



International Covenant on Civil and Political Rights

Distr.: General
27 October 2009

Original: English

Human Rights Committee

Ninety-seventh session

Summary record (partial)* of the 2667th meeting**

Held at the Palais Wilson, Geneva, on Monday, 19 October 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

Contents

Consideration of reports submitted by States parties under Article 40 of the Covenant
(*continued*)

Fifth periodic report of Ecuador

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

** No summary record was issued for the 2666th meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.15 p.m.

Consideration of reports submitted by States parties under Article 40 of the Covenant
(continued)

Fifth periodic report of Ecuador (CCPR/C/ECU/5; CCPR/C/ECU/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Ecuador took places at the Committee table.*
2. **The Chairperson** invited the delegation to reply to questions 1 to 17 of the list of issues (CCPR/C/ECU/Q/5). Unfortunately, the State party's written replies (CCPR/C/ECU/Q/5/Add.1) had not yet been translated from Spanish into the Committee's other working languages.
3. **Mr. Montalvo** (Ecuador) said that his country was currently undergoing major changes, including the adoption of a new Constitution, which had transformed the country's institutional structures, and the establishment of the Ministry of Justice and Human Rights, which already had a considerable number of achievements to its credit.
4. **Ms. Artieda** (Ecuador) said that the Ministry had been established in November 2007 and aspired to transform Ecuador into a State fully based on justice and the rule of law.
5. Replying to question 1 of the list of issues concerning the legal status of the Covenant in the Ecuadorian legal system, she said article 424 of the Constitution stipulated that international human rights treaties ratified by Ecuador which recognized more favourable rights than those contained in the Constitution would prevail over all other enactments. Such treaties would also be directly applicable by the authorities without any prior requirement for incorporation in domestic law.
6. With regard to question 2, she said that the report provided a detailed account of the relationship between the Covenant and the new Constitution.
7. Turning to question 3, she said that the Ombudsman was appointed, pursuant to article 208 of the Constitution, by the Council for Citizen Participation and Social Oversight on the basis of an open merit-based competition. The selected candidate could be challenged by any member of the public.
8. Replying to question 4, she said that progress was being made in mainstreaming human rights in all areas of public policy under the National Plan for Quality of Life (*Plan Nacional para el Buen Vivir*) drawn up by the National Secretariat for State Planning. The requisite budgetary funds would be made available to ensure that all planned human rights activities were properly implemented.
9. Question 5 concerned steps taken to uphold the constitutional and legal guarantees aimed at protecting the rights of indigenous peoples and Afro-Ecuadorians. Under article 3 of the new Constitution, one of the State's core obligations was to guarantee the rights recognized in the Constitution and international treaties without any form of discrimination. Article 11 specified the principles that governed the exercise of human rights, and article 340 established a national system of social inclusion and equity consisting of a coordinated set of systems, institutions, policies, norms, programmes and services that guaranteed the exercise and enforcement of the rights recognized in the Constitution.
10. With regard to question 6 concerning the protection of members of indigenous communities, the State had taken the following action: removal of the explosives from the territory inhabited by the indigenous people of Sarayaku; safeguarding the life and physical integrity of the beneficiaries, including protection against all forms of coercion and threats; freedom of movement for the members of the community, especially on the Bobonaza

River; maintenance of the local airstrip; investigation of the events that had led to the ordering of provisional measures by the Inter-American Court of Human Rights in 2005, and of the intimidation of members of the indigenous people of Sarayaku, especially Mr. Marlon Santi, with a view to identifying those responsible and punishing them in accordance with the provisions of the American Convention on Human Rights; and involvement of the beneficiaries of the provisional measures or their representatives in the planning and implementation of the measures in question in order to ensure their effectiveness.

11. Replying to question 7, she said that, according to a statistical survey conducted in June 2009, women accounted for 26 per cent of senior public-administration and public-enterprise staff, 53 per cent of scientific and academic staff, and 47 per cent of middle-level technical and professional staff. Women had accounted for 38 per cent of the economically active population in June 2009, and 1.2 per cent of that number had held executive positions.

12. With regard to question 8 concerning the Violence against Women and the Family Act (No. 103), there were currently two systems for dealing with violence against women. Minor offences were referred to the 33 women's commissioners' offices throughout the country and more serious offences were handled by the criminal courts. The new Judicial Organization Code had established special courts for minor offences and courts to deal with violence against women and domestic violence. The Judicial College, which was currently being established, would provide training for prosecutors, judges and defence counsel, *inter alia* in the prevention and punishment of domestic violence.

13. Turning to question 10, she said that the Ministry of Education had implemented national basic education programmes for children and adults, and had reduced the illiteracy rate to 2.7 per cent. As a result, Ecuador had been declared free from illiteracy by UNESCO on 8 September 2009.

14. With regard to question 12 concerning the Operational Plan for Human Rights in Prisons, she said that President Corea had declared a prison emergency in 2007 and had launched a process of prison reform involving the establishment of social rehabilitation centres, improvements in detention facilities, reform of prison administration bodies, and comprehensive care for persons deprived of their liberty. Prisoners would henceforth be able to exercise the rights to which they were entitled and would no longer be treated as objects.

15. Replying to question 14 concerning fundamental legal safeguards for persons detained by the police, she said that the services of public defenders had been available since 2007 to all detainees, including foreigners. In addition, a training programme in due-process rights had been launched to raise public awareness of the rights of detainees. A Commission for Implementation of the Criminal Procedure Regime composed of representatives of prosecutors, the National Council of the Judiciary, the National Court of Justice, the Ministry of the Interior and the Ministry of Justice and Human Rights had been established.

16. In response to question 16 concerning legislative measures to shorten periods of pretrial detention, she said that *detención en firme* (a detention order issued in conjunction with a committal order to ensure the defendant's presence at the trial) had been abolished. In March 2009, the Code of Criminal Procedure had been amended to increase the number of precautionary measures relating to pretrial detention, which was now ordered only as a last resort.

17. Lastly, on question 17, she said that the Ministry of Justice and Human Rights had taken steps to upgrade and refurbish young offenders' institutions and to ensure that minors were segregated from adult prisoners.

18. **Mr. Pérez Sánchez-Cerro** noted that there had been little coordination among public institutions in the preparation of the State party's report and the replies to the list of issues. The Ministry of Justice and Human Rights seemed to have received no assistance in addressing the list and therefore referred the Committee in many cases to some other ministry for the information requested. That was not an acceptable approach, since the State party was required to respond to all questions raised by the Committee. He suggested that in future a joint procedure might be coordinated, for instance, by the Ministry of Foreign Affairs. If the delegation was unable to supplement the information contained in the written replies, it might wish to submit supplementary replies in writing within a time frame set by the Committee.

19. In its written reply to question 1, for example, the Ministry of Justice and Human Rights stated that it had no information on whether the courts had applied the Covenant. That was not a satisfactory reply and he urged the delegation to seek information from the relevant source.

20. With regard to the reply to question 2, he noted that article 11 of the Constitution prohibited discrimination on a number of grounds, including ethnicity, but contained no reference to race. He enquired about the reason for the omission.

21. In connection with question 6, he asked whether there had been an investigation into alleged abuses by the armed forces during recent demonstrations by indigenous people against oil-drilling and mining activities in indigenous communities, including the fatal shooting of a demonstrator.

22. The Ministry of Justice and Human Rights said that question 11 concerning states of emergency should be referred to the institutions that were responsible for such matters. He emphasized that the Committee was enquiring about the State party's position on the matter, not that of a particular ministry or institution. It wished to know, for example, what circumstances had given rise to the five states of emergency that had been declared during the period covered by the report and which rights had been suspended.

23. **Ms. Motoc** asked whether the Office of the Ombudsman functioned in accordance with the Paris Principles.

24. She wished to know what action was taken in the criminal justice system to prevent domestic violence. It would be useful to learn how the victim protection programme functioned and what results it had achieved. The Committee would appreciate information on efforts to train law enforcement officials in preventing and punishing domestic violence, and steps to raise public awareness of the need to combat that scourge.

25. She asked what measures the State party was taking to improve literacy levels, particularly as illiteracy was widespread among women.

26. She asked whether, under the Operational Plan for Human Rights in Prisons, the State party had succeeded in putting a stop to the practice of vaginal inspections in prisons as a security and anti-drug measure.

27. She requested additional information on pretrial detention, particularly the maximum period for which a person could be held. The delegation should comment on reports that the police discriminated against female detainees, taking particularly severe action against those who allegedly attempted to escape. It would be useful to know whether minors were held separately from adults in police and pretrial detention centres.

28. **Mr. Salvioli** asked whether the data on women employed in the public sector quoted by the delegation referred to senior and executive positions or all posts. He also wished to know whether the prohibition on registering with the Supreme Electoral Tribunal multicandidate lists in which women accounted for fewer than 20 per cent of the principal

candidates and 20 per cent of the alternates had been enforced (question 7 of the list of issues). The Committee had received reliable information to the effect that the Tribunal had accepted lists containing fewer than 20 per cent female candidates in recent elections. The Constitutional Court had later declared the lists unconstitutional, but by then the elections had taken place. He asked what measures the State was taking to ensure the situation did not reoccur and what disciplinary action had been taken against the members of the Supreme Electoral Tribunal.

29. Given the lack of a written or oral response to question 9, he asked whether the State party had enforced the Health Act, which guaranteed access to contraceptives. If so, the State party should provide further information on that question. He enquired how the National Plan on Health and Sexual and Reproductive Rights helped to ensure access to appropriate health and education services for pregnant women. The Committee had raised that concern in its previous concluding observations, some 13 years previously.

30. The State party had provided no statistics on reports of torture and ill-treatment of detainees, disaggregated by age, sex, legal status, ethnic origin, number of convictions and the type of penalty imposed on the perpetrators (question 13). The concerns of the international community on that question had been reflected in the concluding observations of the United Nations Committee against Torture in February 2006 (CAT/C/ECU/CO/3), decisions of the Inter-American Commission on Human Rights, and rulings and sentences of the Inter-American Court of Human Rights.

31. Lastly, turning to question 14, he requested information on the practical application of fundamental legal safeguards for persons detained by the police. He also asked whether the State party implemented article 36 of the Vienna Convention on Consular Relations, which provided that persons detained in a foreign country had the right to request consular assistance. While the Daniel Tibi case had been brought against the State party in the Inter-American Court of Human Rights in that context, no information had been provided to the Committee on that aspect of question 14. The Committee had received reports that in many cases, the State party did not fulfil its obligation to inform foreigners of their right to consular assistance, and where it did so, the foreigners were given no practical indication of how to contact their consulate.

32. **Mr. Bouzid** asked whether there was any basis to reports that the decisions of the Ombudsman were not applicable in practice by State entities since they were merely recommendations.

33. **Ms. Chanet** requested additional details on the situation of detainees in the State party, including the definition of the term “detainee”. She asked whether all constitutional rights were guaranteed to detainees, and whether detainees enjoyed those rights from the first moment of arrest, including the right to a lawyer. It would be useful to know in what conditions a detainee could meet with a lawyer, for how long, and whether the lawyer contributed to investigations or merely ensured the detainee was in good health and gave advice on defence.

34. Turning to the information provided in paragraphs 179 and 183 of the periodic report, she wished to know whether detainees whose trials were delayed beyond the period allowed for pretrial detention were automatically released. She asked why it had been necessary to establish a Commission for Implementation of the Criminal Procedure Regime and whether that body planned to amend criminal procedure in order to bring it into line with the new Constitution.

35. Given the frequency with which public emergencies were declared in the State party, she would welcome information on the degree to which the Government had derogated from the rights under the Covenant in each case, in accordance with the provisions of article 4. She asked whether the State party had ever been faced with a conflict between a

rule of humanitarian law and the provisions of article 4. It would be useful to have details of the conditions in which public emergencies had been declared.

36. **Mr. Amor** requested clarification of the relationship between domestic legislation and the Covenant, the degree to which domestic legislation reflected the provisions of the Covenant and any lacunae that remained to be filled in that regard. Given that the Covenant could be invoked before the courts, the Committee would appreciate detailed information on the instances in which that had happened. Additional details should also be provided on the steps being taken to ensure that the rights enshrined in the Covenant were fully incorporated into the Constitution. He would appreciate more information on efforts to prevent violence against women and to guarantee access to contraceptives, as requested in questions 8 and 9 of the list of issues.

The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.

37. **Ms. Artieda** (Ecuador) said that the fifth periodic report had been prepared prior to the establishment of the Ministry of Justice and Human Rights. The Ministry was currently working to set up a mechanism to ensure full coordination between all State bodies for the preparation of future reports. Much of the information contained in the fifth periodic report had been provided by a range of State institutions, such as the Supreme Court and the Office of the Ombudsman. There had been broad participation in the process of drafting the new Constitution. The term “ethnicity” signified ethnic origin; the term “race” was considered outdated.

38. **Mr. Montalvo** (Ecuador) said that the Ombudsman’s Office had recently been classified as being in full conformity with the Paris Principles. Under article 215 of the Constitution, the recommendations of the Office were mandatory and took immediate effect.

39. **Ms. Artieda** (Ecuador) said that a committee had been established to facilitate negotiations between the Government and indigenous communities on the issue of oil-drilling projects. It was investigating the death of the Shuar man who had been killed during protests over changes to the law on oil concessions. According to the official forensic report, he had been killed by a bullet of a type not used by the police. The committee was also examining ways of making the justice system compatible with the traditional indigenous system of law.

40. Since the introduction of an adversarial criminal justice system in 2001, continuing efforts had been made to improve the system by strengthening the various institutions involved and coordination between them. Achievements to date had included a reduction in the use and abuse of pretrial detention as a precautionary measure. The maximum periods of pretrial detention that could be imposed were 6 months for offences carrying a term of ordinary imprisonment and 12 months for offences carrying a term of rigorous imprisonment. Lack of flexibility in the criminal justice system and, in particular, excessive use of pretrial detention had led to overcrowding in prisons. Measures taken since 2008 to, inter alia, increase the number of courts, improve their geographical distribution and reform trial procedures had reduced pretrial waiting times and enhanced coordination across the system. Increases in human and financial resources had also improved efficiency and effectiveness, particularly with regard to investigations of serious offences. Under forthcoming reforms to the criminal justice system, currently in the public consultation phase, changes were expected in the classification and punishment of offences involving domestic violence and violence against women, including the introduction of mechanisms to provide for greater flexibility in the imposition of penalties.

41. In reply to Ms. Motoc’s question, she said that, thanks to programmes undertaken by the Ministry of Education, Ecuador’s overall literacy rate had risen to 97 per cent. The ratio of prisoners to capacity in penitentiary facilities had been reduced from 217 per cent in

2007 to 100 per cent. By the end of 2013, it was hoped to have reduced the ratio even further. New social rehabilitation centres were being built, with a geographical distribution aimed at allowing prisoners to maintain contact with their families and a regime that ensured respect for their rights. Integrated approaches to dealing with detainees had helped to reduce violence and improve security in detention facilities. The frequency of rioting had decreased significantly and firearms amnesties had been introduced, monitored by human rights organizations and with civil society involvement. The practice of carrying out vaginal inspections as an anti-drug measure had been banned in social rehabilitation centres; the Ministry of Justice and Human Rights was taking steps to verify its elimination. Some instances still occurred but progress was being made.

42. Ecuador had 13 young offenders' institutions, distributed throughout the country to allow family contact. Young offenders were no longer sent to remand centres, which were being reformed to avoid mixing offenders sentenced to different types of deprivation of liberty.

43. With regard to the proportion of women occupying posts in public administration, she said that, at the last elections, multicandidate lists that had not contained the requisite number of female candidates would not have been accepted. She provided detailed figures for the percentages of women candidates standing for election and elected at various levels in the 2009 elections. Figures for the representation of women in the National Court of Justice and the National Council of the Judiciary would be submitted in writing.

44. Concerning the right to due process, a system of public defenders had been introduced two years previously, their number now having risen to 58. Universities and law schools assisted in the operation of the system, thereby guaranteeing the right to free public defence. With regard to consular assistance, the Ministry of Justice coordinated with consulates in arranging the return of offenders to their home countries to complete their sentences. Lastly, the answer to question 9 of the list of issues and statistics in support of replies to other questions, including question 13 on ill-treatment and torture, would be provided in writing.

45. **Mr. Salvioli** underlined the usefulness of the statistics on female electoral candidates but expressed the view that question 7 of the list of issues, to which the delegation had not yet replied, referred rather to the percentage of women holding unelected positions in the public and private sectors. He requested further information in writing. With reference to consular assistance, he reiterated his earlier remarks and questions.

46. On the issue of domestic violence and violence against women, he asked for details of what offences it was planned to create under forthcoming legislative reforms, what flexible mechanisms would be introduced for the imposition of penalties, and how such cases were currently dealt with, in the light of reports from NGOs of very low rates of prosecution. What measures were being taken to prevent rape, particularly within indigenous communities?

47. Underlining the importance of the ban on vaginal inspections in detention facilities, he enquired about the results of the verification activities carried out by the Ministry of Justice and Human Rights. Had any officials been removed from their posts as a result?

48. **Sir Nigel Rodley** requested clarification and updated information on the legal safeguards referred to in question 14 of the list of issues. At what point were persons detained by the police entitled to consult legal counsel? Could legal counsels attend interrogations? How long could a person be detained in police custody before being sent to a remand centre, and who could they approach if they felt that their rights had been violated? How was external monitoring of procedures carried out? Was the situation

different if a state of emergency had been declared, and, if so, was there any state of emergency currently in place?

49. **Ms. Artieda** (Ecuador) said that posters in social rehabilitation centres and remand centres provided information in various languages on the right to consular assistance. Public defence was available to non-nationals charged with or serving sentences for criminal offences. As she had stated in her initial presentation, 26 per cent of public officials were women.

50. If a person was held in police custody having been caught in flagrante delicto, he or she could be held for 24 hours and must be brought before a competent judge within that time. To ensure that detainees' rights to be informed of their rights at the time of their arrest and to consult legal counsel were respected, the Ministry of Justice and Human Rights had taken various measures, including relocating detention centres to ensure that detainees could be brought before judges within the 24 hours stipulated. An internal police directive existed under which the length of time a detainee had been in police custody before being transferred to a remand centre must be verified as being less than 24 hours, but no external checks were currently provided for. The State party's written reply to question 2 of the list of issues described the constitutional mechanisms to which detainees could have recourse if they claimed that their rights had been violated.

51. With regard to the creation of specific offences involving violence against women, one of the offences being considered, at the request of national women's groups, was "femicide", and efforts were also being made to expedite criminal proceedings in such cases. In response to Mr. Salvioli's last question, she said that the director of a social rehabilitation centre in a northern province had been removed from her post for failing to eliminate the practice of vaginal inspections. Replies to the questions concerning states of emergency and rape in indigenous communities would be provided in writing.

The discussion covered in the summary record ended at 5.25 p.m.