Provision of entitlement documents*
Judgements	8	7	6	7	7	7	7	7	--
Recommendations	2	2	1	2	--	2	2	--	--
Friendly settlements	28	5	2	4	1	4	3	--	--
Total	**38**	**14**	**9**	**13**	**8**	**13**	**12**	**7**	**0**

218. Pending obligations originating in the Inter-American Human Rights System will be implemented gradually until full redress has been achieved in all cases, whereupon the Ecuadorian State will have complied fully with these international mandates.

I. Article 16

31. Further to the State party's reference in its comments to the practical difficulties encountered in prosecuting persons accused of torture and ill-treatment, please indicate how the State party aims to overcome such difficulties, particularly with regard to the alleged ill-treatment of members of indigenous communities, so as to implement the Committee's recommendation [CAT/C/ECU/CO/3, para. 17].

219. In response to the Committee's recommendation in paragraph 17 of its consideration of the third periodic report of Ecuador, the Ecuadorian State has done its best to investigate allegations of torture. The Truth Commission, of which mention has already been made, was set up with a view to overcoming these obstacles, and accordingly the main objectives of the Commission are:

(a) To conduct thorough, independent investigations of human rights violations between 1984 and 1988 and other special cases, and of the causes and circumstances that made them possible;

(b) To apply for declassification of State archives now treated as confidential or as national security-sensitive;

(c) To secure recognition for the victims of such violations and design reparation policies;

[21] Reparations vary depending on the case, but may include payment of monetary compensation, restoration of property, publication of public apologies in the highest-circulation newspaper, measures to perpetuate the victim's memory, unveiling of a plaque bearing the victim's name, investigation and punishment of those responsible for the human rights violation, search for victims' bodies, psychological assistance for victims and/or beneficiaries, police protection, improvements to infrastructure such as landing strips and community clinics, issuing of cards entitling the bearer to police protection, etc.

(d) To recommend the necessary legal and institutional reforms and effective mechanisms for preventing and punishing human rights violations;

(e) To determine where civil, criminal and administrative liability is likely to lie, then refer the matter to the appropriate authorities.

220. The Truth Commission has a national remit for its investigative work, and accordingly has covered every region of the country, particularly the area of the northern border and the Amazon region. It will makes its report public in mid-2009.[22]

221. The Council for the Development of the Nationalities and Peoples of Ecuador (CODENPE) has taken the initiative of setting up 12 indigenous public prosecution services in the 12 provinces where the indigenous population is most concentrated. The purpose of creating these is to speed up the investigation of cases involving indigenous people and ensuring that they are analysed in the light of the cultural affiliation of the people or nationality to which these belong, i.e., in a way that respects the outlook of each culture. Because these services were set up only recently, however (less than a year ago as of the date of submission of this report), it is too soon to arrive at a quantitative and qualitative estimate of the results of their work.

222. The purpose of these measures is to give a fresh impetus to the investigation and processing of those responsible for ill-treating and torturing members of indigenous communities, following an approach that takes account of legal pluralism and respects indigenous cultural outlooks and conceptions of justice, always provided they do not contravene the provisions of the Constitution and international human rights instruments.

32. Please indicate how the precautionary measures adopted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights relating to the Sarayaku are being implemented, and describe the status of investigations into reports of ill-treatment of members of that community.

223. As established in earlier paragraphs, article 1 of Executive Decree No. 1317, issued on 9 September 2008, makes the Ministry of Justice and Human Rights responsible for “coordinating the execution of sentences, precautionary measures, provisional measures, friendly settlements, recommendations and resolutions originating in the Inter-American Human Rights System and in the universal system of human rights, together with any other obligations arising out of international commitments in this area”, while article 2 (3) establishes that the Ministry is to “reach agreement with the competent State authority on the implementation of any measures necessary for full compliance with these obligations”.

224. Against this background, a first meeting was held on 4 November 2008 between the authorities of the Sarayaku indigenous people and staff from the Ministry of Justice and Human Rights and the Ministry of Mines and Petroleum to assess progress and compliance with the provisional measures ordered by the Inter-American Court on 17 June 2005, specifically: to guarantee the right to life and integrity of the person, to remove explosive material, to guarantee freedom of movement (especially on the Bobonaza river), to carry out maintenance on the airstrip, to investigate and punish those responsible and, following on from these measures, to produce a strategy for their continuing implementation. The outcome has been positive, with a variety of actions being undertaken as detailed below.

[22] See annex: Case statistics, Ecuadorian Truth Commission.

A. Removal of explosive material from the territory inhabited by the Sarayaku indigenous people

225. On 16 December 2008, following the last meeting held by the Ministry of Energy and Mines, staff from the Ministry of Justice and Human Rights and the Head of Operations of the National Police Explosives Unit responsible for removing the pentolite met members of the Sarayaku community in the city of Puyo to decide on actions and timetables for implementing this measure.

226. The methodology to be followed for extracting above-ground pentolite would consist of three phases:

(a) Removal of pentolite charges located by a visual and manual grid search;

(b) Removal using electronic explosives detection equipment;

(c) Removal of remaining charges using an explosives detection dog.

227. Each of the phases would last two weeks (14 days) with a break of one week (seven days) between the end of each phase and the beginning of the next, during which police personnel could rest and prepare reports.

228. A number of other agreements were reached at that meeting, one of them being that the Sarayaku community would carry out participatory monitoring of the pentolite removal process, with all necessary safeguards. As the time the present report was submitted, however, removal of above-ground pentolite had yet to begin, even though the equipment required for this has been available since March 2009, as funding for the logistics needed to begin the operation (US$ 45,886.40) had not yet been allocated.

229. Subsequently, on 9 April 2009, a new working meeting was held in Puyo with the leaders of the Sarayaku community, representatives of the Ministry of Mines and the Ministry of Justice and Human Rights and staff from the National Police Intervention and Rescue Group (GIR) responsible for removing the pentolite. A new timetable for the operation was announced and confirmed by the commander of the Intervention and Rescue Group, who took personal responsibility for the operation and attended the meeting, where 4 May 2009 was set as a firm date for the arrival of police personal with their equipment. It was estimated that the operation would last until 28 June.

230. As already noted, although not all the machinery required for personnel to being operating at Sarayaku is available yet, the Ecuadorian National Police have given very high priority to these measures. Accordingly, faced with the prospect that this equipment might not reach the country by the date planned for the start of operations, the commander of the police detachment instructed his personnel to go in with the equipment that is kept available for urgent anti-explosives operations that might be required in Quito.

231. It is important to mention that the community will be dealing with certain logistical aspects before and during the removal operations, such as clearing away weeds from the heliport, opening up pathways for personnel to reach the area where the pentolite is located, guarding and securing the encampment, preparing food for police personnel, obtaining tools and digging out the bunker, purchasing fuel and lubricants for the canoe engines and providing river transportation, among other activities; the cost of these operations (US$ 29,113.60) has been paid in full by the GIR.

232. The removal of pentolite located underground will be planned and organized later following completion of the first stage, which consists in clearing Sarayaku territory of the above-ground pentolite charges.

B. Measures to guarantee the lives and physical integrity of beneficiaries and secure them against coercion or threats of any kind

233. Discussions with the leaders of the Sarayaku community led to agreement on the identity of potentially highly vulnerable individuals so that they could benefit from the protection implemented by the Ministry of Justice and Human Rights in cooperation with the Ministry of the Interior, Police and Worship and the National Police. This system of protection entails the individuals concerned being issued with a card identifying them as beneficiaries of a precautionary measure. This entitles them to obtain immediate 24-hour police protection by dialling 101 whenever they consider it necessary.

234. To implement this system, the community was required to complete some forms containing basic information that fully identified the beneficiaries. This information was completed and submitted to the Ministry of Justice and Human Rights.

235. The beneficiary cards are currently being prepared. At the same time, work is under way with the National Police to prepare a directive that will familiarize the institution's members with the use these cards are to be put to and the priority attention their bearers are to receive. Guidelines for use of the cards are also being prepared for their future bearers. As soon as the cards, the directive and the guidelines are ready, the plan is to deliver them to community leaders as agreed at the meeting of 4 November 2008. When the cards are delivered, beneficiaries will be familiarized with the protection available and the mechanism for activating it.

236. Because the Sarayaku community office is moving, the police are implementing all necessary measures to protect these installations; in addition, a permanent watch is being kept on the offices of the Papango Tours travel agency, which is where the first Sarayaku community office was based.[23]

C. Freedom of movement for members of the Sarayaku indigenous people, especially on the Bobonaza river

237. The Subsecretariat for Human Rights and Public Defence Coordination of the Ministry of Justice and Human Rights, in coordination with the Sarayaku community, organized a field trip to the community on 16, 17 and 18 February 2009. The community was reached via the Bobonaza river, confirming that there was no obstacle or impediment to movement along this watercourse.

238. Although movement is unimpeded, the Ministry of Justice and Human Rights has responded to a request by Sarayaku community leaders with a plan to set up a police observation post at the river port of Latasas in order to guarantee freedom of movement along the river basin. This measure is being coordinated with the National Police.

D. Maintenance of the airstrip in the territory inhabited by the Sarayaku indigenous people to ensure that air travel is not interrupted

239. In March 2009, the authorities of the Institute for the Ecological Development of the Ecuadorian Amazon Region (ECORAE) reported to the Ministry of Justice and Human Rights on progress in maintaining the airstrip. They were able to report substantial achievements, facilitating the subsequent provisional handover of the airstrip, which was received on a free and voluntary basis by the Sarayaku community. Still awaited is a report promised by ECORAE for the Civil Aviation Authority (DAC), so that this can inspect the strip and assess whether the technical standards required for it to start operating have been met, whereupon the final handover can take place.

[23] See annex: Report of the National Police.

E. Investigation of the events leading to adoption and maintenance of the provisional measures and of the threats and intimidation to which some members of the Sarayaku indigenous people were subject, in particular Mr. Marlon Santi, with a view to identifying those responsible and subjecting them to the appropriate penalties in accordance with the parameters laid down by the American Convention on Human Rights

240. With regard to this measure, the Ministry of Justice and Human Rights reported that on 8 January 2009 it had received copies of the allegations submitted to the Pastaza Circuit Attorney's Office by the leaders of the Sarayaku community concerning threats and physical assaults against them.

241. In January 2009, the Ministry of Justice and Human Rights asked the Office of the Public Prosecutor to prepare a report on the status of the allegations presented to the Pastaza Circuit Attorney's Office by Mr. Marlon Santi.[24] In February 2009, the Office of the Public Prosecutor informed the Ministry of Justice that there were only two allegations on record:

(a) Preliminary investigation No. 845-2003, dealing with a confrontation between people from the Canelos community and the Sarayaku community on 4 December 2003 in the area known as "Cuya", when members of the Canelos community allegedly blocked the path of members of the Sarayaku community who were on their way to Puyo for a march. The investigation was discontinued because the accused persons could not be identified;

(b) Preliminary investigation No. 224-2004 presented by Sabine Bouchat because of alleged threats, which was discontinued because of a legal obstacle to continuing the investigations, namely the fact that the threats had been made by electronic mail and the accused person could not be identified.

F. Participation of beneficiaries of provisional measures or their representatives in determining which measures are most likely to ensure the protection and security of members of the Sarayaku indigenous people and, more generally, arrangements to keep them informed of the State's progress in adopting measures prescribed by the Inter-American Court of Human Rights

242. The mechanism implemented by the Ministry of Justice and Human Rights to coordinate compliance with the different obligations originating in the Inter-American Human Rights System takes account of the need for involvement by beneficiaries of the measures concerned and their representatives. It has been holding meetings with beneficiaries and their representatives since November 2008.

243. At the first meeting with beneficiaries and their representatives, held on 4 November 2008, the actions needed to comply with the provisional measures were decided on by common accord with the Sarayaku leaders. A number of meetings were held in Puyo in December 2008 and April 2009.

244. In addition, authorities from the Ministry of Justice and Human Rights have been in constant contact with beneficiaries and their representatives by telephone, electronic mail and indeed visits by Sarayaku leaders to the offices of the Ministry with a view to making coordinated progress on compliance with the different measures notified.

245. As mentioned above, the Ministry of Justice and Human Rights made a field trip to the Sarayaku community in February 2009, which provided an opportunity to obtain general information about the history, organization, democratic system and plans of that

[24] See annex: Investigation of alleged threats against Marlon Santi.

community, the state of the airstrip and the conditions at the Jatún Molino military encampment set up seven years ago to avert confrontations between members of the Jatún Molino and Sarayaku communities.

33. How does the State party ensure that customary indigenous law is consistent with the State party's international human rights obligations, particularly with regard to practices that could amount to ill-treatment?

246. Article 171 of the current Constitution of Ecuador clearly sets forth the obligation of judges to respect customary indigenous law, always provided this does not run counter to constitutional provisions and, most importantly, human rights recognized in international instruments:

"*Article 171.* The authorities of indigenous communities, peoples and nationalities will exercise jurisdictional functions on the basis of their ancestral traditions and internal law, within their own territory, guaranteeing women the right to participate in procedures and rulings. The authorities will apply their own rules and procedures for the resolution of internal conflicts, provided they do not run counter to the Constitution and to human rights recognized in international instruments.

The State will guarantee that the rulings of indigenous courts are respected by public institutions and authorities. Such rulings will be subject to review for constitutionality. Mechanisms for coordination and cooperation between indigenous courts and the ordinary courts will be established by law."

247. To give statutory substance to this constitutional provision, the Subsecretariat for Legislative Development of the Ministry of Justice and Human Rights initiated and participated in the drafting of the Organic Code of the Judiciary, which included a heading dealing with the relationship between indigenous jurisdiction and ordinary jurisdiction, in the same terms as the previous Constitution:

"*Article 7*
Principles of legality, jurisdiction and competence

Jurisdiction and competence are determined by the Constitution and the law. Jurisdiction may be exercised only by judges appointed in accordance with their precepts, with public prosecutors and defenders intervening directly within their sphere of competence.

The authorities of indigenous communities, peoples and nationalities will exercise the jurisdictional functions recognized by the Constitution and law.

Justices of the peace will decide in equity and will have exclusive and obligatory competence to rule on those individual, community and local conflicts and misdemeanours that are subject to their jurisdiction under the law.

Arbitrators will exercise jurisdictional functions in accordance with the Constitution and the law.

Jurisdiction will not be exercised by ad hoc judges or tribunals or by special commissions created for the purpose."

Heading VIII. Relationship between indigenous jurisdiction and ordinary jurisdiction

"*Article 343*
Scope of indigenous jurisdiction

The authorities of indigenous communities, peoples and nationalities will exercise jurisdictional functions on the basis of their ancestral traditions and internal or customary

law, within their own territory, guaranteeing women the right to participate in procedures and rulings. The authorities will apply their own rules and procedures for the resolution of internal conflicts, provided they do not run counter to the Constitution and to human rights recognized in international instruments. Violations of women's rights may not be justified or left unpunished by reference to the provisions of internal or customary law.

Article 344
Principles of intercultural justice

Judges, public prosecutors, defenders and other legal officials, police officers and all other public servants involved in proceedings will observe the following principles in their actions and decisions:

(a) Diversity. Account must be taken of the traditional laws, customs and practices of indigenous individuals and peoples, to ensure optimal recognition and full realization of cultural diversity;

(b) Equality. The authorities will take whatever measures are required to ensure that the rules, procedures and legal consequences of rulings in proceedings involving indigenous individuals and groups are understood. Consequently, among other measures, they will arrange for translators, anthropologists and indigenous law specialists to participate in proceedings;

(c) Double jeopardy. Measures taken by indigenous legal authorities may not be judged or reviewed by judges of the judiciary or by any administrative authority whatever at any stage of proceedings of which they take cognizance, with the exception of reviews for constitutionality;

(d) Presumption in favour of indigenous jurisdiction. If there is doubt as to whether the ordinary courts or indigenous courts are competent, preference will be given to the latter, with a view to ensuring the greatest possible independence for them and the least interference; and,

(e) Intercultural interpretation. When indigenous individuals or groups are summoned, court proceedings and rulings will follow an intercultural interpretation of the rights at issue in the dispute. Accordingly, every effort will be made to take account of cultural elements relating to indigenous peoples', nationalities', communes' and communities' own customs, traditional practices, norms and legal proceedings so that the rights laid down in the Constitution and international instruments can be applied."

248. The Subsecretariat also plans to prepare a diagnosis of indigenous law and an indigenous bill in the course of 2009. This will be sent to the National Assembly for approval. Thus, all efforts are being made to meet this concern of the Committee's.

J. Other issues

34. Please inform the Committee about steps taken or plans made to ratify the Optional Protocol to the Convention.

249. Among the commitments it voluntarily accepted when joining the Human Rights Council as one of the 47 founding Member States, the Ecuadorian State sought the adoption of pending international instruments on the human rights agenda, including the Optional Protocol to the Convention against Torture, co-sponsoring its adoption by the Council in 2006.

250. Once the Protocol had come into force internationally, the Human Rights and Social and Environmental Affairs Department of the Ministry of Foreign Affairs, Trade and

Integration initiated the legal and constitutional measures required for international human rights instruments to be signed and ratified. Thus, in the fourth quarter of 2006 it began to hold consultations with the Ministries of the Interior and Police, the Office of the Public Prosecutor and the Supreme Court regarding the advisability of Ecuador joining the Protocol.

251. Confirming the favourable judgement of the technical legal advisory service of the foreign ministry, the above-mentioned institutions signalled their agreement and the way was clear for the Treaties Department to plan for signing and ratification. In May 2007, the latter gave the Representative of Ecuador at the United Nations in New York full authority to sign the Protocol at the General Secretariat, and this was done on 31 March 2007.

252. In July 2007, the National Congress was called upon to approve or reject the Optional Protocol to the Convention against Torture, in accordance with the previous Constitution of 1998; after this, the Office of the President of the Republic was asked to submit this instrument for consideration by the former Constitutional Tribunal (now the Constitutional Court), which ultimately ruled it constitutional with Opinion No. 0004-2007-CI of 12 December that year (*Registro Oficial* No. 233 of 17 December 2007).

253. In June 2008, when the National Congress was in recess, the Ministry of Foreign Affairs, which was handling the matter, sent the National Constituent Assembly the texts of a number of international instruments for consideration and approval, among them the Optional Protocol to the Convention against Torture. In the time available to it, the Constituent Assembly had to give priority to other matters and was thus unable to deal with this request.

254. Once the current Constitution had come into force, the Legal Advisory Department of the Ministry of Foreign Affairs, Trade and Integration, at the behest of the Treaties Department, issued a legal opinion establishing the need to adapt the ratification process to articles 418 and 419 (4) of the new Constitution, and for this reason the process was once again referred to the Office of the President of the Republic for subsequent ratification.

"*Article 418.* International treaties and other instruments must be signed by the President of the Republic. The President will immediately inform the National Assembly of all treaties he or she signs, giving precise information about their character and contents. A treaty cannot be ratified, for subsequent exchange or deposition, until 10 days after the Assembly is notified of it.

Article 419. Ratification or denunciation of international treaties will require the prior approval of the National Assembly in cases that:

[...]

4. Relate to the rights and guarantees laid down in the Constitution [...]"

255. It should be mentioned that in mid-2008, with a view to maintaining broad social engagement with this new instrument for human rights and the eradication of torture and at the request of the Foundation for Rehabilitation of Victims of Violence (PRIVA), a number of Ecuadorian institutions such as the Ombudsman's Service, the Ministry of the Interior and Police, the Ministry of Justice and Human Rights and the Ministry of Foreign Affairs co-sponsored the Campaign for Ratification of the Optional Protocol to the Convention against Torture.

256. A process of consultation and training is planned for the future with a view to creating the National Preventive Mechanism provided for in the Optional Protocol to the Convention, which must be done within a year following ratification of the Protocol.

257. As part of this process of publicization and promotion with a view to ratifying the Optional Protocol to the Convention against Torture, some training seminars were

organized in 2008 by the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans with co-sponsorship from a number of Ecuadorian institutions and PRIVA Foundation:

(a) Seminar at the Faculty of Jurisprudence of the University of Cuenca;

(b) Seminar at the Guayas Bar Association, Guayaquil;

(c) Seminar at the Diplomatic Academy of Ecuador, Quito;

(d) Special programme to collect signatures and deliver them to the representative of the President of Ecuador.

258. In all, 3,000 people from all over the country in academia, the professions and professional organizations and State and non-governmental agencies were involved in these training seminars, demonstrating the determination and efforts of the Ecuadorian State to ratify the Optional Protocol to the Convention.

35. Please indicate any concrete measures that have been taken with a view to the broad dissemination of the Convention and the Committee's concluding observations in all appropriate languages in the State party. What actions or programmes have been carried out in cooperation with non-governmental organizations?

259. Following the creation of the Commission for Public Coordination of Human Rights in December 2002, the Ministry of Foreign Affairs, Trade and Integration, in its capacity as chair of that body, created a page on its website with the Commission's name. This has been used to publish all the United Nations and inter-American human rights instruments to which Ecuador is a party, and all the periodic reports submitted by Ecuador to the various treaty committees and bodies. There is also a window showing each committee's reviews of the periodic reports submitted by Ecuador, with their concluding observations.

260. Furthermore, to comply with the recommendation of the Committee against Torture in its consideration of the third periodic report of Ecuador, in 2006 and 2007 the Ministry of Foreign Affairs shared these recommendations with the institutions involved with the issue of torture, namely the Ministry of the Interior and Police, the Office of the Public Prosecutor, the National Social Rehabilitation Service, the Judicial Police and the former Supreme Court of Justice, among others. They were also asked to report on progress in complying with the recommendations made specifically to Ecuador, and this was laid before the Committee in 2007.[25]

261. Lastly, as part of the Istanbul Protocol implementation project referred to above, 500 copies of the Istanbul Protocol manual as adapted for Ecuador were published with the support of the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans.

36. Please indicate whether the State party envisages signing and ratifying the Rome Statute of the International Criminal Court and please inform the Committee of steps taken to implement the bill on crimes against humanity, which includes the crime of torture.

262. Ecuador signed the Rome Statute of the International Criminal Court in 1998 and ratified it in 2002.

263. In August 2006, the National Commission for the Application of International Humanitarian Law was set up in Ecuador by Executive Decree No. 1741, published in

[25] See the comments of the Government of Ecuador on the concluding observations of the Committee against Torture, document CAT/ECU/CO/3/Add.1.

Registro Oficial No. 344 of 29 August 2006, as a standing body whose membership comprises a number of State institutions.

264. The International Law Commission is implementing the National Action Plan, which involves it overseeing and contributing to the effective application of the obligations of the Ecuadorian State in relation to international humanitarian law.

265. The membership of this Commission, as provided by the Executive Decree referred to, consists of the Ministry of the Interior and Police, the Ministry of Economic and Social Inclusion, the current National Court of Justice (former Supreme Court of Justice), the Office of the Public Prosecutor, the National Assembly (former Legislation and Codification Commission of the National Congress and former Human Rights Commission of the National Congress), the Ecuadorian Red Cross, which acts as the secretariat of the Commission, the Ministry of National Defence, which acts as deputy chair, the Ministry of Foreign Affairs, Trade and Integration, which holds the chair and, since 2007, the Ministry of Justice and Human Rights.

266. Regarding the steps taken by the State to implement the bill on crimes against humanity, the Subcommission for the Preparation and Follow-up of Draft Legislation considered the following lines of action, among others, for implementation as part of the Action Plan approved at the fourth ordinary meeting of the National Commission for International Humanitarian Law in 2007:

(a) Statutory provision for war crimes in the Ecuadorian system of criminal law. To this end, the Commission sought implementation of the 1998 Rome Statute of the International Criminal Court in the framework of Ecuadorian law and ensured that proper statutory provision was made for war crimes;

(b) Integration of the judicial guarantees provided for by international humanitarian law into Ecuadorian judicial procedures;

(c) Integration of provisions relating to people, property and emblems protected by international humanitarian law;

(d) Integration of provisions relating to limitation of the use of arms forbidden under international humanitarian law.

267. Likewise, the first objective set for the activities of the Subcommission for the Preparation and Follow-up of Draft Legislation (SCESPN) in 2007, and as part of the 2007-2008 Operating Plan, was to work towards implementation of the 1998 Rome Statute, particularly for war crimes, in the light of the Geneva Conventions and additional protocols.

268. To achieve this objective, the following measures were taken in 2007:

(a) The crimes against humanity bill drafted by the Regional Human Rights Advisory Foundation (INREDH) and the Women's Commission of the National Congress was analysed;

(b) A compilation was made of bills, draft bills and laws from countries in the region so that their contents could be drawn upon to enhance the crimes against humanity bill;

(c) A table comparing the bill with legal instruments from other countries in the region was prepared.

269. The following actions were carried out in 2008:

(a) The first SCESPN annual meeting approved the "Timetable for analysis of the crimes against humanity bill";

(b) SCESPN held four meetings[26] to analyse the crimes against humanity bill, attended by the Ministry of Justice and Human Rights, academics, the Ecuadorian Truth Commission and women's NGOs;

(c) By December 2008, the observations made on the crimes against humanity bill had been systematized with a team of Ecuadorian experts and technical advice from the International Committee of the Red Cross.

K. General information on the human rights situation at the national level, including new measures relating to application of the Convention

37. Please provide information on the most recent significant developments since submission of the previous periodic report that have affected the legal and institutional framework for the promotion and protection of human rights. Please also provide any relevant information on follow-up that was submitted to the Committee, including any relevant judicial decisions.

270. The Ecuadorian State is pleased to be able to inform the Committee of a number of major constitutional, legal and institutional advances achieved since the last report, among the most important of which are the adoption of a new Constitution by a Constituent Assembly, which has established a new classification of rights for the country's inhabitants into a variety of categories depending on what is being protected, namely rights pertaining to a decent life, those of individuals and groups with priority needs, those of communities, peoples and nationalities, those of participation, those of freedom and those of protection, plus a chapter on guarantees.

271. Rights pertaining to a decent life. This is a category comprising the basic rights essential to a decent life, such as the rights to water and food, a healthy environment, communication and information, culture and science, education, habitat and housing, health, and work and social security.

272. Rights of people and groups with priority needs. This is a category created to protect people who merit special and immediate attention from the State, namely older adults, youths and people in a mobility situation, pregnant women, children and adolescents, people with disabilities, people with catastrophic diseases, people deprived of liberty, and users and consumers.

273. In this context, it is necessary to touch on attitudes to human mobility. The Constitution now treats it more comprehensively and takes a forward-looking view both regionally, with article 423 of the Constitution articulating the need to "work towards the creation of Latin American and Caribbean citizenship; the free movement of people in the region; the implementation of policies guaranteeing the human rights of border populations and refugees; and common protection for the people of Latin America and the Caribbean", and globally, since article 416 (6) "propounds the principle of universal citizenship, freedom of movement for all the inhabitants of the planet and the progressive abolition of foreigner status as a way of transforming unequal relations between countries, particularly between North and South". Another provision is that "no human being shall be identified as or considered to be illegal because of his or her migration status" (art. 40), thereby expressing support for the human development of people in a mobility situation.

[26] First meeting, Analysis of the preamble (definitions and terminology) and heading I (general principles); second meeting, Analysis of heading II (genocide); third meeting, Analysis of heading III (crimes against humanity): murder, extermination, slavery, deportation or forced population transfer, incarceration or other severe deprivation of physical freedom, torture.

274. Rights of communities, peoples and nationalities. This is a category established to protect indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and the communes forming part of the one indivisible Ecuadorian State, for whose benefit a number of rights have been established to ensure respect for the maintenance and development of their identity, protection against racism and discrimination, and ownership of their community lands, among other things.[27]

275. Rights of participation. This category has been implemented to protect the actions of citizens when they involve themselves in the running and political activities of the State, and includes the right to elect and seek election, participation in matters of public interest, the right to be consulted, and oversight of the actions of the public authorities, among other things.[28]

276. Rights of freedom. This is a category established in the Constitution to protect the power of decision-making and free choice by the inhabitants of the Ecuadorian State in all spheres. It comprises rights relating to life and integrity of the person, set out in full in article 66 of the sixth chapter.[29] It is important to highlight the constitutional provision forbidding torture and any other cruel, inhuman or degrading treatment:

"*Article 66*. The following rights are recognized and guaranteed:

3. The right to integrity of the person, including:

(a) Physical, mental, moral and sexual integrity.

(b) Freedom from violence both in public and in private. The State will take the necessary measures to prevent, eliminate and punish all forms of violence, and especially violence against women, children and adolescents, older adults, people with disabilities and anyone in a disadvantaged or vulnerable situation; identical measures will be taken against sexual violence, slavery and exploitation.

(c) The prohibition of torture, enforced disappearance and cruel, inhuman or degrading treatment or punishment.

(d) Prohibition of the use of genetic material and scientific experimentation when these are inimical to human rights."

277. Rights of protection. This is a category encompassing the need of the inhabitants of the Ecuadorian State to have cost-free access to justice and to effective, impartial and expeditious safeguards for their rights and interests, subject to the principles of immediacy and rapidity; in no event are they to be left undefended.[30]

278. Guarantees. These are appropriate and effective mechanisms for enforcing rights. The new Constitution has incorporated some recommendations made by international human rights agencies to the Ecuadorian State.[31] Thus:

(a) Constitutional guarantees [*garantías normativas*] limit the legislative power of the State. It is established that no reform of the Constitution, statutes and other legal provisions and no act of the public authorities may contravene the rights recognized by the Constitution.

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27 See Constitution, chap. IV, art. 57.

28 Ibid., chap. V, art. 61.

29 Ibid., annex.

30 Ibid., chap. VIII, art. 75.

31 Ibid., heading III, on constitutional guarantees.

(b) Public policies and public services. Mandated by the Constitution of the Republic of Ecuador, these will have the purpose of helping people lead a decent life and giving effect to all their rights, and they will be designed on a basis of solidarity.

(c) Jurisdictional guarantees, which will be governed by principles affirming the power of any individual, group of individuals, community, people or nationality to initiate the actions provided for in the Constitution and the jurisdiction of the judges of the place where the act or omission originates or where its effects are experienced.[32]

279. The 2008 Constitution has also provided for new legal actions such as action for injunction, habeas corpus, access to public information, habeas data, non-compliance and extraordinary action for injunction:

(a) The purpose of action for injunction [*acción de protección*] is to provide a direct and effective safeguard for rights recognized in the Constitution, and it may be lodged when constitutional rights have been breached by the actions or omissions of any non-judicial public authority; against public policies when they entail deprival of the use or enjoyment of constitutional rights; and when the violation is committed by a private individual, if the violation of the right causes severe prejudice, if he or she is providing State-regulated services or acting on a representation or concession basis, or if the person affected is in a state of subordination, defencelessness or discrimination.

(b) Action for habeas corpus has the object of restoring the liberty of anyone who has been illegally, arbitrarily or illegitimately deprived of it by order of a public authority or any person, and of protecting the life and physical integrity of those deprived of liberty.

(c) The purpose of actions for access to public information will be to guarantee access to this when it has been explicitly or tacitly withheld, or when the information provided is unreliable or incomplete. Such actions may be initiated even when the grounds given for the refusal are the secret, confidential or otherwise classified nature of the information. The confidential nature of the information must have been declared prior to the action by a competent authority and in accordance with the law.

(d) The purpose of actions for habeas data is to enable people to ascertain the existence of and obtain access to documents, genetic data, personal data banks or files and reports held on them or their property by public or private organizations on any physical or electronic storage medium. They will also be entitled to ascertain the purpose of these and the uses to which they are put, the origin and destination of personal information and the time for which such data banks or files are to be maintained.

(e) Action for non-compliance [*incumplimiento*] will have the purpose of enforcing application of the statutes making up the system of laws and implementation of rulings or reports by international human rights organizations when the statute or decision whose implementation is sought contains a clear, explicit and enforceable obligation to act or refrain from acting. The petition will be lodged with the Constitutional Court.

(f) Extraordinary action for injunction [*acción extraordinaria de protección*] may be taken against final rulings or edicts that by action or omission violate rights recognized in the Constitution, and will be brought before the Constitutional Court. They may be brought when all ordinary and extraordinary remedies have been exhausted within the statutory period, unless failure to seek these remedies was not attributable to negligence on the part of the person whose constitutional rights have been violated.

[32] Ibid., chap. III, heading III.

280. The Constitution of the Republic of Ecuador also enshrines the existence of institutions with responsibility for safeguarding and ensuring compliance with rights and for overseeing and taking cognizance of the proper use of constitutional guarantees. These include the Ombudsman's Service, the Public Defence Service, the Constitutional Court and the Equality Councils.

281. The Ombudsman's Service is required to protect and safeguard the rights of the inhabitants of Ecuador and to defend the rights of Ecuadorians abroad. Its responsibilities will include:

(a) Sponsoring, either ex officio or at the petition of the party concerned, actions for injunction, habeas corpus, access to public information, habeas data and non-compliance, civic action and complaints about the poor quality or improper provision of public or private services;

(b) Initiating rights protection measures, which will be of immediate and compulsory application, and seeking legal remedies and sanctions from the appropriate authority in cases of non-compliance;

(c) Investigating and pronouncing upon actions or omissions by natural or legal persons providing public services, within its sphere of competence;

(d) Overseeing and encouraging respect for due process and preventing or immediately halting any form of torture or cruel, inhuman or degrading treatment.

282. The Public Defence Service is an independent organ of the judiciary whose purpose is to ensure full and equal access to justice for persons whose vulnerability or economic, social or cultural situation prevents them from retaining defence counsel to protect their rights. It will provide professional, appropriate, efficient and effective legal services free of charge, counselling people on their rights and upholding these on all matters and wherever required.

283. The Constitutional Court is the highest authority for constitutional oversight and interpretation and for the administration of justice on constitutional matters. Its functions are:

(a) To act as the highest authority for interpretation of the Constitution and international human rights treaties ratified by the Ecuadorian State, producing rulings and judgements for this purpose. Its decisions will be binding.

(b) To take cognizance of and rule on public actions for unconstitutionality in form or substance against legislative acts of a general character emanating from State organs and authorities. A finding of unconstitutionality will render null and void the legislative act challenged.

(c) To declare related statutes unconstitutional ex officio when it concludes in the cases submitted to it that one or more of them are contrary to the Constitution.

(d) To take cognizance of and rule on actions for unconstitutionality against administrative acts of general effect emanating from any public authority, at the request of the interested party. A finding of unconstitutionality will invalidate the administrative act.

(e) At the request of the interested party, to take cognizance of and rule on actions for non-compliance that are presented with a view to securing application of administrative acts or ordinances of a general character, irrespective of their nature or legal status, and compliance with rulings or reports from international human rights protection bodies that cannot be executed through the ordinary legal channels.

(f) To issue rulings constituting binding jurisprudence on actions for injunction, compliance, habeas corpus, habeas data, access to public information and all other constitutional processes, and on cases selected by the Court for review.

(g) To carry out an immediate ex officio review of the constitutionality of declarations of states of emergency when these entail suspension of constitutional rights.

(h) To take cognizance of and punish cases of non-compliance with constitutional judgements and rulings.

(i) To declare that State institutions or public authorities are acting unconstitutionally when, by omission, they are in complete or partial breach of mandates contained in constitutional provisions, within the time laid down in the Constitution or the time considered reasonable by the Constitutional Court. If the time limit passes and the omission is not corrected, the Court will provisionally issue the regulation or execute the act concerned, in accordance with the law.

284. National Equality Councils. As provided by the Constitution, these will be the bodies responsible for ensuring that the rights enshrined in the Constitution and international human rights instruments are fully active and operative. The Councils will exercise functions in the formulation, mainstreaming, observance, follow-up and evaluation of public policies relating to gender, ethnic, generational, intercultural, disability and human mobility issues, in accordance with the law. To achieve their ends, they will coordinate with the governing and executive bodies and with the organizations specializing in the protection of rights at every level of government.

285. It is also important for the Committee to be made aware that the current Government has initiated some institutional changes not prescribed by the Constitution with a view to promoting and protecting human rights, as well as taking steps to create or redesign a number of institutions the better to guarantee human rights.

286. One of these changes is the creation of a planning authority called the State National Planning Secretariat (SENPLADES), which is responsible for using the National Development Plan to monitor the design and implementation of public policy in all the country's public authorities. SENPLADES is conducting an in-depth review of projects submitted by the different State institutions in order to determine whether the public resources these projects require would be well spent.

287. Another institutional change has been the creation of coordinating ministries, which lead the coordination of ministries of State by subject area. They are the Ministry for the Coordination of Social Development, the Ministry for the Coordination of Economic Policy, the Ministry for the Coordination of Production and the Ministry for the Coordination of Internal and External Security.

288. A third institutional change has been the transformation of the Ministry for Social Welfare into the Ministry of Economic and Social Inclusion, which is acting on a number of fronts to generate and implement public policies designed to improve the living conditions of the Ecuadorian population.

289. Another important institutional change implemented by the current national Government and already analysed in this report has been the creation of the Ministry of Justice and Human Rights as a ministry of State to oversee, establish, monitor and promote real observance of human rights and the implementation of justice. It was created by Executive Decree No. 748 of 14 November 2007, published in *Registro Oficial* No. 220 of 27 November 2007.[33]

[33] See annex: Decree creating the Ministry of Justice.

290. The third article of the Executive Decree lays down the main objectives to be attained by the Ministry of Justice and Human Rights, namely:

(a) To support efforts to improve the services provided by institutions in the justice system by initiating policies to expand the coverage of these services, following the quality standards laid down by article 192 of the Constitution. This is to be achieved by coordinated application of management efficiency programmes, so that economic, financial, material and technological resources are used to best effect;

(b) To coordinate measures that guarantee effective access to timely, high-quality justice as a fundamental right for all the inhabitants of Ecuador;

(c) To provide institutionalized support to the judiciary and the Office of the Public Prosecutor in the effort to resolve conflicts arising in social rehabilitation centres and other judicial conflicts affecting the public administration;

(d) To promote implementation of appropriate mechanisms for publicizing human rights and legal and procedural information;

(e) To coordinate the provision of public defence services;

(f) To coordinate, execute and monitor the programmes and projects of the various bodies involved in the social rehabilitation system, together with programmes and projects providing assistance and protection to underage offenders;

(g) To work together with the National Council on Narcotic and Psychotropic Substances (CONSEP), on behalf of the central government administration, on the design and implementation of programmes to prevent and eradicate consumption of narcotic and psychotropic substances;

(h) To develop new bills or draft reforms to existing laws with a view to improving the justice and social rehabilitation system;

(i) To monitor the prison system throughout the country to ensure it does not reach critical levels of overcrowding that jeopardize the physical and mental integrity of inmates;

(j) To oversee all inward and outward extradition processes;

(k) To administer adolescent detention centres, for which it must comply with the policies established by the National Council for Children and Adolescents;

(l) To keep statistical records on inmates at the country's different adolescent detention and social rehabilitation centres.

291. Subsequently, Executive Decree No. 1317 of 9 September 2008, published in *Registro Oficial* No. 428 of 18 September 2008,[34] conferred upon the Ministry of Justice and Human Rights the responsibility for coordinating implementation of judgements, precautionary measures, provisional measures, friendly settlements, recommendations and resolutions originating in the Inter-American Human Rights System and in the universal system of human rights, and likewise any other obligations arising out of international commitments in this area; to this end, the following specific functions were established by article 2 of the Decree:

(a) To refer resolutions to the competent authority so that it can order investigations and measures to determine individual liabilities for human rights violations, and to follow up the progress of such investigations and measures to determine liabilities.

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[34] See annex: Decree No. 1317 of 9 September 2008.

(b) To coordinate with the Ministry of Finance on payments of material and non-material compensation to victims of human rights violations.

(c) To work with the competent State authority on the implementation of whatever measures are required to discharge its obligations in full.

(d) To draft legal reforms with a view to bringing the system of legislation up to international standards.

(e) To keep beneficiaries, the Ministry of Foreign Affairs, the Office of the Procurator-General and other relevant bodies informed of progress with the compliance activities coordinated by the Ministry of Justice and Human Rights.

(f) To work with the Ministry of Foreign Affairs, Trade and Integration on nationwide implementation of any other international instrument establishing international obligations for the State in the field of human rights.

(g) To participate jointly with the Ministry of Foreign Affairs in the process of preparing and validating State reports to the committees and other organs of human rights treaties, within a public coordination framework. The Ministry of Foreign Affairs must submit the validated reports to the appropriate organs of international human rights treaties.

(h) To carry out internal follow-up, monitoring and evaluation in Ecuador of compliance with legal statutes and national policies dealing with human rights, so that the relevant data can be incorporated into State reports to the organs of human rights treaties.

(i) To support the Ministry of Foreign Affairs in preparing the agenda for visits to Ecuador by human rights mechanisms and special rapporteurs, and jointly prepare the official position of the State on issues that come within the purview of international mechanisms.

(j) To participate in international human rights meetings, including presentation of reports to international human rights organizations, with the Ministry of Foreign Affairs acting as the coordinating authority.

(k) To inform public bodies and civil society of the recommendations made by international human rights organs or committees and to assess their implementation, with support from the Ministry of Foreign Affairs.

292. From the above, the Committee can observe the determination of the Ecuadorian State to use its constitutional and institutional framework to promote and protect human rights by means of specific powers and objectives, leaving no doubt as to its far-reaching commitment to guaranteeing the rights of its inhabitants.

38. Please provide detailed information on any new political, administrative or other measures taken to promote and protect human rights at the national level since submission of the previous periodic report, including human rights programmes and plans of action, the resources and means necessary for their development and their objectives and results.

293. The Ecuadorian State has taken the necessary steps to protect human rights. Thus, in February and August 2009 the Subsecretariat for Legislative Development, which is part of the Ministry of Justice and Human Rights, provided support and technical advice to some committees of the Constituent Assembly. One of the main issues on which support was provided was the new system of guarantees now contained in the current Constitution. The plans of the Subsecretariat for 2009 also include developing a number of laws to protect human rights at national level, including a law to regulate the operations of the Constitutional Court and constitutional oversight and Equality Act procedures.

294. Likewise, in accordance with the provisions of article 392 of the current Constitution, which establishes the State’s obligation to safeguard “the rights of people in a situation of human mobility” and to coordinate with the different State bodies and civil society, and in response to the need to reconcile secondary legislation with the new constitutional approach to human mobility, the National Secretariat for Migrants, which is in charge of migration policy, has been working with the Ministry of Justice and Human Rights since 2009 in a participatory process to develop a comprehensive human mobility bill, the goal of which is a reform identifying principles, rights, processes, institutional resources and guarantees in the fields of emigration, immigration, internal displacement and asylum.

295. The 2001-2010 Strategic Plan of the Ministry of National Defence (MDN) provided for the creation of a human rights section within the Legal Department, which has been operating normally up to the present time; since 2008, the MDN has also been undergoing restructuring with the sole object of improving processes in the Armed Forces.

296. Furthermore, in view of the manifold needs and legal, administrative and disciplinary shortcomings that exist within the Armed Forces where human rights, international humanitarian law and gender are concerned, in 2009 the Ministry raised the status of the section referred to above by creating the Department of Human Rights and International Humanitarian Law to operationalize and optimize the implementation and integration of these issues.

297. The Department working team will undertake the following activities:

(a) Producing policies on human rights and international humanitarian law in the Armed Forces with a view to ensuring respect for human rights in both professional and personal situations;

(b) Coordinating with other Ecuadorian and international institutions and establishing support mechanisms for the implementation of any measures in this area;

(c) Securing representation and participating jointly with other institutions concerned with the issue;

(d) Developing, approving and applying the National Armed Forces Plan for Human Rights;

(e) Designing manuals and cards based on existing documents;

(f) Following up and investigating appeals, complaints and petitions presented by civilian and military personnel as provided by article 12 of the Convention, and considering and coordinating the human rights requirements of other institutions;

(g) Providing advice on the internal legal procedures of the armed forces;

(h) Organizing and coordinating specialist training in human rights protection principles and standards and international humanitarian law for civilian and military personnel;

(i) Reforming the approach taken to human rights and international humanitarian law in the military education system by mainstreaming them in the content of graded curricula and the unified education method, and by increasing teaching time in training institutions for officers and other ranks where this subject is covered.

298. It is important to add that the Ministry of National Defence has signed a number of agreements aimed at improving the workings and procedures of the Armed Forces with

organizations such as the Ecuadorian Red Cross and the Ministry of Justice and Human Rights.[35]

299. Complementing all this was the publication of the "Regulations Replacing the Military Discipline Regulations" in Ministerial General Order No. 243 of Monday 15 December 2008, which establishes in article 39 of chapter II, Abuse of authority, that the following will constitute "Serious offences:… (c) Ordering degrading or humiliating punishments, where these do not constitute a criminal offence"; anyone committing this infraction will be subject to one of the disciplinary sanctions set forth in article 70, taking into account any attenuating or aggravating circumstances as provided by articles 112 and 113 of these new regulations.

300. Meanwhile, the Ministry of Foreign Affairs, Trade and Integration has given notification that since 2003, as part of the activities of the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans, which is responsible for implementing the National Human Rights Plan, a number of activities have been undertaken to implement measures for the promotion and protection of human rights at national level, especially in the design of the Human Rights Operating Plan for People in Prison, article 4 of which provides for "the abolition of all practices of torture and physical or psychological ill-treatment as mechanisms for investigation and punishment in all systems of detention and investigation and in prisons".

301. From 2003 to 2008, some working committees were organized to draft the Human Rights Operating Plan for People in Prison under the responsibility of the Subcommission for the Human Rights of People in Prison, whose membership consisted of representatives of Ecuadorian institutions and civil society. The intention is for this operating plan to be published once the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans has considered its text, which it has not yet done.[36]

302. A number of results came out of the working committees in the work of the Subcommission. In 2003, the Forum for Prisoner Rehabilitation and Human Rights was created, and four working committees were set up as part of it: the legal committee and the committees on overcrowding, work and health. The outcome of the legal committee's work was the bill for the Sentencing Act, submitted to the National Congress in 2003. This bill was not considered by the legislature but, as mentioned earlier, interest in these matters has been reinvigorated by the new Constitution and the country's new institutions.

303. In 2005, organizations linked to the Subcommission for the Human Rights of People in Prison recommenced work on the Operating Plan, reformulating objective 5. Ultimately, the objectives of the Plan were: modernization of justice, implementation of sentences, and alternatives to prison as a way of relieving overcrowding and reintegrating offenders into

[35] On 5 November 2008 an Interinstitutional Cooperation Agreement was signed between the Ministry of National Defence (MDN), the International Committee of the Red Cross (ICRC) and the Ecuadorian Red Cross (CRE) for the integration of international humanitarian law into the Armed Forces. Points 1 and 2 of the seventh clause of the Agreement provide for the formation of a "committee for the integration of international humanitarian law" into the Armed Forces, the specific object of which is "to integrate the prescriptions and principles of international humanitarian law into strategic, operational and tactical military manuals and regulations…" by preparing the "Armed Forces Project for the Integration of International Humanitarian Law" to operationalize the Agreement signed.

The Interinstitutional Cooperation Agreement between the Ministry of National Defence (MDN) and the Ministry of Justice and Human Rights (MJDH) for the protection, promotion and dissemination of human rights within each institution's sphere of competence was signed on 27 January 2009. On the basis of this agreement, a consultancy exercise has been undertaken to review military laws and regulations for possible adverse effects on human rights.

[36] The Human Rights Operating Plan for People in Prison had not been published by 2009.

society. These initiatives were developed with the participation of a wide array of State and civil society actors; as already noticed, however, this draft Operating Plan had yet to be published at the time the present report was submitted.

304. It is important to note that, following the creation of the Ministry of Justice and Human Rights in 2007, the subjects of social rehabilitation and human rights in prison have been included in its various competences.

305. In view of concerns about violations of the human rights of migrants, both Ecuadorian and foreign, the Ecuadorian State created the National Secretariat for Migrants (SENAMI) by Executive Decree No. 150,[37] with a view to its devising and implementing migration policies conducive to the human development of all the actors concerned.

306. The responsibilities of SENAMI include assisting migrants and their families when these are in vulnerable situations and helping them to reintegrate into Ecuador under favourable economic, social and cultural conditions.

307. To achieve this, it was necessary to prepare the National Human Development Plan for Migrants. This State policy, now gaining strength, is based on the current Constitution, article 40 of which recognizes the right to migrate:

"*Article 40.* People's right to migrate is recognized. No human being shall be identified as or considered to be illegal because of his or her migration status.

The State will work through the appropriate bodies to ensure that Ecuadorians abroad are able to exercise their rights, irrespective of migration status [...]"

308. It is important to stress that, on the basis of this law, all migrants, irrespective of their human mobility situation, have guarantees from the Ecuadorian State that they will not become victims of torture and other cruel or unusual treatment or punishment.

309. Another important measure taken by the Ecuadorian State was the political decision to "declare efforts to combat human trafficking, illegal trafficking of migrants, exploitation for sexual and work purposes and other forms of exploitation and prostitution of women, children and adolescents, child pornography and the corruption of minors to be a matter of priority State policy" in Executive Decree No. 1823 of 30 August 2006, published in *Registro Oficial* No. 375 of 12 October 2006. The Decree also approved the National Plan to Combat Human Trafficking, Illegal Trafficking of Migrants, Exploitation for Sexual and Work Purposes and Other Forms of Exploitation and Prostitution of Women, Children and Adolescents, Child Pornography and the Corruption of Minors.

310. To execute the Plan, a number of national authorities joined forces in 2006 to create a Technical Secretariat responsible for implementing measures to prevent and combat these practices and assist victims. In 2009, three working committees, with members drawn from various ministries, were created to implement the three aspects of the plan: prevention, investigation/protection and punishment. Within the framework of the National Plan, Ecuador has succeeded in developing a politico-administrative and judicial structure which has largely succeeded in meeting the objectives laid down by implementing measures for prevention, for punishment and investigation, and for reparation and restitution of rights. Since February 2008 and over the course of 2009, particular emphasis has been laid on publicization of and familiarization with Plan activities, including presentation of both the Consular Assistance Protocol for Victims of Human Trafficking and the website of the National Human Trafficking Plan. Twenty-two preliminary inquiries, five criminal investigations and three sentences relating to cases of human trafficking are among the achievements on the punishment and investigation side during the period mentioned.

[37] Published in *Registro Oficial* No. 39 of 12 March 2007.

311. The National Assembly has also taken legislative measures to protect human rights. Thus, in accordance with the provisions of the current Constitution determining that expeditious special procedures will be established by law to try and punish offences of domestic and sexual violence and hate crimes, an unnumbered law[38] was passed in March 2009 to amend the murder provisions of the Criminal Code, forming part of the chapter on crimes against life (art. 450), and a chapter dealing exclusively with hate crimes was inserted with the title "Crimes against constitutional guarantees and racial equality", the purpose being to protect against and punish illegitimate actions motivated by hatred or contempt in all contexts, whether expressed through the media or by means of physical or psychological violence, or in the sphere of employment or service.

"*Article 81 of the Constitution.* Expeditious special procedures will be established by law to try and punish crimes of domestic and sexual violence, hate crimes and crimes against children, adolescents, the young, the disabled, older adults and people whose particular characteristics create a need for greater protection.

Article 450 of the Criminal Code. Homicide committed with any of the following attendant circumstances constitutes murder and shall be punishable by 16 to 25 years' special imprisonment:

10 (a) Hatred or contempt motivated by the victim's race, religion, national or ethnic origin, sexual orientation or sexual identity, age, civil status or disability."

"**Heading II**
Crimes against constitutional guarantees and racial equality

Unnumbered chapter
Hate crimes

Unnumbered article. Anyone who publicly, or by any means tending to its becoming public knowledge, incites hatred, contempt or any form of physical or psychological violence against one or more people by reason of their skin colour, race, sex, religion, national or ethnic origin, sexual orientation or sexual identity, age, civil status or disability shall be sentenced six months' to three years' imprisonment.

Unnumbered article. Anyone committing acts of physical or psychological violence motivated by hatred or contempt against one or more people by reason of their skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity, age, civil status or disability shall be sentenced to six months' to two years' imprisonment.

If anyone is injured by the acts of violence referred to in this article, the perpetrators shall be sentenced to two to five years' imprisonment. If such acts of violence lead to a person's death, the perpetrators shall be sentenced to 12 to 16 years' imprisonment.

Unnumbered article. Anyone who in the course of his or her professional, commercial or business activities refuses someone a service or facility to which he or she is entitled or excludes a person or denies or impairs or restricts the rights enshrined in the Constitution by reason of their skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity, age, civil status or disability shall be sentenced to one to three years' imprisonment.

Unnumbered article. Any public servant who behaves in any of the ways described in this chapter or refuses or delays a procedure or service to which a person is entitled will be punished as provided in the previous article. In these cases, the official shall be debarred

[38] See annex: Reforms to the Criminal Code, Act 0, supplement to *Registro Oficial* No. 555 of 24 March 2009, published in the supplement to *Registro Oficial* No. 578 of Monday 27 April 2009.

from holding any public position, employment or commission for the same time period as the prison term imposed."

312. This law reforming the Criminal Code also made provision for the crimes of genocide and ethnocide, which represents a great advance in Ecuadorian criminal law as it guarantees and protects the rights of national, ethnic, racial or religious groups:

"**Heading VI**

Unnumbered chapter
Genocide and ethnocide

Unnumbered article. Anyone perpetrating any of the following acts with intent to destroy a national, ethnic, racial or religious group wholly or in part shall be punished as follows:

1. Anyone causing the death of its members shall be sentenced to 16 to 25 years' special imprisonment.

2. Anyone causing severe impairment of the physical or mental integrity of the group's members shall be sentenced to six to nine years' ordinary imprisonment.

3. Anyone deliberately submitting the group to conditions of existence that can be expected to entail its total or partial physical destruction shall be sentenced to six to nine years' ordinary imprisonment.

4. Anyone taking measures to prevent births in the group shall be sentenced to six to nine years' ordinary imprisonment. Information about or access to family planning and contraception methods and sexual and reproductive health services shall not be deemed birth prevention measures.

5. Anyone forcibly transferring children from the group to another group shall be sentenced to six to nine years' ordinary imprisonment.

Unnumbered article. Anyone flouting a national, ethnic, racial or religious group's right of self-determination or desire to remain in voluntary isolation shall be guilty of the crime of ethnocide and shall be sentenced to three to six years' ordinary imprisonment.

Unnumbered article. Anyone carrying out activities tending to influence, alter or in any way change the culture, way of life or identity of voluntarily isolated peoples in the awareness that this could lead to the total or partial disappearance of human groups shall be sentenced to two to four years' imprisonment.

Unnumbered article. The fact of the infractions detailed in this chapter having been committed by a subordinate will exempt neither the superior ordering them nor the subordinate executing them from criminal liability.

In all these cases, attempted crimes will be punishable by half the penalty laid down for crimes successfully committed.

Unnumbered article. Prosecutions and penalties for the crimes dealt with by this chapter shall not be subject to any period of prescription."

313. With the opening of regional offices of the Constitutional Court in 2009, lastly, for the first time in 28 years of constitutional oversight the Ecuadorian State has fulfilled the mandate of the Constitution instructing that the administration of constitutional justice be deconcentrated to provide the most effective possible defence for the rights of citizens outside the capital.

314. Some regional offices exist. The Guayaquil Regional Office has jurisdiction in the provinces of Guayas, Los Ríos and Galápagos; that of Cuenca serves the provinces of Azuay, Cañar and Morona Santiago; that of Riobamba the jurisdictions of Bolívar, Pastaza,

Tungurahua and Cotopaxi; that of Ibarra the provinces of Carchi and Esmeraldas; that of Loja the provinces of Loja and Zamora Chinchipe; that of Machala will deal with constitutional matters in El Oro province; that of Portoviejo will serve the provinces of Manabí, Santa Elena and Santo Domingo de los Tsáchilas; and that of Orellana will have jurisdiction in the provinces of Orellana, Sucumbíos and Napo.

315. The essential purpose of these offices is to furnish citizens with all the information they need regarding the administration of constitutional justice and, in particular, to provide information in a timely and efficient manner on cases in which they are personally involved, so that they do not have to travel to the capital, Quito, to obtain data on formalities, proceedings and the results of their actions.

316. The regional offices have a duty to organize, plan and implement academic events at the highest level to familiarize judges, magistrates, court officials, lawyers and the whole population with constitutional law and human rights, thereby making a real contribution to the development of democracy and the consequent consolidation and operation of fundamental rights for the benefit of the country's population.

317. To this end, workshops have been held in a number of cities around the country, with over 120,000 people attending them from August 2008 to April 2009. They are detailed in the following table.

Table 18
Workshops held by the Constitutional Court
(August 2008 to 30 April 2009)

Regional office	*Workshops*	*Number attending*	*Provinces*
Cuenca	150	17 975	Azuay/Cañar/Morona Santiago
Francisco de Orellana	63	9 150	Napo/Orellana/Sucumbíos
Guayaquil	149	16 193	Galápagos/Guayas/Los Ríos
Ibarra	125	14 122	Carchi/Esmeraldas/Imbabura
Loja	27	6 430	Loja/Zamora Chinchipe
Machala	83	15 522	El Oro
Portoviejo	67	7 809	Manabí/Sta. Elena/ Sto. Dom. Tsáchilas
Riobamba	286	39 215	Bolívar/Chimborazo/Cotopaxi/Tungurahua/Pastaza
Quito	30	2 637	Pichincha
Total	**980**	**129 053**	**24**

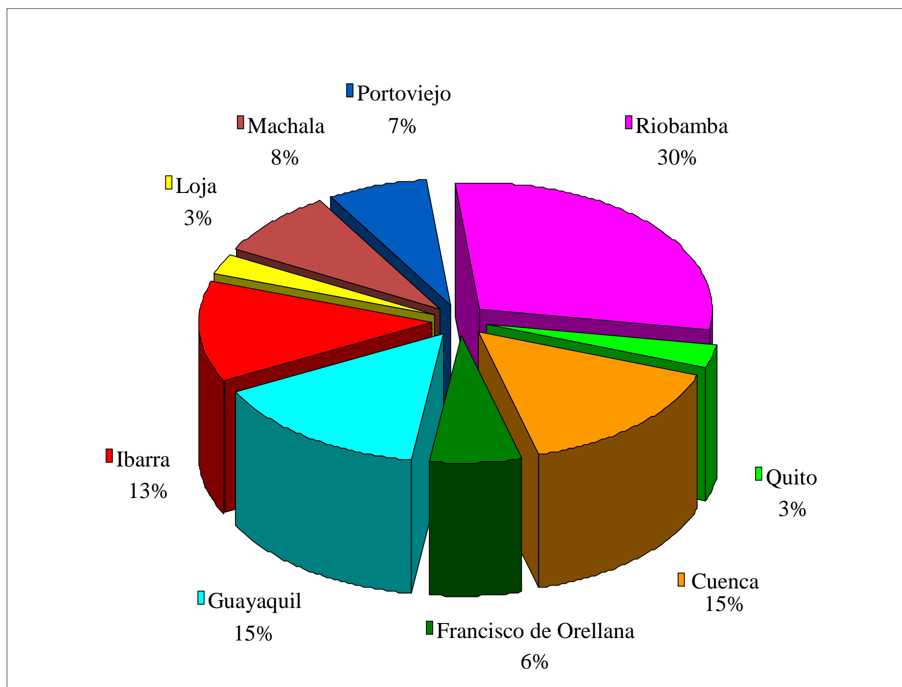
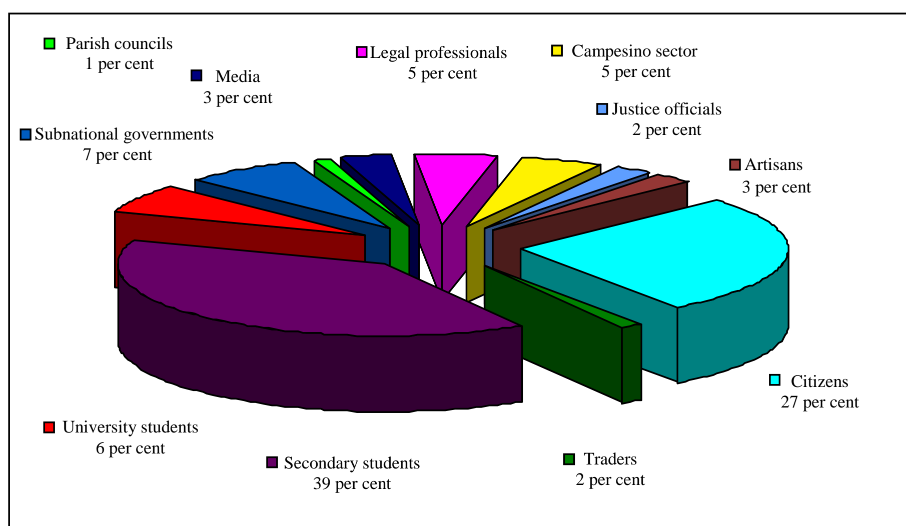


Table 19
Workshops held by Constitutional Court regional offices nationwide
(August 2008 to 30 April 2009)

Target group	*Workshops*	*Number attending*
Justice officials	21	3 230
Artisans	25	2 334
Citizens	263	35 542
Traders	15	1 230
Secondary school students	384	59 215
University students	63	6 517
Subnational governments	69	8 918
Parish councils	12	1 390
Media	29	265
Legal professionals	49	5 463
Campesino sector	50	4 949
Total	**980**	**129 053**



39. Please provide any other additional information on measures adopted to implement the Convention and the Committee's recommendations since the Committee's consideration of the third periodic report in 2005, including relevant statistical data and information on any other noteworthy developments in the State party relating to the provisions of the Convention.

318. The Ecuadorian State has undertaken a number of measures in its concern to spread knowledge and understanding of human rights. In 2005, three manuals were designed in coordination with the Ministry of Foreign Affairs, Trade and Integration and with support from the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), the Institute of Criminology of the Central University of Ecuador, PRIVA Foundation, the National Social Rehabilitation Council and the National Social Rehabilitation Service: the *Manual de capacitación para profesionales de centros de*

rehabilitación social del Ecuador (Training manual for professionals at social rehabilitation centres in Ecuador), *El debido proceso penitenciario* (Due process in prisons) and *Los derechos son de todos y todas* (Rights are for all). These were supplied to the Subcommission for Human Rights in Prison of the Commission for Follow-up of the National Human Rights Plan to be used as training manuals for prison staff.

319. Also published in 2005 was a leaflet entitled *Modelo de visita a prisiones* (Prison visiting model), which was also used for prison staff training seminars.

320. In addition, as part of the Commission's work, some training workshops were held in 2006 for prison staff in some provinces of the Eastern and Sierra regions (Morona Santiago, Chimborazo and Pichincha). The purpose of these workshops was to provide prison staff with tools relating to the human rights of people in prison. Some 500 people are estimated to have benefited. The texts of the manuals were provided to those attending the workshops.

321. Pursuant to the open invitation issued by Ecuador in 2002 to all United Nations special mechanisms to visit the country and see the human rights situation for themselves, the Working Group on Arbitrary Detention visited Ecuador between 12 and 22 February 2006.

322. The Working Group visited the provinces of Pichincha (where Quito, the capital, is located), Azuay and Guayas, and interviewed officials from the executive, legislative and judicial branches and representatives of civil society. It visited 13 detention centres, which included social rehabilitation centres, provisional detention centres and juvenile detention centres and police stations, meeting some 200 inmates.

323. In its report on this visit,[39] the Working Group made some recommendations to Ecuador concerning the situation in prisons, and these have been extensively addressed since the Ministry of Justice and Human Rights came into existence, as reported in earlier paragraphs of this document.

324. In response to Committee recommendations, and in its concern to provide ongoing training to security forces personnel, the Ecuadorian State has held a number of courses dealing with human rights and the eradication of torture, as follows:

(a) The International Committee of the Red Cross for the Plurinational State of Bolivia and the Republics of Ecuador and Peru, represented by the ICRC regional delegation in Peru, issued an invitation to the subregional meeting of government experts on the regulation of the use of force and protection of persons in situations of internal disturbances and other situations of internal violence, held in Lima on 24 and 25 November 2008. This was attended by a general officer, a senior officer and a junior officer, in accordance with the 1979 Code of Conduct for law enforcement officials and the 1990 principles on the use of force and firearms for law enforcement officials, which were created to prevent excesses or abuses in the performance of their duties and reconcile domestic regulations with international principles in these areas.

(b) Complementing the project referred to in the previous paragraph, civilian and military staff from the Ministry of National Defence participated in the Peru-Ecuador binational seminar on torture prevention and security policies from a human rights perspective in the city of Piura, Peru, in August 2008.

325. It should also be noted that institutions like the Ministry of Justice and Human Rights and the Ombudsman's Service have provided professional, administrative, technical and security staff at social rehabilitation centres with training in human rights issues.

[39] Document A/HRC/4/40/Add.2.

326. In addition, the judiciary and the Ministry of Justice and Human Rights have been making the most strenuous efforts to ensure that the indispensable task of applying human rights correctly is achieved. As part of this effort, the first seminar on the application of human rights was held in Quito on 9 and 10 September 2008 for judges and criminal justice officials; the event was repeated in Cuenca on 9 and 10 December 2008 and will be held again in all the country's other circuits.

327. Likewise, one of the general objectives of the Constitutional Court is to develop, implement and maintain a system of constitutional justice that is transparent, accessible, timely, independent and autonomous to oversee, interpret and administer constitutional justice. Notwithstanding this, one of the great problems experienced by the constitutional oversight body has been that it was leaderless for long periods owing to the political issues with which it became involved from 2004 until June 2007. Its caseload increased substantially as a result and is now being processed as rapidly as possible.

328. To dispatch the backlog of cases, the Constitutional Court has been providing vigorous support to every part of the institution and has developed minimum quality standards for the judgements, edicts and rulings it issues, promoting a change in constitutional legal culture among judges, professionals, students, justice officials and society in the light of the new rights guarantees and the processes for upholding them. Accordingly, between 30 November 2004 and 30 April 2009 the former Constitutional Tribunal and the present Constitutional Court settled 6,587 cases, of which a breakdown by competence is given in the following table.

Table 20
Consolidated report on cases resolved by legislative competence of the current Constitution of the Republic of Ecuador as of 19 October 2008

Competence	*Code*	*Cases*	*Percentage*
Unconstitutionality of legislative acts	CT	140	2.10
Unconstitutionality of administrative acts	AA	125	1.90
Action for habeas corpus	HC	536	8.10
Action for habeas data	HD	244	3.70
Action for constitutional protection [*amparo*]	RA	5 249	79.70
Action for access to public information	AI	82	1.20
Objections of unconstitutionality	OI	2	0.00
Rulings on international treaties/conventions	CI	14	0.20
Conflicts of competence	CC	1	0.00
Inapplicability of legal precepts	DI	38	0.6
Decentralized system [*régimen seccional*]	RS	121	1.80
Electoral complaints	QE	32	0.50
Legislative complaints	QL	3	0.00
Total		**6 587**	**100.00**