



# **International Covenant on Civil and Political Rights**

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## **Human Rights Committee**

### **Concluding observations on the sixth periodic report of Ecuador**

Addendum

### **Information received from Ecuador on follow-up to the concluding observations\***

[Date received: 7 August 2017]

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\* The present document is being issued without formal editing.



1. In accordance with rule 71 (5) of the Human Rights Committee's rules of procedure, the Ecuadorian Government hereby submits information related to its implementation of the Committee's recommendations contained in paragraphs 20 (Truth Commission), 24 (conditions of detention and violence in prison) and 28 (freedoms of expression and peaceful assembly).

#### **Paragraph 20**

**The State party should adopt the necessary measures to expedite judicial investigations into the cases of human rights violations set out in the report of the Truth Commission and ensure that those alleged to be responsible are prosecuted and, if found guilty, punished commensurately with the seriousness of their actions. The State party should also increase its efforts to ensure that victims and their family members have prompt access to full reparation, taking all necessary measures, including compensation.**

#### *Reply of Ecuador*

2. In 2007, the Government commenced work on establishing effective transitional justice mechanisms aimed at ensuring truth, justice and redress relating to the human rights violations committed in its territory. Since then, the promotion and protection of human rights has been a State policy mainstreamed at many levels.

3. In May 2007, the Truth Commission was established pursuant to Executive Decree No. 305 to investigate and shed light on the human rights violations committed between 1984 and 1988 and during other periods. In June 2010, the Commission published its final report, entitled "Without truth there can be no justice", which documented 118 cases of illegal deprivation of liberty, torture, sexual violence, extrajudicial execution, attempted killing and enforced disappearance. It also identified two special cases that occurred in Colope and Sucumbíos.

4. The files were handed over to the Attorney General's Office, which, in March 2012, established the Office of the Commission of Truth and Human Rights to prosecute crimes against humanity and serious human rights violations. The six prosecutors of the Office underwent a long process of specialized training, provided by national and international experts, since it was the first time in the country's history that these offences were being prosecuted. International assistance in criminal investigations was also sought in order to ensure that the experts and specialists dealing with these cases were not members of the national police or armed forces, given that they are the institutions under investigation.

5. During the investigation, police records were made available and documents on clandestine structures of repression were declassified and meticulously processed by the National Archive of Ecuador, all of which has taken up a significant amount of time. These types of cases are being investigated in line with international standards for the first time, and landmark judgments have been achieved, such as in the Lema case, the case of González and others, including Fybeca, and the Cañola case. In the 12 cases currently being prosecuted in Ecuador (3 for crimes against humanity and 9 for serious human rights violations), qualitative progress has been made in overcoming substantive and procedural obstacles, such as the statute of limitations, *res judicata* obtained fraudulently and the problem of offences that were not statutory offences at the time that they were committed, among others, thereby opening the way for the remaining 106 cases currently at the preliminary stages of investigation. Rebuilding command structures and grouping cases related to the secret detention centre are central to new strategies aimed at streamlining legal proceedings.

6. The Attorney General's Office has worked very closely with victims of human rights violations through workshops held in several of the country's provinces. It has also promoted measures of symbolic reparation that extend beyond the field of criminal justice. For example, in December 2014, the mural "Cry of memory", which is mounted on the outside of the Attorney General's Office in Quito, was unveiled to commemorate the victims of repression in Ecuador and Latin America. That same month, a plaque dedicated to the family members of the victims of extrajudicial executions in the case of González

and others was affixed to the Attorney General's Office building in Guayas Province in tribute to their unwavering struggle for the truth. More recently, in 2016, the Attorney General's Office opened the Plaza de la Memoria as a gift to the people, to serve as a public space to preserve memory and combat impunity.

7. In 2013, the National Assembly passed legislation providing for the reparation of victims and the prosecution of serious human rights violations and crimes against humanity in order to create a comprehensive reparations programme. Responsibility for non-material reparations rests with the Ombudsman's Office and, in line with its Reparation Programme, 327 requests relating to 780 direct and indirect victims have so far been handled. A total of 862 psychological and 566 medical consultations have been conducted, and the deaths of two persons and the identity and filiation of four persons have been recorded. In addition, 102 criminal records were expunged, 121 persons received legal advice, 149 benefited from labour policies on access to employment, 75 were considered for housing credit and 40 were awarded education scholarships.

8. The Ministry of Justice, Human Rights and Worship is responsible for material reparations and, according to the Human Rights Directorate, 189 case files relating to victims documented by the Truth Commission have been assessed and found to correspond to 43 of the cases referred to in the "Without truth there can be no justice" report. Of those 189 cases, 6 have resulted in compensation agreements and the associated payments. Moreover, in the third quarter of 2017, seven additional compensation agreements, with 13 beneficiaries, will be signed, while 59 files are currently in the process of negotiation.

9. The comprehensive reparation mechanism has been endorsed by the international community; for example, the Inter-American Court of Human Rights, in paragraph 224 of its decision in the *Vásquez Durand v. Ecuador* case of 15 February 2017, "recognizes and appreciates the progress made by the State in the area of reparation of victims of human rights violations and crimes against humanity, following the promulgation of the law, and its implementing regulations, on reparation of victims and legal redress".

#### Paragraph 24

**The State party should take due note of the previous concluding observations (CCPR/C/ECU/CO/5, para. 17) and increase its efforts to continue improving conditions of detention and eliminating overcrowding, in particular by ensuring the effective implementation of regulations relating to alternatives to the deprivation of liberty. The Committee further recommends that the State party redouble its efforts to prevent and put a stop to violence in places of deprivation of liberty and continue ensuring that all incidents of violence between inmates, particularly incidents that have resulted in deaths, are investigated and that those responsible are punished commensurately with the seriousness of their actions.**

#### *Reply of Ecuador*

10. In 2007, the rate of overcrowding in the Ecuadorian prison system was 116.63 per cent. However, thanks to the building and renovation of social rehabilitation centres, overcrowding was reduced to 0.24 per cent in 2014 and 1.72 per cent in 2015. The figure rose to 22.45 per cent in 2016, owing to the loss of prison places following an earthquake, which resulted in overcrowding for reasons beyond the authorities' control.

11. In this context, new social rehabilitation centres were built with an investment of around US\$ 400 million, creating more than 16,000 prison places. Furthermore, in view of the emergency caused by an earthquake in April 2016, the infrastructure of the social rehabilitation centres is being reinforced in the affected areas so as to provide decent and safe living conditions, which will, in turn, allow for the addition of extra places. A total of US\$ 19 million is being invested in the renovation of the El Rodeo Social Rehabilitation Centre in Manabí, the worst-affected province. Given all these developments, an incarceration rate of 186 per 100,000 inhabitants was recorded for the year 2016, below the average of 250 per 100,000 in South America.

12. The Ministry of Justice, Human Rights and Worship has introduced a new prison management model to reduce recidivism and introduce rehabilitation procedures in suitable

facilities. This also paves the way for decent living conditions as well as activities and programmes aimed at building the capacities of the prison population.

13. The prison management model covers the following core areas: education, health, sport and family. Currently, a total of 6,770 persons deprived of their liberty are enrolled in the formal education system (which comprises literacy, post-literacy, upper levels of basic education, secondary education and higher education). As regards employment, 14,099 persons deprived of their liberty are engaged in labour activities, 121 of whom have formal contracts. As at 2016, 88 prisoners were certified as master craftsmen in diverse areas.

14. The prison system has also been strengthened through the implementation of human rights-based protocols. For example, in 2016, a protocol on visits was issued to regulate the monitoring, screening and security procedures of social rehabilitation centres and a protocol on supporting lesbian, gay, bisexual, transgender and intersex persons (LGBTI) deprived of their liberty was implemented.

15. In January 2017, the use of electronic monitoring devices as an alternative to deprivation of liberty was introduced. A total of 290 devices are currently in use.

### **Education and training for prison guards**

16. As part of efforts to build and develop the capacities, abilities and values of prison guards, the Ministry of Justice, Human Rights and Worship conducts continuous training, thanks to international cooperation with the French School of Prison Administration, the Chilean prison service and the International Committee of the Red Cross. Between 2010 and 2016, 1,971 prison officials received training in topics such as human rights in the prison context, comprehensive care models for persons deprived of their liberty, prison security and first aid.

17. With regard to the training of police officers on issues related to prison security and human rights, 1,995 police officers were trained in 2016 and 750 were trained between January and June 2017.

18. Further efforts to strengthen the prison system include the introduction of the Technical Diploma in Prison Security with the aim of (a) professionalizing prison staff and (b) providing technical training for aspiring prison guards, which will lead to improved care for persons deprived of their liberty and safeguard their human rights.

19. The Technical Diploma in Prison Security was approved by the Higher Education Council in 2015 and is being implemented in regional social rehabilitation centres with the academic backing of the following technical colleges: Ramón Barba Naranjo in Cotopaxi Province, Francisco Febres Cordero in Azuay Province and Juan Bautista Aguirre in Guayas Province. A total of 116 officers are currently taking the diploma with the following modules:

### **Technical course in prison security**

	<i>Qualification</i>	<i>Technical Diploma in Prison Security</i>
General information	Title:	Technical Diploma in Prison Security
	Education level:	Higher technical
	Course length:	3,200 hours
	Method:	Theory and practice
	Course location:	Cotopaxi, Azuay and Guayas Provinces

### **Curriculum**

**First cycle (foundation level):** Human rights in the prison context, Prison life, Prison management model, Oral and written communication, Ethics in public service, Human relations.

**Second cycle (professional level 1):** Prison regulations, Psychology in the context of deprivation of liberty, Technological tools, Conflict management and resolution for first responders, Prison-specific risks, Art and culture in the context of deprivation of liberty.

**Third cycle (professional level 2):** Crime policy, Prison security planning, Leadership, Prison management and administration, Narcotic and psychotropic substances, Health education, Physical education, Formal education.

**Fourth cycle (diploma level):** Prison security, Handling lethal and non-lethal weapons, Electronic security system, Final project, Self-defence.

20. Education and training procedures are linked to objective 6.4 of the 2013-2017 National Plan for Good Living, on consolidating the transformation of the social rehabilitation system, which, among its policies and strategic guidelines, provides for the implementation of a comprehensive care model for persons deprived of their liberty and improvements to monitoring systems and internal and external security. To ensure the success of these policies and strategies, there is a need to develop procedures for the training and professionalization of prison staff and to put them into effect so as to ensure respect for the human rights of persons deprived of their liberty.

21. Regarding the need to strengthen preventive measures to reduce rates of violence between persons deprived of their liberty, it should be noted that Ecuador has a public policy in place on rehabilitation and social reintegration. The Office for the Treatment and Life-planning of Persons Deprived of their Liberty is responsible for managing and implementing plans, programmes, projects and activities that promote culture, employment, education and sport, all of which help prevent violence among individuals. The performance of daily activities is protected by constitutional and legal norms and by the prison management model, in addition to the training and professionalization of prison guards mentioned above.

22. The Ministry of Justice, Human Rights and Worship also coordinates with the Ministry of the Interior and the national police in conducting investigations into wrongful and criminal acts occurring inside and outside social rehabilitation centres. Moreover, the division responsible for the security of prison facilities for adult persons deprived of liberty works in cooperation with the Operations Directorate of the national police to provide training on human rights in the prison context for police officers who patrol the external fences and work at the main entrances of social rehabilitation centres. Training is continuous and aimed primarily at police officers who replace their colleagues.

23. Lastly, several mechanisms have been put in place by the Social Reintegration Directorate, which is part of the Subsecretariat for Rehabilitation, Reintegration and Precautionary Measures for Adults, with a view to improving conditions of detention. These mechanisms include the introduction of:

(a) **Prison visit system:** a standard operating procedure has been developed for social rehabilitation centres covering visitor entry, frequency and types of visits, security protocols, protection of minors and other priority groups, rights and obligations of visitors and standards for guaranteeing the right to receive visitors. The new system provides for greater security inside social rehabilitation centres, thereby preserving the dignity of persons deprived of their liberty and their family members and significantly reducing aggression levels in centres.

(b) **Care model for children of mothers in detention:** a specific scheme has been developed to cater for mothers who are imprisoned with their children. It includes the introduction of appropriate spaces and support from trained professionals, providing greater security for pregnant women and mothers whose children live with them in the centres by housing them in accommodation specifically for this particularly vulnerable group of persons.

(c) **Monitoring of persons granted legal benefits or change of prison:** persons sentenced to a term of imprisonment who have obtained a prison privilege, in the form of early release, parole or moving from a closed to semi-open or open facilities, must report for weekly monitoring and also undergo monthly monitoring on family and social reintegration. These monitoring activities have enabled a decrease in reoffending rates.

(d) **Stories about freedom:** a project run by the Ministry of Justice, Human Rights and Worship encouraged persons deprived of their liberty to write children's stories for their own children, based on real life. The project's objective is to raise awareness of the consequences and experiences of being imprisoned. A pilot project was conducted in the Guayas Area 8 Regional Social Rehabilitation Centre and provided the Guayas facility with a new perspective on the skills, backgrounds, tolerance and forms of treatment for maximum-security prisoners and for the LGBTI community.

## Paragraph 28

**The State party should adopt appropriate measures to ensure that all persons under its jurisdiction can exercise in practice their right to freedom of peaceful assembly; redouble its efforts to prevent and eliminate all forms of the excessive use of force by law enforcement officials and members of the security forces; and take appropriate action to ensure that all allegations of the excessive use of force are investigated thoroughly, independently and impartially and that the alleged perpetrators are brought to justice and, if found guilty, punished commensurately with the seriousness of their actions.**

### *Reply of Ecuador*

24. Regarding freedom of association, Decree No. 739, published in Official Gazette No. 570 of 21 August 2015, establishes the definition, nature and purpose of assembly. In article 3 of the Decree, social organizations are defined as all organizational forms of society through which individuals, communes, communities, peoples, nationalities and collectives are entitled to convene in order to establish an organized, coordinated and stable grouping of people for the purpose of interacting with each other and undertaking lawful goals and objectives, in socially and environmentally responsible ways, to meet human needs and for the common good of its members and/or wider society, and whose will is expressed through the constituent, collective and voluntary activities of its members and is regulated by rules established for the fulfilment of its purposes.

25. This provision does not contain any restrictions on free association; thus, it is consistent with constitutional provisions and in line with the various international human rights instruments, including the Universal Declaration of Human Rights and, in particular, paragraph 16 (2) of the American Convention on Human Rights and paragraph 22 (2) of the International Covenant on Civil and Political Rights.

26. Ecuador does not apply broad or ambiguous criteria that restrict the freedom of expression and association enshrined in the Constitution; all decisions of the public authorities must provide justification. Decree No. 739 set out stronger guarantees and conditions for free association, reducing a number of previous requirements, such as, among others, sponsorship by a lawyer and the payment of fees to establish an association.

27. The case against the organization Acción Ecológica (Environmental Action) serves as a specific example of the respect paid to administrative decisions issued by the competent authorities, since, during the process of dissolution, due process and guarantees of free association were respected, as was the right to a timely defence. The Ministry of the Environment ultimately issued a decision on 12 January 2017 to:

(a) Dismiss the application to dissolve the organization Acción Ecológica

(b) Urge Acción Ecológica to comply with the objectives for which it was established, in accordance with the Constitution and any relevant legislation in force, taking into account the fact that the exercise of rights is subject to certain limitations. As such, it is the responsibility of natural and legal persons to adjust their actions in line with those parameters, without that being considered as limiting or restricting the exercise thereof.

28. The fact that Acción Ecológica is still operating today is evidence that the this Decree has been fully implemented. The Government respects and upholds the right of free association.

29. Regarding the specific issue of the progressive use of public force, it is stated in article 158 of the Constitution of Ecuador that "the national police shall be an institution

designed to protect citizens' rights, freedoms and guarantees. Members of the armed forces and the national police shall be trained on the basis of democracy and human rights, and shall respect the dignity and rights of persons, without discrimination and with unconditional adherence to the legal order."

30. In order to carry out its functions in compliance with set parameters on the rational and progressive use of force, the following protocols, tools and principles are in place to regulate the conduct of the national police at public events:

- (a) Doctrine of the National Police of Ecuador;
- (b) Manual on Human Rights Applied to Police Functions (second ed., 2009);
- (c) Regulations on the legal, appropriate and proportionate use of force. Ministerial Agreement No. 4472 of 10 July 2014, article 10, on cases of the use of force, and article 23, on the use of force when faced with violence during demonstrations;
- (d) Law Enforcement Operations Handbook, Resolution No. 2013-188-CSG-PN, paragraph 4.3: "Model for the appropriate use of force in law enforcement operations".

31. In this connection, the national police has been implementing its comprehensive in-service training programme since 2010, in compliance with the country's international obligations under the inter-American human rights system. The purpose of the programme is to train and annually assess police officers in the areas of human rights, police doctrine and police procedures, in accordance with the Constitution, laws and regulations. Various modules and topics related to, among others, human rights, multiculturalism and gender issues, and their protection mechanisms, have been addressed by the programme.

32. The Ministry of the Interior has taken administrative measures to prevent possible excessive use of force by police officers. For that purpose, Official Gazette No. 314 of 19 August 2014 published mandatory rules for police officers in the form of regulations on the legal, appropriate and proportionate use of force by the national police, with the aim of safeguarding the integrity of persons, their rights and freedoms; upholding the principles of freedom, public order, public safety; preventing the commission of offences within the national territory; and applying the principles of legality, proportionality and necessity.

33. The third general provision of the regulations on the legal, appropriate and proportionate use of force provides for the planning, execution and evaluation of comprehensive and continuous professional training for all police officers on the use of force and the use of firearms. Such training is provided through the comprehensive in-service training programme, the Department of Continuous and Comprehensive Training and the National Police Training and Specialization College. Moreover, the comprehensive in-service training programme of the National Police Education Directorate must certify that police staff have been trained in the appropriate use of force and must inform the Minister of the Interior and the Department of Logistics of any police officers who have not passed this process.

34. Since 2015, training on the following topics, among others, has also been strengthened: regulations on the legal, appropriate and proportionate use of force; basic guarantees for persons in conflict with the law; strategic community policing procedures; non-lethal technology management and practices; disciplinary regulations; international human rights standards; police negotiating; and the Code of Police Ethics. A total of 45,484 police officers were trained in 2015 and 46,377 in 2016.

35. The Organic Code governing public safety and public order institutions, which was published in Supplement No. 19 to the Official Gazette of 21 June 2017, also regulates the progressive use of force. In article 6 (7) and (8), it states that those security forces that are regulated by the Code, such as the national police force, prison guards and the prison security corps, must work in strict compliance with the progressive use of force principle and prioritize the use of preventive and deterrent activities and procedures above the use of force, with a view to safeguarding the life, integrity and freedom of individuals.

36. Lastly, measures taken to punish the improper use of force include Order No. 078 of 20 April 2012, pursuant to which the General Command of the national police force decided to reform the organizational structure and operating regulations of the Inspectorate

General of the National Police. The Inspectorate was thus given responsibility for monitoring personal and professional discipline at all levels by balancing the human and material resources of police units against their specific tasks and issuing regular reports on relevant actions or making recommendations to the General Command.

37. Pursuant to Ministerial Agreement No. 5041-A of 24 November 2014, article 25 of the operational regulations of the Inspectorate General of the National Police was amended, replacing the human rights department with a human rights and gender-based violence investigations department. In particular, article 25 (c) provides for oversight by the Ministry of the Interior, while 25 (e) provides for coordination between the Ministry of the Interior and the Inspectorate General of the National Police with regard to specialized activities to safeguard human rights and eliminate gender-based violence.

38. Against this backdrop, the Inspectorate General of the National Police has bolstered its investigations of ill-treatment, misconduct and corruption. Studying police conduct sheds light on the existence of serious or class 3 offences, which have an impact on respect for human rights.

39. According to the information provided by the Attorney General's Office, the number of cases recorded involving the excessive use of force, which is defined in article 293 of the Comprehensive Criminal Code as an abuse of authority in the line of duty, is as follows:

<i>Procedural stage</i>	<i>2016</i>	<i>2017</i>	<i>Total</i>
Preliminary investigation	74	29	156

*Source:* Office of the Commission of Truth and Human Rights/Attorney General's Office.