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Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 209/2023*, **, ***

Communication submitted by:	A.D.H.L. (represented by the Centre for Human Rights of the Pontifical Catholic University of Ecuador)
Alleged victim:	The author
State Party:	Ecuador
Date of communication:	20 October 2022 (initial submission)
Date of adoption of decision:	24 January 2025
Subject matter:	Degree of specialization of the juvenile justice system
Procedural issues:	Abuse of right of submission; insufficient substantiation; exhaustion of domestic remedies
Articles of the Convention:	6, 24, 37 (c) and 40 (3)
Articles of the Optional Protocol:	7 (c) and (f)

* Adopted by the Committee at its ninety-eighth session (13–31 January 2025).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Sidikou, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chophel, Rosaria Correa, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

*** An individual opinion by Committee member Ann Skelton (concurring) is annexed to the present decision.

1. The author of the communication is A.D.H.L., born on 20 August 2002. The author claims that the State Party has violated his rights under articles 6, 24, 37 (c) and 40 (3) of the Convention. The Optional Protocol entered into force for the State Party on 19 September 2018.

Factual background

2.1 In 2018, A.D.H.L., who was then 16 years old, was charged with the rape of a 12-year-old girl. The charge was based on article 171 of the Organic Comprehensive Criminal Code of Ecuador, which establishes that the crime of rape is punishable by a term of imprisonment of 19 to 22 years when the victim is under 14 years of age. The criminal proceedings began in February 2019 and the trial hearing was held in October 2020. On 31 December 2020, the reporting judge of the Juvenile Division of Guayaquil Court found the author guilty of rape on account of the victim's age (under 14 years old). The judge also ruled that it had not been demonstrated that the author had used violence against the victim and handed down the following rehabilitative measures: (a) house arrest for two years; (b) full reparation in favour of the victim; (c) a ban on making any public statements about the victim; and (d) regular house visits by the National Police.

2.2 On 31 October 2020, the public prosecutor and the victim's lawyer lodged an appeal, arguing that the rehabilitative measures imposed by the trial judge were inconsistent with article 385 (3) of the Code on Children and Adolescents, which provides that: "In the case of offences punishable [under the Criminal Code] by imprisonment for over 10 years, a reprimand and placement in an institution for 4 to 8 years shall be applied." On 19 April 2021, the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the Provincial Court of Guayas amended the trial court's judgment, handing the author a reprimand and sentencing him to placement in an institution for 8 years, on the ground that he had committed an offence punishable by deprivation of liberty for over 10 years; the judge also awarded the victim compensation, ordered the author to participate in a rehabilitation programme and resume his studies and arranged for the victim to receive psychological support.

2.3 On 26 April 2021, the author's mother filed an appeal on points of law alleging a violation of the specialized regulations on juvenile justice and arguing that the appellate court lacked specialization in juvenile justice, in violation of the defendant's rights, and also that the appellate court's decision was not properly substantiated. On 13 October 2021, the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the National Court of Justice annulled the appellate court's decision for lack of substantiation and amended the rehabilitative measures imposed to: (a) a reprimand; (b) placement in an institution for 5 years, discounting time served; (c) mandatory participation in sexual education programmes; (d) compensation for the victim; (f) victim protection measures; and (g) psychological support for the victim. The Court based its decision on the need to consider, in determining the nature and duration of rehabilitative measures, the principle of the application of criminal law as a last resort. The Court also pointed out that restorative juvenile justice requires the implementation of a progressive delinquency prevention policy and the systematic analysis and development of measures that avoid criminalizing and penalizing the adolescent for conduct that does not cause serious damage to his or her development, nor harm others, with a view to the protection of the welfare, development, rights and interests of all young people.

2.4 On 24 January 2022, the Constitutional Court dismissed the application for a special protective remedy submitted by the author's mother. According to the Court, this application was based on dissatisfaction with the rehabilitative measures imposed on the author and failed to provide legal justification to support the claims presented or demonstrate a direct and immediate violation of the author's constitutional rights as a result of the judicial action or inaction complained of. On 16 June 2022, the case file for this appeal on points of law was shelved.

Complaint

3.1 The author claims that the absence of competent judges in the court of appeal and the court ruling on points of law violated his rights under article 40 (3) of the Convention. These

courts lacked the necessary specialization in juvenile justice. According to the author, the Organic Code on Children and Adolescents and the Convention call for specialized systems adapted to the age and development of the child. The absence of judges specializing in juvenile justice undermined his right to due process, as the judicial decisions rendered did not adequately take into consideration his situation as an adolescent or the best interests of the child, which resulted in disproportionately punitive sanctions instead of corrective measures prioritizing his rehabilitation. In addition, the author alleges that the measure of placement in an institution does not comply with the principle of the application of criminal law as a last resort, in violation of the regulations prioritizing alternative measures for adolescents.

3.2 The author also alleges that the detention conditions in Guayaquil Detention Centre are inadequate, which has had an effect on his physical and mental health, in violation of his rights under articles 6, 24 and 37 (c) of the Convention. The author claims to have been subjected to and witnessed acts of violence during his placement, aggravating the deterioration of his mental health.

3.3 The author requests the Committee to uphold the decision of the trial court, which imposed house arrest, and to ensure the protection of his rights through less harmful measures. He also calls for a review of the conditions in detention centres for adolescents.

State Party's observations on admissibility

4.1 In its observations of 3 March 2023, the State Party argues that the communication is inadmissible under article 7 (c) of the Optional Protocol as it constitutes an abuse of the right of submission of communications. The State Party argues that the author has failed to demonstrate that his rights were violated in the judicial proceedings and expects the Committee to act as an appellate body for a domestic decision, which falls outside of the scope of its mandate in accordance with the Optional Protocol.

4.2 The State Party also claims that the communication is inadmissible because it is insufficiently substantiated, in accordance with article 7 (f) of the Optional Protocol. The State Party argues that the entirety of the author's trial was conducted within a specialized system, which it asserts was adequate and effective. According to the State Party, the author does not clearly indicate in what sense he was not tried before a specialized system and, from a review of the case file, it cannot be concluded that the authorities responsible for trying the author lacked competence. The State Party argues that the communication is based on the author's dissatisfaction with the judgments handed down and fails to demonstrate that he was not tried by a competent court.

4.3 The State Party claims that, during all stages of the judicial proceedings, due process was upheld in respect of the author. It argues that the measures imposed by the domestic courts, including the court of appeal and the court ruling on points of law, were proportional to the gravity of the crime and based on the facts and evidence presented and that the procedural guarantees established in domestic law and international standards were respected. The State Party argues that the judges correctly applied the Comprehensive Organic Criminal Code and the Organic Code for Children and Adolescents and acted in accordance with the regulations in force, and that their decisions reflect a reasoned analysis of the facts and the applicable law. The State Party maintains that the appeal and application for review on points of law lodged by the author were decided upon by specialized divisions for the family, children, adolescents and juvenile offenders of the provincial and national courts. The National Court of Justice annulled the challenged decision and amended the rehabilitative measure imposed to 5 years' placement in an institution.

4.4 Regarding conditions in the detention centre, the State maintains that they meet the minimum standards for adolescents in conflict with the law. It further argues that the necessary care has been provided to protect the physical and psychological integrity of the author.

Author's comments on the State Party's observations on admissibility

5.1 On 26 June 2023, the author submitted his comments on the State Party's observations. The author cites the jurisprudence of the Constitutional Court,[1] which establishes that judicial officials specialized in juvenile justice must have knowledge of the rights of children and adolescents, a clear understanding of the differences between juvenile justice and adult criminal justice and a commitment to the restorative purposes of the process.[2]

5.2 The author reiterates that the decisions handed down by the court of appeal and the court that ruled on points of law imposed punitive measures, without assessing his social background, age or personal circumstances, in violation of the principles of proportionality, application of deprivation of liberty as an exceptional measure and the best interests of the child. The author alleges that his appeal and application for review on points of law were resolved by judges who do not specialize exclusively in juvenile justice. The author alleges that the judges of the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the Provincial Court of Guayas lacked the necessary qualities and knowledge in matters related to children and adolescents and that the judges of the National Court of Justice do not have exclusive jurisdiction in juvenile justice, nor are they permanent judges in this field, but act as "temporary judges" seconded from other divisions (for example, criminal or labour) and therefore cannot be considered to be specialized judges.

Additional submissions by the parties

6.1 In its observations of 16 October 2024, the State Party reiterates that the author was tried within a specialized juvenile justice system throughout all stages of the criminal proceedings and in all instances where appeals were filed. The State Party argues that the author does not raise issues related to the lack of a trial before a specialized system, but rather claims that the right to the specialization of justice of children and adolescents was violated, without differentiating between the existence of a specialized system of justice and the degree of specialization of the justice system, and that his real issue lies with his dissatisfaction with the judicial decisions themselves.

6.2 The State Party argues that the appeal court's decision amended the trial court's judgment, demonstrating a differentiation in the criminal justice system and taking into account criminal law norms and child-specific legislation, the severity of the crime, the legal right violated and the best interests of both the victim and the perpetrator. According to the State Party, the National Court of Justice amended the nature and duration of rehabilitative measures imposed on the basis of the principles of the best interests of the child, proportionality, minimal intervention and due process, emphasizing that both ordinary and specialized legislation classify rape as a serious offence.[3] In addition, the State Party points out that the Constitutional Court determined that, in its opinion, the courts involved took strict rehabilitative measures in the light of the reality and social circumstances of the juvenile offender.[4]

6.3 The State Party argues that it works progressively within its justice system to implement differentiated approaches. It notes that the Council of the Judiciary issued decision No. 152-2019 approving the implementing regulations for Constitutional Court judgment No. 9-17-CN/19, which provides for a specialized juvenile justice system. Judges specializing in issues pertaining to the family, women, children and adolescents are responsible for conducting impartial and specialized trials. In 2024, the State Party had

[1] "A judicial official is specialized in juvenile offenders if he or she possesses certain qualities: (1) knowledge of children's rights and comprehensive protection doctrine; (2) an understanding of the distinction between juvenile justice and other forms of justice, particularly adult criminal justice; (3) commitment to the purposes of the juvenile justice process", judgment No. 9-17-CN/19, para. 42.

[2] General comment No. 24 (2019) on children's rights in the child justice system.

[3] National Court of Justice, decision of appeal on points of law, case No. 09965-2019-00028, 13 October 2021.

[4] Constitutional Court, order dismissing the application for a special protective remedy, case No. 3102-21-EP, 24 January 2022.

52 specialized judicial units and 120 multipurpose judicial units in its juvenile justice system, with a total of 569 judges.[5]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol to the Convention, whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes the author's claims under article 40 (3) of the Convention related to the alleged lack of specialization in juvenile justice of both the judges of the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the Provincial Court of Guayas and the judges of the National Court of Justice, which meant that these judges did not adequately consider his status as a minor at the time of the commission of the offence and did not apply criminal law as a last resort. The Committee also notes the State Party's argument that the author has not demonstrated the existence of a rights violation arising from the judicial proceedings, nor indicated in what sense he was not tried before a specialized system, and that the communication is based on the author's dissatisfaction with the judgments rendered and fails to demonstrate that he was not tried by a competent court.

7.3 Recalling the importance of ensuring a comprehensive juvenile justice system,[6] the Committee notes that the State Party has a specialized juvenile justice system, through which judges are assigned to courts and divisions specializing in the family, women, children and adolescents. It also notes that, in the present case, the author was tried by judges specializing in juvenile justice and that the appeal and application for review on points of law lodged by the author were ruled upon by the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the Provincial Court and the National Court of Justice, respectively, and that no specific information has been provided to refute the claim that these judges lacked specialization.

7.4 As to the alleged failure to take into account his status as a juvenile offender in the determination of his sentence, the Committee recalls that, as a general rule, it comes under the jurisdiction of the national courts to examine the facts and evidence and to interpret domestic law, unless such examination, interpretation or application is clearly arbitrary or amounts to a denial of justice.[7] In the present case, the Committee notes that the judgments of the courts of first instance and appeal and the court ruling on points of law took the author's status as a minor into account and applied the national regulations in force in the area of juvenile justice, in particular article 385 (3) of the Code on Children and Adolescents, which regulates the measures that may be imposed on juvenile offenders for serious crimes. The Committee observes that the judges in question decided on rehabilitative measures, which included a reprimand and placement in an institution, taking into account the severity of the crime and the principles of proportionality, the application of criminal law as a last resort and the best interests of the child.

7.5 In the absence of additional information showing how the author's right to specialized justice and the procedural guarantees established in article 40 (3) were violated, the Committee considers that the present complaint has not been sufficiently substantiated and declares it inadmissible in accordance with article 7 (f) of the Optional Protocol.[8]

7.6 With regard to the author's claims under articles 6, 24 and 37 (c) of the Convention, relating to the harm to his physical and mental health caused by inadequate conditions at Guayaquil Detention Centre, the Committee is of the view that the author has presented these claims in a general manner, without specifying to what extent his rights under these provisions have been violated. The Committee therefore finds that these claims are

[5] CRC/C/ECU/7, para. 165.
[6] General comment No. 24 (2019) on children's rights in the child justice system, paras. 105 and 106.
[7] See, inter alia, the Committee's decision in *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.2.
[8] Ibid.

manifestly ill-founded and declares them inadmissible under article 7 (f) of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 7 (f) of the Optional Protocol;

(b) That the present decision shall be transmitted to the author of the communication and, for the record, to the State Party.

Annex

[Original: English]

Individual opinion of Committee member Ann Skelton (concurring)

1. I agree with the reasoning, and with the finding of inadmissibility.

2. However, in my view, it is regrettable that the author did not bring a claim under article 37 (b) of the Convention.

3. In this matter, the author faced a statutory rape charge under article 171 of the Organic Comprehensive Criminal Code of Ecuador, under which the punishment for rape is a term of imprisonment of 19 to 22 years in cases including when violence, threats or intimidation have been used, or when the victim is under 14 years of age. In this case, no violence was used, but the victim was 12 years old, which brought the offence within the purview of article 37 (b).

4. The first point to consider, therefore, is whether the practice of charging children under article 171 of the Organic Comprehensive Criminal Code of Ecuador, which carries a lengthy minimum sentence, is compliant with article 37 (b) which stipulates that detention is to be used as a measure of last resort, and for the shortest appropriate period of time. In order to fully understand the factors at play, however, one has to consider other legal provisions that were invoked at the different levels of the process.

5. The trial court that set the initial sentence ignored the minimum sentence rule and handed down a community-based sentence comprised of various measures. In the appeal of this decision to the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the Provincial Court of Guayas, the prosecutor argued that the rehabilitative measures imposed by the trial judge were inconsistent with article 385 (3) of the Code on Children and Adolescents, which provides that: “In the case of offences punishable [under the Criminal Code] by imprisonment for over 10 years, a reprimand and placement in an institution for four to eight years shall be applied.” The appeal judge then set the maximum term of deprivation of liberty, which was eight years. Finally, on 13 October 2021, the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the National Court of Justice annulled the appellate court’s decision for lack of substantiation and amended the rehabilitative measures imposed to placement in an institution for five years, together with various other measures.

6. The first observation that must be made about this journey through three tiers of domestic courts is that the system is overshadowed by the general statute under which the author was charged. It sets a very high minimum sentence of imprisonment 19 to 22 years for the offence. I recognize that the harshness of this is attenuated by article 385 (3) of the Code on Children and Adolescents, which provides for a reprimand and placement in an institution for four to eight years to be applied in cases for which an adult would be sentenced to 10 years or more. This is certainly a positive factor. Furthermore, the Specialized Division for Family, Children, Adolescents and Juvenile Offenders, in the final appeal in this matter, reportedly based its decision on “the principle of the application of criminal law as a last resort” and on “a restorative justice approach”.

7. In my view, there is a major disconnect between article 37 (b) of the Convention and this legal regime, which starts from a long minimum sentence, and then allows courts to work their way backwards by providing justifications for lower sentences. Although article 385 (3) of the Code on Children and Adolescents requires sentences of between four and eight years for offences that attract sentences of more than 10 years for adults, that is still problematic, as it sets a minimum sentence of four years. Any minimum sentence that is set in the law restricts the sentencing discretion of the court, thus making detention of four years the first resort, rather than allowing for detention as a measure of last resort. This is compounded when one is already working backwards from a lengthy minimum sentence applicable to adults, and may explain why the Specialized Division for Family, Children, Adolescents and

Juvenile Offenders of the Provincial Court of Guayas, in the first appeal in this matter, set the maximum period of eight years.

8. This case demonstrates, therefore, why minimum sentences do not allow for the full implementation of article 37 (b) – namely, detention as a measure of last resort and for the shortest appropriate period of time.

9. In paragraph 78 of its general comment No. 24 (2019) on children's rights in the child justice system, the Committee observed as follows: "Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards."

10. A clean slate approach allows a court to properly apply the principle that no child should be detained or imprisoned, except as a measure of last resort. Having decided that, in a particular case, deprivation of liberty was unavoidable given the other competing interests that must be weighed, the court must then move on to deciding on the shortest appropriate period of time. In this case, the decision by the Specialized Division for Family, Children, Adolescents and Juvenile Offenders of the National Court of Justice had its hands tied by the law, which did not permit a sentence of less than four years.

11. If a violation of article 37 (b) had been found, a suitable remedy to prevent future violations would have been a recommendation to the State Party to consider amending its law to ensure that children are not tried under general laws that link to lengthy minimum sentences, and also to reconsider article 385 (3) of the Code on Children and Adolescents since it sets a minimum sentence of four years, thus impeding the proper application of article 37 (b) of the Convention.