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COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD (PARTIAL)* OF THE 675th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 14 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* No summary record was prepared for the rest of the meeting.



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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Ecuador (CAT/C/39/Add.6; CAT/C/35/L/ECU) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Ecuador took places at the Committee table.

2. Mr. FAIDUTTI (Ecuador) said that the delegation would begin by making general comments on the questions raised by the Committee, followed by detailed replies on more specific matters. With regard to the definition of the offence of torture and the application of appropriate penalties, he referred the Committee to the provisions of articles 151, 186, 187, 204 and 205 of the Criminal Code, articles 111 and 120 of the Code of Criminal Procedure and provisions of the Military and Police Criminal Codes. Although Ecuadorian legislation did not provide a definition of torture that was fully in line with that contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 23.2 of the Constitution of Ecuador was sufficiently broad in scope to cover all the aspects of torture defined therein. Strenuous efforts were being made to eliminate torture, as was borne out by the number of cases of torture dealt with in the courts. Ecuador did not believe that the absence of a definition of torture which was exactly the same as that in the Convention afforded potential victims of torture less protection against it. However, in response to a recommendation made by the Committee in connection with the second periodic report of Ecuador (CAT/C/20/Add.1), and with the support of civil society, a bill had been drafted to incorporate a definition of torture in the Criminal Code. A bill had also been drafted to incorporate relevant provisions of the Rome Statute of the International Criminal Court into domestic legislation. The bills had not yet been approved by the National Congress owing to the current political crisis in the country.

3. Following the establishment of the National Council of the Judiciary, budgetary allocations for the judiciary had been increased. They had been used to raise the salaries of judges with a view to eliminating corruption among them, establishing more criminal courts and recruiting more prosecutors. Members of the judiciary were now higher-paid than other civil servants of equal rank.

4. As far as domestic violence and violence against women was concerned, in 2003 there had been a slight decrease in the number of complaints lodged with the Commissioners for Women and the Family. For instance, in the province of Guayas, the number of complaints had fallen from around 8,000 to approximately 6,000, resulting in fewer prosecutions. On the other hand, in 2004 there had been an increase in the number of prosecutions for rape and sexual offences, since investigation methods under new provisions relating to criminal procedure had made it possible to deal more swiftly with such cases. The press and NGOs had also played an important role by raising awareness of domestic and sexual violence, encouraging the victims to report incidents and promoting greater respect for women.

5. With regard to sexual minorities, relations between homosexuals had been decriminalized under legislation passed in 1997. Article 23 of the Constitution guaranteed the physical and moral integrity of all persons living in Ecuador. Under article 4 of the Domestic Violence and Violence against Women Act, 1995 all members of the family unit, without distinction, were protected against domestic violence.

6. On the subject of indigenous justice, he said that, in order to ensure the compatibility of indigenous customary law with the Constitution and domestic legislation, a bill relating to the administration of indigenous justice in Ecuador had been submitted to the National Congress. Moreover, in practice, the public authorities took steps to prevent action that might constitute a violation of a person's physical or moral integrity, pursuant to article 191 of the Constitution. Since the majority of the indigenous population was bilingual, thus far the State party had not made it a requirement for legal personnel working with the indigenous communities to speak indigenous languages. However, it recognized the need to increase the number of public defenders working with minority groups, and to train them in the relevant legislation and procedures and minority languages.

7. There had been a rise in the number of court cases involving foreigners living in Ecuador. Advice and assistance on legal matters and during legal proceedings was provided by their embassies and consular offices in the country. In the absence of the latter, the services of honorary consuls were also available.

8. The State party was aware that the existence of separate police and military courts was contrary to the provisions of international human rights instruments. In that connection, he referred the Committee to the written replies to the question in paragraph 34 of the list of issues. At present there was considerable public pressure to bring the police and military courts into a single jurisdiction along with the ordinary courts, and the Government was discussing proposals along those lines.

9. There was no conflict of jurisdiction between the police and military courts and the ordinary courts, since their proceedings and decisions were governed by different legislation - the Criminal Code, the Police Criminal Code and the Military Criminal Code. Members of the security forces could be tried in the ordinary courts for offences under ordinary law committed in the discharge of their duties. Between 1999 and 2003, the National Council of the Judiciary had run training programmes for judges operating in the ordinary, police and military courts on respect for human rights, due process and the need for a single jurisdiction.

10. Mr. LARENAS (Ecuador), responding to queries concerning enforced disappearance, said that fortunately the phenomenon was not widespread in the country and that the public had been greatly perturbed by the few isolated incidents that had occurred. Article 23.2 of the Constitution prohibited, inter alia, enforced disappearance and abduction, and the penalties laid down for such offences were not subject to the statute of limitations. Although there was no specific definition of enforced disappearance in Ecuador's criminal legislation, it could be considered as being covered by abduction and kidnapping, which were classified as criminal offences. Due note had been taken of the Country Rapporteur's comments on the psychological suffering caused to the relatives of the victims of enforced disappearances.

11. Mr. ROBERTS (Ecuador) said that, in addition to monetary compensation awarded by the courts or other bodies, there were other forms of reparation for the victims of human rights violations, such as posting the names of victims in public places, instituting criminal proceedings against the perpetrators, extinguishing the criminal records of victims, and publishing articles in the national newspapers concerning the responsibility of the State for certain acts. Under article 20 of the Constitution, steps had also been taken for the State to recover funds from persons found guilty of human rights violations.

12. Providing clarifications on the distinction between pretrial detention and detención en firme, he referred the Committee to the written replies to the question in paragraph 7 of the list of issues. In essence, detención en firme replaced pretrial detention when the time limit for the latter had expired so that court proceedings could be initiated against the accused without further delay. Detención en firme had been widely contested in Ecuador by human rights and legal bodies. In 2004 an application on the matter had been filed with the Constitutional Court, which had not yet issued a ruling owing to the current political crisis.

13. Human rights training programmes were ongoing for all State officials who worked with detainees and for members of the armed forces. The current armed forces' human rights curriculum aimed to strengthen recognition and implementation of the constitutional principles and the provisions of the international human rights instruments to which Ecuador was a party. Draft legislation prepared at the beginning of 2005 on a national human rights plan for the armed forces was currently under consideration. Its main objective was to foster a culture of respect for human rights in the armed forces and to ensure that human rights promotion and protection was a major component of all duties during peacetime and time of conflict.

14. Mr. LARENAS (Ecuador) said that the principle of non-refoulement was respected in his country, in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Under Executive Decree No. 3316 of 6 May 1992, no one who was at risk of torture or ill-treatment in his country of origin could be turned back at an Ecuadorian border. All border authorities received instruction on that principle, and any violations were handled by the Ministry of Foreign Affairs.

15. Mr. ROBERTS (Ecuador) said that the National Human Rights Plan had been allocated a budget of US$ 97,000. Several local, regional and provincial subcommissions had been created to decentralize implementation of the Plan's objectives.

16. Under articles 161 and 162 of the Code of Criminal Procedure, all detentions made without a court order were recorded in a public register. Anyone had the right to apprehend a criminal in flagrante delicto. The detainee must then be handed over to the police and brought before a judge within 24 hours.

17. While no detention centres were yet administered by private institutions, the possibility of such centres was provided for in the draft sentence code currently before the National Congress.

18. All persons entering any of the country's 33 social rehabilitation centres were registered in the Statistical Bulletin of the Department of Social Rehabilitation and given a medical examination to ensure they showed no signs of torture or ill-treatment. If such signs were found, that Department instituted criminal proceedings against those accused of perpetrating the crime of torture or ill-treatment. Accused persons were suspended from duty and tried under the ordinary criminal justice system.

19. Mr. FAIDUTTI (Ecuador) said that the number of habeas corpus applications had fallen significantly since the adoption of the new Code of Criminal Procedure. Under the amended legislation, severe punishment was imposed on any police officer who carried out an arbitrary or illegal arrest.

20. Under the terms of an agreement between the International Committee of the Red Cross and the National Police, ongoing training was provided to public officials on the rights of refugees and internally displaced persons.

21. While some cases of attempted torture were difficult to prove due to a lack of evidence, attempted torture was a criminal offence under Ecuadorian legislation.

22. No official explanation had been given for the withdrawal of four NGOs from the National Human Rights Plan. It might have been a result of the decentralization of the Plan, which was currently implemented by 15 provincial subcommissions. The Plan provided a coordinated approach to human rights policies, which had formerly been developed by both government bodies and NGOs, leading to a duplication of effort. While some Quito-based NGOs had shown a degree of resistance to the Plan, given that it had been functioning well for seven years, that was no longer justified. The Government had signed cooperation agreements with several civil society organizations and was eager to increase such collaboration.

23. Mr. ROBERTS (Ecuador) said that while the State had endeavoured to reach an amicable agreement in the case of Joffre Aroca Palma, the victim's family had refused to negotiate on the grounds that to do so might jeopardize their safety. The case was currently pending; further attempts would be made to resolve the issue once the political crisis had been overcome.

24. Discussion of the draft sentence code had also been suspended because of the political crisis.

25. The majority of foreigners imprisoned for drug-related offences preferred to be in Quito in order to be near their embassies and consulates. Hence the high occupancy rate in women's prisons in the capital. The guards inside women's prisons were all female.

26. Under the amended Code of Criminal Procedure, any act of discrimination on the grounds of sexual orientation was prohibited by law. The National Human Rights Plan included measures to raise awareness of the rights of sexual minorities. A bill to prohibit all forms of discrimination, including discrimination on grounds of sexual orientation, was currently at the drafting stage.

27. Mr. FAIDUTTI (Ecuador) said that there were no paramilitary groups in Ecuador. While he could not provide the Committee with further details regarding the case of the transvestite who had been attacked in Guayaquil in September 2001, it was likely that the perpetrators had been one of the gangs of juvenile delinquents already known to the police. Both State entities and NGOs had taken steps to integrate those young people into society.

28. Many women had joined the police force and many young lawyers were women. The proportion of female judges was expected to increase significantly in future.

29. Mr. GROSSMAN (Country Rapporteur) emphasized the need to implement the National Human Rights Plan and to ensure proper human rights training for members of the armed forces and the police. Steps should be taken to define the crimes of torture and enforced disappearance and to ensure that attempted torture was properly punished.

30. With regard to the use of the expression "paramilitary group", he pointed out that the term appeared in paragraphs 49, 50 and 51 of Ecuador's report. If no such groups existed, the State party should in the future avoid referring to them in its reports in order to prevent confusion. Lastly, he stressed that, when handling cases of torture, equal importance should be attached to establishing the truth, dispensing justice and providing compensation to the victims.

31. The CHAIRPERSON stressed the need to adopt and implement a law on the execution of sentences. He asked whether the Government intended to allocate more financial resources to resolving the problem of overcrowded prisons. Referring to paragraph 230 of the report, he requested information on the implementation of the Government's policy of appointing public defenders to protect vulnerable groups in court. Further information about the payment of compensation to victims of torture in cases before various judicial bodies should also be provided.

32. Mr. FAIDUTTI (Ecuador) said that a law on the execution of sentences would be submitted to Congress in the near future. The Government had always cooperated with the United Nations and other organizations and had never rejected requests for inspections or inquiries into its judicial procedures related to human rights cases. With regard to the problem of overcrowding in prisons, the Government intended gradually to increase the resources allocated to improving detention conditions. Lastly, he said that the State had an obligation to ensure legal protection for every individual brought before a court. To that end, every court appointed public defenders for vulnerable people, including members of indigenous communities, workers, women, minors and other individuals without financial means. Lawyers considered it an honour to be appointed as a public defender.

33. Mr. ROBERTS (Ecuador) said that all cases before international courts and commissions and United Nations committees, involving compensation for the crime of torture, had been settled. The Inter-American Court of Human Rights had issued three rulings concerning Ecuador. In the case of Suárez Rozero v. Ecuador, compensation had been paid, and in the cases of Daniel Tibi v. Ecuador and Acosta Calderón v. Ecuador, compensation was pending but the money had been requested from the appropriate ministry. In addition, in two recent cases, domestic courts had ordered the Government to pay compensation to victims of human rights violations.

34. Ms. GAER asked what measures had been taken to punish the perpetrators of the offences described in paragraphs 48-52 of the report, and what steps would be taken to prevent such acts in the future.

35. Mr. FAIDUTTI (Ecuador) stressed the importance of creating jobs for young people in order to prevent them from forming gangs and becoming involved in crime. In Ecuador, various NGOs, in cooperation with the Ministry of Social Welfare, were conducting important projects designed to identify the causes of hooliganism and offences committed by young people and to try to eliminate those causes, inter alia, by helping young people find employment and facilitating their integration into society.

The discussion covered in the summary record ended at 11.35 a.m.