

## Ecuador and racial discrimination<sup>+</sup>

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On December 21, 1965, the General Assembly of the United Nations approved the International Convention on the Elimination of all forms of Racial Discrimination. After its ratification by 27 signatory States (including Ecuador), the Convention entered into force on January 4, 1969.

Under Article 8 of the Convention, the Committee for the Elimination of Racial Discrimination (CERD) was established, comprised of 18 experts of “**high moral standing and acknowledged impartiality**”, elected by the States parties to the Convention among its nationals, and to that end they submitted the relevant candidacies. The Ecuadorian candidate has been a member of the Committee since its first session in January 1970.

Article 9 of the Convention sets forth the obligation of States parties to file a report on “legislative, judicial, administrative and other steps taken to comply with the provisions

of this Convention”. These reports are examined by the Committee, which “may make suggestions and general recommendations based on the examination of the reports and information received from States Parties”.

During its first session, on January 28, 1970, the Committee approved the guidelines that States must observe in the preparation of their reports. The Committee believed that these reports should be treated as confidential documents and that they should be examined as such. However, in its fifth session in 1972, the Committee adopted GA Resolution 2783 (XXVI), which considered that the work of the Committee would be facilitated if “the representatives of States parties were invited to attend the meetings when their reports are examined”. Accordingly, the Committee modified its provisional Regulations in order to allow for representatives of States parties to be present during the examination of their reports. The repre-

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sentatives would point out the most relevant aspects of the document, add new information or aspects not reflected in the report, answer questions raised by the Committee and provide additional information.

It was believed from the beginning that the submission and examination of the reports is the essential mechanism whereby the Committee may fully fulfill its role of overseeing the observance of the obligations arising from the Convention.

In early 1988, the Committee began the practice of appointing reporters from countries, in charge of analyzing State reports, to highlight aspects pertinent to the compliance with the obligations and also vacuums or deficiencies. The responsibility of the designated member is to make a comprehensive analysis and an evaluation of each State report, and to prepare a complete list of questions to be submitted to the representatives of the reporting State. After the presentation of the country reporter, all other Committee members may intervene to examine the report, and thus a dialogue is established with the State representative. This procedure was adopted to improve the Committee's efficiency. In 1992 the Committee began a practice regarding the way the State report is debated, and a system of observations and final conclusions

was adopted. It includes an introduction, analysis of positive aspects, factors and difficulties the prevent application of the Convention, major issues of concern, and suggestions and recommendations.

The competence of the Committee does not end with the submission of its observations and final conclusions; it appoints one of its members, for a term of two years, to follow up on the compliance of the recommendations made to the reporting State. In addition, each year the Committee submits a report to the General Assembly on their activities and an examination of the reports of State parties. Based on this, the General Assembly can adopt the resolutions it deems necessary.

### **Reports submitted by Ecuador**

On June 17, 1970, Ecuador submitted its first report<sup>1</sup>. It stressed that "fortunately there is no provision in its legislation that may presume racial discrimination". It stated that the "guiding principles of the national legislation are equality of all men and the prohibition of making any differentiation whatsoever for reasons of race, ideology, social status or any other consideration". The report based these assertions on provisions contained in its Constitution and in other legal bodies, including Article 48 of the Civil Code.

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Doc. CERD/C/R.3/Add.25

It added that the administration of justice is governed by the same principles.

This report was examined by the Committee in its third session<sup>2</sup> and, together with 16 other reports, was considered “unsatisfactory”. The Committee sent a notice to the pertinent States asking them to compare again the information submitted with the guidelines for the preparation of reports and to provide the pertinent data by July 15, 1971.

Ecuador submitted its second report<sup>3</sup> on **January 26, 1972** repeating the concepts contained in the first report and citing several articles of the Constitution with the goal of demonstrating that the provisions of the Convention were being complied with in the country. Likewise, it cited several articles of the Civil and Labor Codes. Based on this, the report affirmed that “in Ecuador we feel no need to establish regulations regarding the obligation to not incur in any act or practice of racial discrimination ...” Given the notorious absence of this discrimination, it added that “we have not even felt the need to include in our legislation a provision stating that “any dissemination of ideas based on racial superiority are punishable under the law..’ In the social, economic and cultural spheres, the report says that State bodies and institutions have already issued

measures aimed at achieving these objectives. It recalled that the Law abolishing precarious agricultural work had been promulgated in 1970, and transcribed several provisions of the Law of Agrarian Reform. In the sphere of the administration of justice, the report stated that no judiciary cases of racial discrimination had been filed and it transcribed several articles of the Criminal Code to demonstrate the existence of regulations that penalize acts of discord, attempts against religious beliefs and other related acts. It reminded that differences had been established during colonial times based mainly on economic factors. It added that on July 25, 1851, during the administration of President Urbina, the “few slaves” that still existed were freed. The report stated that on October 30, 1857 the “advance payment of taxes assessed on the indigenous population” was suppressed. Finally, the report added that the “ethnic composition of its population is heterogeneous, and it coexists in the most harmonious way”. It stressed that the “ethnographic scale of Ecuador presents the most variegated nuances, with an evidently indigenous background that represents 50% of the total population – 6,500,000 – and the other 50% correspond to the following groups: a) 25% mestizo, b) 15% white, d) 5% black, and e) other groups of foreign origin”.

2 Supplement 18 (A/8418), para. 30  
3 Doc. CERD//R.30/Add.6

This report was considered by the Committee during its seventh session. While some members highlighted the fact that the report was detailed and included several important constitutional provisions, as well as other laws, including one regarding the abolition of precarious agricultural labor, others expressed their disagreement with the affirmation that no racial discrimination existed in Ecuador, and added that all State parties were compelled to comply with certain provisions of the Convention, including Article 4, which provided that the dissemination of ideas based in racial superiority should be punishable by law.

The representative of Ecuador, Ambassador Mario Aleman<sup>4</sup>, then Chargé d'Affaires before the United Nations, affirmed before the Committee that, for tradition and conviction, Ecuador is deeply anti-racist, and so the Government has considered that sanctioning measures that expressly condemn discrimination is superfluous. He gave a broader explanation of the ethnical composition of the population. He stated that, concerning the racist regime of South Africa, Ecuador condemns violations against freedom and respects without reservation the decisions adopted by the United Nations on this issue. Indeed, the Government had issued measures to prohibit tra-

de, tourist and other relations with the racist regime of South Africa.

After this debate, the Committee considered that the report was complete.

The third report of Ecuador was submitted on December 24, 1973, and an addendum was submitted on March 12, 1974<sup>5</sup>. I reiterated that Ecuadorian legislation did not contain any provision that could imply racial discrimination. It transcribed once again the main constitutional provisions. It stated that no case of discrimination had ever been registered; and that all the inhabitants of the Republic were free to access public positions. It reproduced some provisions of the Labor Code and stressed that there is equality of rights for nationals and foreigners. It reaffirmed the Ecuadorian position opposed to the racist regimes of southern Africa. It answered several criticisms made by some members of the Committee when they examined the previous report, especially concerning the fact that properties located in Ecuador are subject to Ecuadorian laws even if their owners live abroad; to practical measures to encourage integrationist organizations; to the scope of certain provisions of the Criminal Code; and the initiation of studies to introduce some regulations concerning compliance of Article 4 of the

4 meetings.

CERD/C/SR. 128-9. Ambassador Alemán was the first Ecuadorian representative to ever attend Committee

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CERD/C/R.70/Add. 3 and Add.14

Convention in the national legislation. The addendum transcribed the provisions that would be added to the draft Criminal Code.

The third report was examined by the Committee during its ninth session in 1974. The addition of reforms to the draft Criminal Code was welcomed, because it met in part the demands of Article 4 of the Convention, except the financing of racist organizations and the declaration of illegality and prohibition of those organizations.

The representative of Ecuador, Ambassador Mario Aleman, answered these questions<sup>6</sup>. He explained that the constitutional history of Ecuador has been very agitated. He added that he would report to the competent authorities the observation regarding the amendments proposed to the Criminal Code, which at that moment were not final. He also indicated the reasons why members of religious communities were prohibited from intervening in politics, which did not implied disregarding their right to vote in popular elections. He said that the official language of the country was Spanish, and that other languages were considered as elements of national heritage. The Government was interested in promoting the teaching of Quechua.

The Committee decided that this third report was satisfactory.

Ecuador submitted its fourth report in two documents<sup>6</sup> **on June 4 and July 22, 1976**. The Committee examined them in its 14<sup>o</sup> session in August 1976<sup>7</sup>.

The Ecuadorian Government reiterated that, from the legal point of view, no form of racial discrimination existed in the country. It indicated that articles 211 to 215, which penalize crimes against human rights, had been introduced in the draft Criminal Code, and that it condemns discrimination or racial hatred. It transcribed the text of these provisions. Concerning the application of Art. 7 of the Convention, the second document stressed one of the major concerns of the Government, integral education of the population. It stated that it had strengthened the teaching of Quechua. It placed emphasis on the solution of existing agrarian problems, for which it sought support in the program of Agrarian Reform and Colonization. It added that Ecuador maintained its rejection of the racist regimes of southern Africa.

The representative of Ecuador, Ambassador Mario Aleman, made an introductory exposition to highlight the international Ecuadorian policy of supporting human rights and re-

6 CERD/C/SR.186  
7 CERD/C/R.90/Add.17 and Add.21  
8 CERD/C/SR.302

jecting *apartheid*, as well as the scope of the internal legislation opposed to all forms of racial discrimination. Several members of the Committee expressed their satisfaction for the information received, and stressed that were waiting to see the reforms of the Criminal Code that were about to be adopted.

Some members made questions regarding the Ecuadorian peasant sector and the situation of the indigenous population; how the agrarian reform had benefited the population and in what proportion; if the current legislation provided penalties for acts of discrimination or racial hatred; how non-discriminatory rules were applied regarding employment; what resources were available to victims of discriminatory acts. The Ecuadorian representative answered these questions, indicating that the Government had delayed the promulgation of the Criminal Code until it had heard the opinions of Committee members; he mentioned the efforts made by the Government in accordance with Article 7 of the Convention, especially in the fields of learning and tolerance between different groups that make up the Ecuadorian population; he reaffirmed the information provided in previous reports regarding the composition of the population and outlined the efforts deployed by the Government to increase the econo-

mic and social development of indigenous groups. He added that the victims of discriminatory acts may resort to the courts.

The Chairman of the Committee stated that the report had been favorably received.

Ecuador submitted its fifth report on March 2, 1979<sup>9</sup> and the Committee examined it in its meeting of August 2 of that year<sup>10</sup>. The report stated that on January 29, 1979 the regulations to implement the Convention had been included in the Criminal Code, and it included the texts of those amendments. It made a summary of the main constitutional provisions to fully implement the rights protected by the Convention. It announced that, via referendum, the Ecuadorian people had approved a new Constitution that would enter into force with the accession of the new President of the Republic, in August 1978. It outlined the major innovations contained in the new constitutional text in matters of protection of human rights, and especially concerning the elimination of all forms of racial discrimination. It indicated that until then no tribunal of the Republic had ever heard a case of discrimination. It made emphasis on legislative measures taken to strengthen national unity, to ensure the validity of the fundamental rights of men and to promote the economic,

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9 CERD/C/20/Add.35  
10 CERD/C/SR.440

social and cultural progress of all the inhabitants, with especial reference to the indigenous population. It stressed the obligation of using, in addition to Spanish, Quechua or other indigenous languages.

The Ecuadorian delegate, Ambassador Miguel Albornoz, Permanent Representative to the United Nations, placed emphasis on the reforms to the Criminal Code, as well as in the measures adopted to put into practice the agrarian reform. He asserted that an authentic and broad process of racial mixing existed in Ecuador, which eliminated all notion of preeminence of any racial group. Efforts were being aimed at reducing cultural and economic differences in a constant search for a better distribution of revenues. Indigenous groups, who have millenary roots, are among the most valued human resources of the country. Via self-improvement, they have gradually progressed and have once more repurchased lands that were taken from them during colonial times. It is not only necessary to preserve their traditions and natural values, but also to offset the dangers of cultural alienation.

The Committee welcomed the new legislative measures approved pursuant to the provisions of the Convention. It requested that the next report provide a clearer pictu-

re of the advances achieved by the agrarian reform. Concerning Article 6 of the Convention, the Committee asked for an explanation regarding the scope of the “specialized tribunals” that Ecuador had established to ensure the restoration of the rights of all citizens.

The Ecuadorian representative clarified that the “specialized tribunals” were administrative tribunals. He said that it was hard to give an accurate figure of the percentage of ethnic groups, because all are intermingled, but that all citizens have the same political and other rights. An agrarian reform is taking place but the solution to the difficult problems regarding technology transfer, loans, training and organization of cooperatives takes time. The agrarian reform of 1964 entirely abolished the system under which the sharecroppers (“huasipungueros”) worked the land. He also responded to many other questions made by members of the Committee.

The sixth and seventh reports were submitted on December 2, 1981<sup>11</sup> and the Committee analyzed them during its 25<sup>o</sup> session, on March 12, 1982<sup>12</sup>.

In this opportunity, Ecuador again highlighted the main provisions of the Constitution of 1978 regarding protection and defense of

11 CERD/C/91/Add.2  
12 CERD/C/SR. 562

human rights. It pointed to the traditional Ecuadorian policy of rejection of the practice of *apartheid* and highlighted the main steps taken by the Government in this area. It affirmed that, in the context of the National Plan of Development 1980-84, provisions had been made for the substantial improvement of the distribution of productive resources and income in the rural sector. The report added that the objectives of the plan included free association to allow rural inhabitants to exercise their rights and materialize their economic, social and cultural aspirations; the presence of forms of production based on cooperatives and other types of community organization; the localization of agricultural production according to potential land use. It highlighted the expected advances thanks to the application of the agrarian reform.

The Ecuadorian representative, Ambassador Mario Aleman, pointed out that on March 18, 1977 the country had made the declaration provided in Art. 14 of the Convention in order to allow the Committee to examine claims made by inhabitants of Ecuador who are victims of discriminatory acts. He insisted on the efforts made by the Government to improve and enhance education, considering that it is the best resource to promote harmony and understanding among all inhabitants.

Regarding Art. 2 of the Convention, the members of the Committee asked for more information on measures adopted to allow the indigenous population to enjoy human rights in the same conditions as the rest of the population. More details were asked regarding the teaching of Quechua and its use in administrative, judiciary and other spheres. The committee asked more details regarding the number of families that had benefited from the agrarian reform. Information was requested on the way the right of *habeas corpus* is applied. It asked for more information regarding concrete measures that have been adopted in the sphere of teaching, education, culture and information, as well as in the way the population was made aware of its rights and the steps that have been taken to promote indigenous languages and values.

In response, the Ecuadorian representative referred to the scope and the procedure of *habeas corpus*. In the field of education, he recalled that radio stations broadcast educational programs targeting teachers in isolated rural areas. Regarding legal protection, he mentioned the role of the Ombudsman. In the economic sphere, he said that the Central Bank of Ecuador had decided to grant loans to indigenous peasants and, to prevent them from resorting to loan sharks, mobile brigades that traveled to the more remote areas had been created.

The eighth report was submitted on March 19, 1984<sup>13</sup>, and the Committee considered it during its 31<sup>o</sup> session, on March 5-6, 1985<sup>14</sup>.

This report included a table with the percentages of different population groups: white 25.50%; indigenous 18.50%; mestizo 36.00%; mulatto 14.50%; and black 4.50%. It also highlighted the presence of other aboriginal groups, mostly in the Highlands and in the Amazon region. It emphasized on the significance of Ecuador's ratification of the Convention, as well as on the statement provided in Art. 14. regarding compliance of Art. 6 of the Convention. Again it mentioned the right of *habeas corpus*, the use of interpreters in judiciary procedures for those who do not speak Spanish, as well as other constitutional guarantees. It stressed the principle of equality established in the Constitution, which gives rise to other fundamental rights. Regarding Art. 7 of the Convention, the report mentioned the efforts deployed to promote understanding, tolerance and friendship among diverse racial or ethnic groups. Among the responses to previous questions, special information was provided regarding the agrarian reform and its application.

Ambassador Miguel Albornoz was in charge of representing Ecu-

dor during the examination of this report. Answering the questions and remarks made by the members of the Committee, he explained that the country is still undergoing a process of intermingling of races and cultures. Regarding the agrarian reform, he said that the main problem is not the distribution of arable land, but increasing productivity. Some indigenous communities have shifted from an economy of subsistence to a monetary economy and even have resorted to loan advances. He explained the establishment of FODERUMA, an organization which helps to promote indigenous cultures. He added that 33% of the national budget is allocated to education. He stated that all citizens 18 years or older can vote even if they are illiterate.

The ninth and tenth reports<sup>15</sup> were submitted on January 25, 1988, and the Committee examined them during its 38<sup>o</sup> session on August 9, 1990.

In this report, and based on constitutional provisions, Ecuador affirmed that there was no racial discrimination in the country "because there is no notion whatsoever of preeminence of class based on chromosome reasons. What we have is a genuine and broad process of racial mixing that is a great movement of national integration in a country

13 CERD/C/118/Add.4  
14 CERD/C/SR.701-2  
15 CERD/C/149/Add. 26 and CERD/C/172/Add.4

that, in itself, is like most of South America, a melting pot of races in continuous fusion". It referred also to the participation of women, mentioning women's right to vote, the Convention on the Civil and Political Rights of Women, the reforms made in the Civil Code and other bodies of law. A special chapter was dedicated to analyze the advances made regarding the participation of the indigenous population. The report provided information regarding the emergence of the movement ECUARUNARI, as well as other indigenous bodies and their activities. It placed emphasis on the work of communes and cooperatives. It assigned special interest to the agrarian reform, stressing that one of its goals was "economic development, improving the standard of living and the distribution of wealth and income". It analyzed the repercussions of commercial estates ("latifundio") and small properties ("minifundio") and the measures taken regarding this issue.

Ambassador Eduardo Santos Alvite, Representative of Ecuador to the European Office of the United Nations, was in charge of submitting this report and responding to the questions of the members of the Committee. He stated that one of the purposes of the Government was guaranteeing to all the inhabitants of the country the free exercise of the human rights enshrined in in-

ternational instruments in effect. He referred in particular to steps taken to eliminate illiteracy.

Some Committee members expressed their concern regarding the lack of application of some provisions of the Convention and of the Criminal Code and asked the reasons for this phenomenon. They added that the fact that people do not resort to courts of justice in itself is no proof of the inexistence of racial discrimination. They also showed interest in receiving more information regarding the measures taken by the Government to protect the heritage and preserve the cultural specificity of minority groups. As already reported, 30% of the budget was destined to education. More information was requested regarding progress achieved in the educational field. They asked what the percentage of the national territory occupied by indigenous populations was. They showed interest in learning about the degree of representation of these populations in Government bodies.

Ambassador Santos Alvite answered many of these questions. He reminded the Committee of the burden of the foreign debt, in spite of what the Government continued to adopt measures to guarantee the development of the economic and social structures of the country. Leaving aside the classical paternalism – a feature of colonial times– the Go-

vernment was making huge efforts in its fight to strengthen local autonomies.

Ecuador submitted its 11<sup>th</sup> and 12<sup>th</sup> reports on August 19, 1991 and April 9, 1992<sup>16</sup>. The Committee examined these documents during its 42<sup>o</sup> session on March 10, 11 and 18, 1993<sup>17</sup>.

These documents were very detailed and covered specific information regarding each one of the articles of the Convention. Information regarding the strengthening of national identity was considerably broadened and special emphasis was made on measures aimed and ensuring to indigenous nationalities the required material conditions to guarantee their survival and development, their political participation, the recreation and strengthening of their culture, as well as their access to bilingual intercultural education. The report outlined the major projects that contribute to reinforcing national identity. Particularly, it provided reports on different ethnicities: the Quechua, Cofan, Signa, Secoya, Huaorani, Shuar and Achuar, Chachi, Awa, and Tsachila. It stressed the scope of the reforms to title II of the Criminal Code, making special reference to the compliance of the commitments arising from Article 4 of the Convention. It gave information on several provisions contained

in Article 5. It highlighted judicial procedures aimed at complying with Article 6. It assigned special significance to projects developed as provided in Article 7. It stressed that one of the main goals of the Government is to lower unemployment and underemployment rates and it outlined the programs applied to achieve these purposes.

Ambassador Alfredo Pinoargote, Representative of Ecuador to the Office of the United Nations in Europe, was in charge of submitting these reports and providing answers to the questions of the members of the Committee. In his introductory statement, Ambassador Pinoargote stated that no systematic racial discrimination existed in the country, but that existing inequalities responded to social, economic and structural problems typical of all developing countries. "The Ecuadorian society is not perfect, but the Government is aware of the problems and tries at all times to introduce improvements in the legislation and to fight inequality". He affirmed that the National Plan of Development was an especially significant instrument, as currently more emphasis is placed on planning. He added that one of the major obstacles to the realization of that National Plan was the dependency of the national economy on external factors.

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CERD/C/197/Add.9 and CERD/C/226/Add.1  
CERD/C/SR/971, 972 and 983

The members of the Committee took note that the reports submitted recognized that Ecuador was a multiethnic and multicultural society, and that the State strove to contribute to the consolidation of a national identity. Concrete data on birth, death and life expectancy rates of indigenous populations were requested. More information was requested regarding the effects of natural resource exploitation programs. Likewise, the Committee voiced its interest in learning the criteria applied and when education in indigenous languages would begin; the percentage of members of Parliament that belong to indigenous communities, if indemnities were paid to people whose livelihoods were compromised by new industries, especially in the exploitation of natural resources. Regarding the indigenous uprisings of 1990 and the dialogue established later on with the leaders of these communities, the Committee asked what their demands were, especially with regards to land.

The Ecuadorian representative stated that he had collected all the questions of the members of the Committee and that he would convey them to the relevant authorities to obtain information that would be included in the following report. He also stated that a constitutional amendment was under study, which included the possibility of creating

the position of *Ombudsman*, because at that time the Attorney General was the authority responsible for examining and investigating complaints regarding human rights violations. As for the representation of the indigenous population in Congress, he stated that the Constitution did not provide for a specific representation of indigenous groups by means of an established quota. All Congress representatives are elected by the people, regardless of color or race. He added that the problem of oil exploitation in the Amazon region was carefully overseen, especially to protect the environment and the interests of the indigenous communities that live in those regions. Pursuant to the Ecuadorian legislation, the State owns all underground resources, but exploitation activities gave special consideration to the concession of adequate compensations to indigenous communities.

Reports 13°, 14°, 15° and 16° were submitted in one single consolidated document<sup>18</sup> on July 9, 2002. The Committee examined them during its 62° session, on March 4-5, 2003.

In this document, the Government reaffirmed that Ecuador is a “democratic country, respectful of the fundamental rights of human beings, and that it has expressed its absolute rejection both internally and

in several international forums to all form of discrimination, either for reasons of race, ethnical origin, economic status, nationality, religion, etc...” To support these criteria, the Government mentioned several constitutional provisions, explained the scope of the Rural Social Security Service, the national education system, the relationship of indigenous and black populations with society, etc. It dedicated a special chapter to reporting on indigenous nationalities and peoples, as well as on their organization and political participation and, in this sense, the report said that the “State has not hindered the process of self-identification of the indigenous and afro Ecuadorian groups as a different population and their constitution as social actors. It explained advances in the allocation of lands and irrigation.

Referring to Articles 2 to 7 of the Convention, the Ecuadorian report highlighted constitutional, legislative and other steps taken to show compliance with anti-discriminatory regulations. Regarding Article 4 of the Convention, it referred particularly to the fact that the Criminal Code strictly conforms to that provision. Regarding Article 5, the report made a lengthy and documented exposition of measures in effect to effectively comply with the different aspects contained in the regulation. It stressed the accession of Ecuador to ILO Agreement 169 and the way

it is being enforced in the country. Regarding Article 6 of the Convention, the report cites constitutional and legislative measures that comply with this contractual obligation. Regarding the application of Article 7 of the Convention, the report indicated the different measures adopted to comply with that provision.

Ambassador Roberto Ponce, Under-secretary for Multilateral Affairs of the Ministry of Foreign Affairs, assumed the representation of Ecuador to submit the report and answer the questions of Committee members.

In his introductory explanation, Ambassador Ponce reaffirmed that since its independence, Ecuador has been a pluricultural and multiethnic developing country. More particularly, he stressed the difficulties it faces, several of them inherited from colonial times and others as a consequence of the acute economic crisis that affected the country in 1999. He mentioned the different entities created by the Government to assist and defend the interests of the indigenous and Afro Ecuadorian communities. Based on the figures of the 2001 census, he indicated population percentages among white, indigenous, mestizo, black and other ethnicities. He added that there are differences between the figure estimated by CONAIE (the Confederation of Indigenous Nationalities of

Ecuador, 40% of indigenous population in the country) and the figures – more accurate – provided by PRO-DEPINE (organization sponsored by the World Bank). The difference can be explained by the “sentiment that inhabits deep in the heart of many Ecuadorians who know of the existence of an undeclared racial discrimination”. This reveals that the bulk of the Ecuadorian population is mestizo. He added that there have been several legal cases in which constitutional provisions regarding recognition of indigenous peoples and nationalities for the administration of justice in their communities and territories had been enforced. He highlighted the work of the Ombudsman’s Office, the expansion of education in indigenous languages, political participation, consultation to indigenous communities on decisions regarding the exploitation of natural resources, the impact of social and environmental development programs in those communities. Particularly, Ambassador Ponce mentioned actions carried out by the Ecuadorian State in compliance with the Declaration and the Durban Program of Action.

During the debate, several members of the Committee made questions regarding the need to explain the statistical disparity between the figures of CONAIE and the census, and regarding which data were reliable; if in addition to the criterion of

self-definition, additional parameters had been adopted in the 2001 census to identify ethnical affiliation; what other ethnical groups are included in the item “other” in that census; the administrative structure, especially regarding indigenous organisms or organizations that handle their problems; indigenous justice, how does it work and if the provisions of international human rights instruments are respected when indigenous communities enforce their justice; the national judiciary system; the Ombudsman’s Office and its functions; environmental protection; application of laws against discrimination; the scope of social rights; the impact of refugees and migrants; the role of the media. Ambassador Ponce answered all these questions.

In his observations and final recommendations, the Committee welcomed the detailed reports submitted by Ecuador, as well as the updated information provided by the Ecuadorian representative. It indicated several positive aspects and regarding the reasons for concern and the recommendations, it mentioned: a) the lack of systematic statistical data on the ethnic composition of the population; b) the need to strengthen national institutions in charge of promoting the indigenous and Afro Ecuadorian populations; c) that, in spite of constitutional guarantees, discrimination against indigenous and Afro Ecuadorian

populations and other ethnic minorities continues; d) the excessive use of force by the police and the army, especially in the context of political protests and civilian disturbances; e) the proportionately high percentage of people belonging to minority groups that often do not enjoy equal access to the labor market, to land and to means of agricultural production, or to health, education and other services; f) against the problem of illiteracy among indigenous and Afro Ecuadorian populations, the need to increase the number of bilingual teachers; g) the double discrimination suffered by women belonging to ethnic minorities, both for their ethnical origin and their gender; h) the convenience in having the previous consent of indigenous communities before commencing the exploitation of natural resources; i) lack of trust in the Ecuadorian legal system observed among members of ethnic minorities; j) need to give broad dissemination to information about internal resources available against racial discrimination acts; k) lack of information on the operation of the indigenous legal system; l) acts of discrimination and hostility against migrants.

On August 11, 2006, Ecuador submitted reports 17°, 18° and 19° in one consolidated document<sup>19</sup>. The Committee has yet to fix a date for the examination of these reports.

The chapter on generalities provides updated figures regarding population, number of women, especially belonging to ethnic groups, illiteracy rates, schooling, annual inflation, amount of foreign debt, minimum unified salary and per capita income. It describes acts considered as racists and the legal protections for the victims of such acts; it indicates the roles of national institutions in charge of promoting the indigenous and Afro Ecuadorian populations, as well as the responsibilities of the Ombudsman's Office in this area. It highlights national plans on issues related to racial discrimination, xenophobia and other related forms of intolerance. Likewise, it provides information on operating plans made in broad consultation with all sectors of society involved in each issue. It reports on the creation of the Unity for Indigenous and Afro Ecuadorian populations, the delivery of titles of ownership of land to ancestral communities, 56% of the surface of which corresponds to black communities, 28% to Chacbi communities, and 16% to the Quechua populations of the Amazon Region.

This consolidated report contains a special chapter dedicated to the economic, social and cultural rights of vulnerable groups, for whom the use of resources has been prioritized with the purpose of eradicating the huge economic and social

inequalities generated by increased poverty. In this context, it lists ongoing actions and health, education and nutrition programs aimed at those groups. It gives information on gender perspective and actions taken in that sense. It offers information on the afro Ecuadorian people and programs executed for their benefit. It offers information on indigenous communities and peoples and for the first time, it speaks of the existence of the Roma people (gypsies) with a population totaling 1.000, and indicates the major measures taken for their benefit. Finally, it summarizes actions taken by the State regarding Articles 2 to 7 of the Convention.

**Some final comments:**

1. As we can see, like in most State parties, the first reports submitted to the Committee by Ecuador made emphasis only on constitutional and legal aspects, limited only to emphatically declaring that, by virtue of the pertinent provisions of the Constitution and other bodies of law, there was no racial discrimination, because all citizens are equal under the Law. The Committee, in turn, limited itself to receiving these assertions as acceptable.

2. On this basis, during its first years the Committee, after discussing the reports without the presence of representatives of the reporting State, mostly regarding formal aspects,

declared that they were satisfactory. The term unsatisfactory was applied when the reports did not meet formal requirements.

3. When the Committee decided to invite representatives of the reporting States, the dialogue, called “constructive”, earned greater significance, because Committee members were able to make questions or request clarifications, thus considerably broadening the field of action.

4. In turn, Committee members deemed that the examination of the reports could not depend only on information conveyed by State parties in their reports, but that, in their capacity as experts, they could use – as indeed they did – other sources of information (laws and regulatory and administrative provisions of reporting States, Parliamentary debates, opinions of other United Nations bodies, opinions of treaty experts and, at a later date, opinions and expositions of non-governmental organizations). This exchange of views helped the Ecuadorians authorities to become aware of the existence of racial discrimination in the country against indigenous and Afro Ecuadorians communities, and only in the last reports filed (17°, 18° and 19°) does it mention the existence of the “Roma” (Gypsy) group, that -although limited in number- are also victims of discrimination.

5. The result of this significant innovation is that the Committee reaffirmed its view that there is no country in the world that can be considered fully immune to the scourge of racial discrimination, because while in some it is manifested in a direct and open way, in others it subsists under several forms, many of which are concealed in social, cultural and even religious traditions, or in deep-rooted customs considered to be inalterable.

6. As indicated above, the analysis by the Committee of the subsequent reports submitted by Ecuador slowly led Government authorities to become aware of the phenomenon of racial discrimination that persists in the country in different social levels and under different modalities. Vulnerable groups have been and continue to be the victims of discriminatory practices. It is worth noting that in this effort, the involvement of Ecuadorian representatives in the examination of the reports has since then been more constructive and dynamic.

7. It is true that, as a result of the examination of the reports and of the dialogue with the Committee, Ecuador has adopted significant measures aimed at overcoming discrimination problems, for instance actions in the field of agrarian reform, measures to raise the standard of living of indigenous and Afro Ecuadorian

communities, actions to fight poverty, measures to promote education in aboriginal languages and many others. These advances can be better appreciated when compared with the situation that prevailed only four or five decades ago. However, we have still to see a tangible result of all this vast range of actions, but the important thing is that the authorities are aware that it is necessary to continue along this path. In addition, the victims of discrimination are now aware of the situation and, at least in principle, know that there are legal, administrative and also international mechanisms open and available to hear their complaints.

8. One of the most significant reforms in Ecuador in the legislative field was the amendment to the Criminal Code to include specific provisions that view racial discrimination as an offense and establishes punishments for perpetrators. The main reason for concern of the Committee is that, in a country like Ecuador where racial discrimination still subsists, there are no records of judiciary cases in which these criminal provisions have been enforced. The problem lies in the fact that the population mistrusts the administration of justice, considered as generally corrupt, and therefore do not appeal to the courts, fearing that the plaintiff may become the victim of false testimony supported by corrupt judges, or even be subject to

ancestral prejudices, becoming the accused and condemned by slander, with the certainty of end up in jail.

9. Anyway, fundamental changes in this area have taken place in Ecuador, and it can be considered that broad possibilities have been opened to allow the battle against

racial discrimination to continue until more concrete results are obtained and vulnerable groups can be assured that their rights are duly and adequately protected, not only by the legislation – which many times remains only on paper – but in the daily and constant practice.