



International Covenant on Civil and Political Rights

Human Rights Committee

Concluding observations on the sixth periodic report of Ecuador *

1. The Committee considered the sixth periodic report of Ecuador (CCPR/C/ECU/6) at its 3277th and 3278th meetings (CCPR/C/SR.3277 and 3278), held on 27 and 28 June 2016. At its 3294th meeting, held on 11 July 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified procedure and for submitting its sixth periodic report in response to the lists of issues prior to reporting in accordance with that procedure (CCPR/C/ECU/QPR/6). The Committee appreciates the opportunity to resume its constructive dialogue with the high-level delegation of the State party on the measures adopted during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral replies provided by the delegation and the additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

- (a) Adoption of the Comprehensive Organic Criminal Code in 2014;
- (b) Adoption of the Organic Act on National Equality Councils in 2014;
- (c) Adoption, in 2013, of the Act for the Reparation of Victims and the Prosecution of Grave Human Rights Violations and Crimes against Humanity That Occurred in Ecuador between 4 October 1983 and 31 December 2008;
- (d) Adoption of the National Plan for Good Living 2013-2017;
- (e) Adoption of the Organic Act on Disabilities in 2012;
- (f) Adoption of the Organic Act on Intercultural Education in 2011;
- (g) Adoption of the Comprehensive National Plan for the eradication of sexual offences in the education system in 2011;
- (h) Adoption of the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion in 2009.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 July 2010;
- (b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 11 June 2010;
- (c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 20 October 2009.

C. Principal matters of concern and recommendations

Implementation of the Committee's Views under the Optional Protocol to the Covenant

5. The Committee regrets not having received updated information on the specific measures taken to implement its Views relating to communication No. 277/1988 (*Terán Jijón v. Ecuador*) and communication No. 319/1988 (*Cañón García v. Ecuador*), in which the Committee established the responsibility of the State party (art. 2).

6. The State party should adopt the measures required for effective follow-up and full implementation of the Committee's Views establishing the responsibility of the State party, which have still not been implemented, with a view to ensuring access to an effective remedy in the event of a violation of the Covenant, in accordance with article 2 (3).

Equal rights between men and women

7. The Committee notes with satisfaction the measures adopted by the State party on gender equality and the progress made with

regard to labour issues, including the fall in women's unemployment and underemployment rates. It is, however, concerned at the information that women continue to be more affected by unemployment than men and that the wage gap persists, even though it has become significantly smaller. The Committee also welcomes the information on the participation of women in public life, in particular in the civil service, the National Assembly and the Constitutional Court. It is, however, concerned at the limited representation of women in individual elections at the local level, although it notes that various possible ways of tackling the problem are under consideration (arts. 3 and 26).

8. The State party should continue and redouble its efforts to ensure the effective implementation of existing legislation and policies on gender equality with a view to achieving full equality of rights between men and women in every sphere, including the sphere of labour. It should also adopt effective measures to increase women's participation in individual elections at the local level. The State party should also increase its efforts to eliminate gender stereotypes regarding the role and responsibilities of men and women in the family and in society.

National Equality Councils

9. The Committee welcomes the adoption of the National Equality Councils Act in 2014 but regrets that two of the five councils established pursuant to that law, namely the National Equality Council for Peoples and Nationalities and the National Equality Council for Human Mobility, have not yet begun their work (arts. 2 and 26).

10. The State party should adopt the necessary measures to ensure that the National Equality Council for Peoples and Nationalities and the National Equality Council for Human Mobility begin their work as soon as possible.

Discrimination and violence on the grounds of sexual orientation or gender identity

11. The Committee notes with satisfaction the measures adopted by the State party with regard to lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and commends the inclusion in the Constitution of the prohibition of discrimination on the grounds of gender identity and sexual orientation, among others. It is, however, concerned at allegations relating to a number of acts of discrimination and violence, including murders, that such persons have reportedly suffered during the reporting period owing to their sexual orientation or gender identity. The Committee also takes note of the action taken by the State party to rescue many people who had been placed in addiction rehabilitation clinics for treatment to "cure sexual orientation or gender identity" and to close down some of the clinics. Recalling its previous concluding observations (CCPR/C/ECU/CO/5, para. 12), however, the Committee is concerned at allegations that cases of such "treatment" continued to be reported during the period under review and, in view of the State party's information that it has mounted four prosecutions, it regrets not having received details of the criminal prosecutions of persons responsible for such "treatment" and their results (arts. 2, 6, 7 and 26).

12. The State party should redouble its efforts to combat stereotypes of and prejudice against LGBTI persons and ensure that acts of discrimination are prevented; that persons responsible for acts of violence against LGBTI persons are properly investigated, prosecuted and punished; and that victims are provided with comprehensive redress. It should also redouble its efforts to eliminate fully the practice of placing such persons in institutions for treatment to "cure their sexual orientation or gender identity"; adopt the necessary measures to investigate, prosecute and ensure suitable punishment for persons responsible for such "treatment"; and provide full reparation for victims, including rehabilitation and compensation.

Violence against women

13. The Committee notes the numerous measures adopted by the State party to combat and punish violence against women. It is, however, concerned by information that such violence continues to be a serious problem and that the number of prosecutions and punishments of those responsible appears to be low (arts. 3, 6 and 7).

14. The State party should redouble its efforts to prevent and combat all acts of violence against women and to investigate, prosecute and ensure appropriate punishment for persons responsible for such acts. The State party should also redouble its efforts to strengthen the capacities of justice officials throughout the country in order to ensure that complaints are followed up and that all victims obtain redress and appropriate protection measures without delay. It should further ensure that the implementation of the National Plan for the Elimination of Gender Violence against Children, Adolescents and Women is constantly monitored with a view to attaining specific benchmarks.

Voluntary termination of pregnancy

15. The Committee notes with concern that the new Comprehensive Organic Criminal Code criminalizes the voluntary termination of pregnancy, except where it is carried out in order to "avoid danger to the life or health of the mother and if such danger cannot be averted by other means" and where the pregnancy was the consequence of the rape "of a woman suffering from mental disability". The result of this is that many pregnant women continue to use unsafe abortion services that may put their lives and health at risk (arts. 3, 6, 7 and 17).

16. The State party should review the Comprehensive Organic Criminal Code with a view to introducing additional exceptions to the prohibition of voluntary termination of pregnancy, including situations in which the pregnancy was the result of incest or rape, even where the woman does not have a mental disability, or in cases of fatal foetal impairment, and ensure that legal obstacles do not force women to resort to unsafe abortions that may put their lives and health at risk. It should also increase its efforts to ensure that women and teenage girls have access to appropriate sexual and reproductive health services throughout the country and to provide more education and awareness-raising programmes on the importance of using contraceptives and the right to sexual and reproductive health.

Abuse and sexual violence in educational institutions

17. The Committee takes note of the measures adopted by the State party to prevent, eradicate and punish cases of abuse and sexual violence in educational institutions. However, while it takes note of the procedures introduced by the Ministry of Education and the results achieved with regard to sexual violence between February 2016 and June 2016, it is concerned at the information in the State party's report (CCPR/C/ECU/6, para. 139) regarding the small number of convictions secured by comparison with the high number of complaints of sexual offences in educational institutions and the alleged impunity of some perpetrators of such acts (arts. 7 and 24).

18. The State party should redouble its efforts to successfully prevent, combat and punish abuse and sexual violence in educational institutions. It should thus take stronger action to facilitate and encourage complaints by victims and ensure that all cases of abuse and sexual violence are investigated thoroughly, independently, impartially and without delay; that the perpetrators are brought to trial and, if found guilty, punished commensurately with the seriousness of their actions; and that victims receive full reparation, including rehabilitation.

Truth Commission

19. The Committee notes with satisfaction that the Truth Commission submitted its final report "Without truth there can be no justice" in 2010 and welcomes the adoption in 2013 of the Act for the Reparation of Victims and the Prosecution of Grave Human Rights Violations and Crimes against Humanity That Occurred in Ecuador between 4 October 1983 and 31 December 2008. It is, however, concerned at the information that progress has been slow on most of the judicial investigations of the cases of human rights violations set out in the Commission's report. The Committee also takes note of the action taken by the Ombudsman's Office to provide victims with redress but is concerned at the slow progress made with regard to compensation (arts. 2, 6 and 7).

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.

Peasant Defence Networks

21. The Committee is concerned that none of the judicial proceedings relating to abuses allegedly committed by members of the Peasant Defence Networks has, to date, resulted in a conviction. In that regard, it notes with interest the information provided by the State party that measures are being adopted to strengthen investigation procedures in such cases (CCPR/C/ECU/6, paras. 165 and 166) (arts. 2 and 7).

22. The State party should adopt effective measures to ensure that members of the Peasant Defence Networks who have committed abuses answer for their actions.

Conditions of detention and violence in prison

23. The Committee takes note of the State party's efforts to improve its prison infrastructure and to tackle overcrowding. It is, however, concerned at reports that overcrowding is still found in some places of deprivation of liberty, with the result that conditions of detention in such places are inadequate. The Committee also notes with concern that 16 violent deaths were recorded in places of deprivation of liberty between 2014 and 2016 and that, on a number of occasions, the prison authorities are alleged not to have taken appropriate measures to prevent violence. The Committee notes that prosecutions were mounted in the cases of the 16 violent deaths referred to above and that 13 of them resulted in convictions (arts. 6, 9 and 10).

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. It 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.

Independence of the judiciary

25. The Committee is concerned at allegations of the frequent use by the Council of the Judiciary of the disciplinary system laid down in the Code of the Judiciary to dismiss judges, and in particular the use of the catch-all term "inexcusable error" contained in article 109 (7) of the Code. It is also concerned by allegations that judges have been threatened with judicial proceedings in connection with the exercise of their duties, that such proceedings have actually been opened and that the judicial system is used to impose harsh sentences on government critics and members of the opposition in a manner that puts its impartiality in doubt (art. 14).

26. The State party should increase its efforts to ensure and protect the full independence and impartiality of the judiciary and guarantee that it can carry out its judicial functions without any form of pressure or interference. The State party should ensure that judges are not dismissed on the basis of their decisions and that working judges enjoy security of tenure.

Freedoms of expression and peaceful assembly

27. The Committee is concerned at allegations of instances of the excessive use of force at demonstrations during the period under consideration. The Committee takes note of the information that, during the public demonstrations that took place in 2015, some demonstrators resorted to violence against security forces and law enforcement officials, and the State party has every right to investigate such actions. The Committee is, however, concerned at allegations that, in some cases, police or army officers resorted to an excessive use of force to respond to such violence or to disperse demonstrations. It therefore regrets not having been told whether these allegations have been investigated. The Committee is further concerned about allegations that criminal proceedings have been instituted on the basis of broadly worded offences contained in the old Criminal Code, such as sabotage and terrorism, against persons who participated in social protests and other public demonstrations. The Committee regrets not having received any information on the number of persons charged with terrorism or sabotage under either the old Criminal Code or the new Comprehensive Organic Criminal Code in connection with social protests or other public demonstrations during the reporting period (arts. 7, 19 and 21).

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.

29. The Committee is concerned at allegations regarding a number of legal provisions and practices that could discourage the expression of critical positions or critical media and social media reporting on matters of public interest and adversely affect the exercise of freedom of expression. In that regard, it is concerned at information indicating that the Organic Act on Communication, while enshrining important principles relating to the right to freedom of expression, may contain some provisions that might affect the full exercise of that right, including the imposition of a number of obligations that may prove ambiguous or disproportionate, such as the obligation imposed on the media to “cover and disseminate facts of public interest” or the ban on disseminating “information that is, directly or through third parties, issued by prior arrangement and repeatedly published in one or more medium of communication with a view to discrediting a natural or legal person or undermining his or her public credibility” (“media lynching”), failure to observe which could give rise to severe penalties. It is also concerned at allegations that some individuals who criticized the Government, including journalists and social media users, were subjected to harassment and anonymous threats after they had been named by government officials in the media and that the judicial system was used to silence criticism by means of legal action (art. 19).

30. The State party should take all the necessary steps to guarantee the full and effective exercise of the right to the freedoms of opinion and expression in all their forms, in accordance with article 19 of the Covenant. In that regard, it should ensure that its legislation, particularly the Organic Act on Communication, is fully in line with article 19 of the Covenant and that any restriction on the exercise of freedom of expression complies fully with the strict requirements of article 19 (3) of the Covenant, as further developed in the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression. The State party should also provide proper protection for all persons subjected to harassment or threats for exercising their right to the freedoms of opinion and expression and ensure that all allegations relating to acts of that nature are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice.

Freedom of association

31. The Committee is concerned at reports that the State party’s legislation contains provisions enabling the dissolution on grounds that may be extremely broad or ambiguous of social organizations that have the status of legal persons (art. 22).

32. The Committee recommends that the State party take the necessary measures to ensure that all persons under its jurisdiction are able fully to enjoy their right to freedom of association and that any restriction on the exercise of that right should be in full compliance with the strict requirements of article 22 (2) of the Covenant. In particular, it recommends that the State party review its legislation with a view to ensuring that it is fully in line with article 22 of the Covenant.

Child labour

33. Although it takes note of the measures taken by the State party to eliminate child labour and of the significant reduction in the rate of child labour, the Committee notes with concern the information that a large number of children still work in the State party (art. 24).

34. The State party should persist with its efforts to reduce child labour and ensure that persons employing children in contravention of the law on child labour are punished.

Rights of indigenous peoples

35. The Committee takes note of decision No. 001-10-SEP-CC of the Constitutional Court and Executive Decree No. 1247 but is concerned at reports that some oil concessions have been granted in indigenous territories without prior consultation with the communities affected. The Committee is also concerned at the delay in the adoption of the bill on consultation with the communes, communities, peoples and nationalities of Ecuador. While it takes note of Interministerial Agreement No. 120 setting out the code of conduct to be observed by public and private companies located adjacent to untouchable areas that engage in oil activities in the Amazon Region of Ecuador, it is also concerned at claims that the Tagaeri and Taromenane indigenous peoples, living in voluntary isolation, are in a vulnerable situation, owing, among other reasons, to the exploitation of natural resources in the territories that they inhabit (art. 27).

36. The State party should:

- (a) Take the necessary steps to ensure that proper consultations are held with indigenous communes, communities, peoples and nationalities with a view to obtaining their free, prior and informed consent concerning any measure that might have a substantial impact on their way of life and their culture;**
- (b) Expedite the adoption of the bill on consultation with the communes, communities, peoples and nationalities of Ecuador and ensure that indigenous communes, communities, peoples and nationalities are properly consulted during that process;**
- (c) Increase its efforts to protect the lives and livelihoods of indigenous peoples living in isolation and, in particular, ensure that extractive or any other activities that may place them in a more vulnerable situation are not conducted.**

Indigenous courts

37. The Committee is concerned at the lack of a specific legal and institutional framework governing the division of responsibilities between indigenous courts and ordinary courts (arts. 14 and 27).

38. The State party should take the necessary measures to adopt a specific legal and institutional framework governing the division of responsibilities between indigenous courts and ordinary courts and to guarantee respect for the rights and interests of indigenous communities, peoples and nationalities, ensuring that all members of such communities fully enjoy their rights under the Covenant.

D. Dissemination of information relating to the Covenant

39. The State party should widely disseminate the Covenant and its two Optional Protocols, the State party's sixth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society, the non-governmental organizations operating in the country and the general public.

40. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party is requested to provide, within one year following the adoption of the present concluding observations, relevant information on its implementation of the Committee's recommendations made in paragraphs 20 (Truth Commission), 24 (conditions of detention and violence in prison) and 28 (freedoms of expression and peaceful assembly).

41. The Committee requests the State party to submit its next periodic report by 15 July 2021 and to include in that report specific, up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee further requests the State party, in preparing its next periodic report, to consult widely with civil society and the non-governmental organizations operating in the country.

42. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its seventh periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.