



# Генеральная Ассамблея

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## Совет по правам человека

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**Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие**

### **Доклад Специального докладчика по вопросу о внесудебных казнях, казнях без надлежащего судебного разбирательства или произвольных казнях Филипа Алстона**

Добавление

**Миссия в Эквадор\* \*\***

#### *Резюме*

Правительство Эквадора под руководством президента Рафаэля Корреа проводит крупные реформы с целью усиления защиты прав человека, включая обновление Конституции, реформу пенитенциарной системы, увеличения расходов в сфере правосудия и защиты свидетелей и осуществления социально-экономических инициатив для улучшения жизни граждан, находящихся в неблагоприятном положении. Многие министры прилагают большие усилия в области прав человека. Тем не менее Эквадор сталкивается со значительными проблемами, связанными с внесудебными казнями.

За последние 20 лет в Эквадоре резко возросло число убийств. Правительство принимает значительные меры, с тем чтобы приступить к решению проблемы наемных убийц, однако существует неотложная необходимость положить конец практике, при которой полиция и прокуроры зачастую не проводят серьезного расследования, когда на жертву есть досье в полиции.

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\*\* Документ представлен с опозданием.

На севере страны конфликт в Колумбии теперь распространяется на Эквадор. Значительно возросло число незаконных вооруженных групп, действующих на границе. Они применяют физическое насилие и убивают гражданских лиц. Вооруженные силы Эквадора сталкиваются с трудностями в борьбе с этими группами и в некоторых районах, по-видимому, не могут или не хотят делать этого. Кроме того, военные применяют насилие к гражданским лицам.

Поступает много сообщений о данных от средств массовой информации официальных лиц об убийствах, связанных с правосудием на местах. Однако Специальный докладчик не обнаружил свидетельств о каких-либо убийствах подобного рода, совершенных за последние годы. Противоположная информация усложняет официальное правосудие, осуществляемое в соответствии с местными традициями, с применением линчевания, которое представляет собой произвольные нападения на подозреваемого преступника или мщение ему.

Линчевание, социальная чистка и насилие со стороны местных хунт являются серьезными проблемами в некоторых районах страны, но о них нет достаточной информации и они недостаточно изучены.

Безнаказанность является одной из важных причин и усложняющим обстоятельством при всех этих видах убийств. Полиция и прокуроры зачастую имеют недостаточную подготовку и ресурсы. Свидетели часто не знают о программе защиты свидетелей или не доверяют ей. Работа судов идет медленно. Широко распространены коррупция и угрозы в системе уголовного правосудия и это склоняет "правосудие" в пользу людей жестоких, богатых и могущественных.

Работа Комиссии правительства по установлению истины, которая изучила нарушения с 1984 по 2008 год, является важным ударом по безнаказанности. Хотя некоторые выступали с нападками на ее состав и независимость, Комиссия тем не менее собрала бесценный объем информации о фактах насилия. Чрезвычайно важно, чтобы были приняты меры в связи с этой информацией.

Для многих в международном сообществе прав человека Эквадор находится весьма далеко. В результате этого Эквадор страдает от недостатка гуманитарной помощи и действий в области мониторинга и содействия.

При встречах с руководящими официальными лицами при завершении своей миссии Специальный докладчик счел их реакцию очень позитивной по отношению к его предварительным рекомендациям и выводам. Ввиду общей приверженности правительства делу поощрения прав человека он выражает оптимизм по поводу того, что реформы, рекомендованные в настоящем докладе, будут серьезно рассмотрены.

## Annexe

### Report of the Special Rapporteur on the extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to Ecuador (5–15 July 2010)

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## **I. Ecuador-Colombia border killings**

1. The extent of organized crime, guerrilla and State violence at the northern border of Ecuador is not widely appreciated. Across the border in Colombia, these issues receive significant domestic and international attention. While the level of violence is notably worse in Colombia, the conflict has clearly spilled into Ecuador, with extremely negative consequences for those living in the provinces of Sucumbíos and Esmeraldas. Civilians are subjected to harassment, unlawful taxes, stealing and violence from a range of non-State actors, including the Fuerzas Armadas Revolucionarias de Colombia (FARC), ex-paramilitary groups and traffickers. Civilians are also subjected to violence from State forces. The Special Rapporteur gratefully acknowledges comments received on the present report from the Government of Ecuador in April 2011. The suggested factual changes have been made and the comments as a whole have been included (see appendix II).

### **A. Growth of illegal armed group violence**

2. The northern border province of Sucumbíos has long suffered from FARC infiltration, but has had little State or other illegal armed group presence. FARC control led to serious violations of the rights of civilians, as described below. The presence of a single-armed actor had, however, one positive effect: there was little competition between armed actors over the control of resources. The attendant costs to civilians of such competition were thus minimized.

3. Since early 2008, however, the armed actor presence has increased and diversified, the dynamics of control have become unstable, and civilian security has deteriorated. As Colombian efforts to fight illegal armed groups have pushed them to marginal areas of Colombia, they have increasingly crossed into Ecuador. Furthermore, following a Colombian airstrike on a FARC base in Sucumbíos in March 2008, Ecuador's military presence in the area has greatly increased. The military's presence had been welcomed by many civilians weary of the lack of security. However, one effect of increased State presence has been the dispersal of FARC camps and increased numbers of FARC members choosing to live among civilians in order to disguise their presence from the military. This has increased the opportunity for FARC abuses, and complicated the place of civilians in the military's anti-FARC strategy.

4. Witnesses, Government officials and interlocutors working closely with affected populations described how the newer criminal groups enter Ecuador for a range of reasons. They cross the border to obtain goods, to traffic drugs and weapons, or to temporarily escape the intensity of conflict in Colombia. Illegal armed groups have bases in Ecuador, where the military has found weapons and explosives. Sucumbíos province in particular is especially inviting to the groups because of the ease with which the border can be crossed; the existence of many villages along the border, which provide a steady source of food, information and forced labour; the presence of major roads through the province, and a large airport for travel and transporting goods; and the existence of a large town, providing supplies, health care and ease of concealment.

5. The growing number of illegal armed groups in Ecuador has led, inevitably, to competition for these resources. The consequences for civilians have been disastrous. The groups force civilians to "cooperate" with them: to pay taxes, provide food and shelter, hide weapons, make uniforms and provide information on the activities of other armed groups and State actors. In some cases, they also forcibly recruit civil-

ians, including minors, to fight. The groups can obtain control through simply being the only armed presence in an area; or, where there is no State presence, they can obtain a level of community support by being the only group capable of enforcing basic order and security. They also threaten civilians to secure their cooperation; abuses take place when civilians refuse to comply with group demands.

6. The violence has particularly affected rural Ecuadorians, indigenous groups and displaced Colombians. One rural resident explained that the FARC, which was in de facto control of her area, forced residents to pay "taxes" on the corn they sold, punished common crimes (such as stealing) and forced her family to give the guerrillas food. She also stated that her neighbours' two sons had been abducted by the FARC to fight. Interlocutors working with the Colombian refugee population in Sucumbíos noted that the population in Sucumbíos had grown significantly in recent years – from an average of two new asylum-seekers per day in 2007–2008 to 50–60 per day in 2010 – and they are easy targets of both illegal armed group and State abuse<sup>1</sup>. In addition, indigenous groups living along the border have been held captive, driven off their land or used as forced labour<sup>2</sup>.

7. Where armed groups compete with each other for influence over the civilian population, it becomes increasingly difficult for civilians to meet the various groups' interests. Harassment of civilians escalates as each group vies for control. Abuses have also been exacerbated by civilians using the violence of armed groups for their own personal ends. For example, interlocutors noted that one could deal with a personal enemy (for example, a neighbour with whom one was in a land conflict) by reporting to the local paramilitary group that the enemy supported the guerrillas.

8. Pursuit of the illegal activities by armed groups requires them to control the population and transport routes, which has in turn led to "social cleansing" and high homicide rates in some border towns. In some towns, the murder rate exceeds 100 murders per 100,000 inhabitants, a rate that puts these areas among the most dangerous in the world<sup>3</sup>. Many interlocutors cited the grim example of Puerto del Carmen, a small town of some 4,000 residents that has experienced one to three assassinations per week over at least the past two years. Interlocutors did not understand how this extreme insecurity had been permitted to prevail for so long, given the presence in the vicinity of an army battalion, a police station and a naval presence. While it is certainly difficult to address such violence, there appears to be a total lack of will on the part of authorities to combat crime in the town.

9. Indeed, across the northern region, it was difficult to get a clear sense of the effectiveness of Ecuador's police and military response to illegal armed groups. The statistics provided by military officials are difficult to reconcile with one other. On the one hand, between 2007 and 2009, troop numbers in the region quadrupled. The number of military operations has grown substantially from just 22 in 2007 to 248 in

<sup>1</sup> I was particularly concerned to learn that a list prepared by the Ecuadorian armed forces containing the names of some 430 Colombians living at the northern border who allegedly "supported or collaborated" with illegal armed groups was widely available. The publication of the list makes it all too easy for armed actors to target named individuals. I was provided reliable information that a number of those on the list were Colombian refugees wrongly accused of illegal activity. Some had to be urgently moved from the area.

<sup>2</sup> The Federation of Kichwa Nationality Organizations of Sucumbíos provided detailed information on internal displacement of indigenous persons. In a number of border towns, the number of indigenous families had dramatically dropped from 2000 to 2008. For example, in Puerto Mestanza, the population fell from 86 to 4 families.

<sup>3</sup> Countries with the highest reported homicide rates include Colombia (61 in 2002), South Africa (49.6 in 2002) and Brazil (30.4 in 2002).

2009. Information provided by the military also indicates that significantly increasing numbers of "clandestine installations" of armed groups have been discovered: 12 in 2005, 47 in 2007, and 156 in 2009.

10. On the other hand, very few group members have been either arrested or killed. Military officials in Sucumbíos provided information on just four incidents in which group members were killed<sup>4</sup>. I was also informed of the deaths of five members of the Ecuadorian military during the same period<sup>5</sup>. I was told by officials that just three armed group members were captured in 2010. When I asked judges about drug trafficking cases, they said that while an estimated 30 per cent of their cases in Sucumbíos were drug-related, the charges were generally just for small quantities of possession. The significant traffickers were rarely prosecuted.

11. The low rate of armed group fatalities is surprising in the context of a significant military presence attempting to suppress violent criminal groups. It could be taken as a positive indication that the military is addressing such violence without engaging in the types of unlawful killings seen in other countries. This explanation is difficult to sustain, however, given the very low rate of military fatalities, few arrests of group members despite the extensive activity of illegal armed groups, the increased military presence, the large number of installations found and the pressing need for civilian protection in the region. Officials provided no satisfactory information as to why the arrest rate was so low. Some interlocutors suggested that it was partly due to high levels of -community infiltration by armed groups, which enabled them to hide, as well as to evade capture by obtaining information on troop movements. Other interlocutors, including police officials, indicated that, in certain areas, security forces simply ignored armed group activity because of fear or bribery, and that they themselves were sometimes involved in trafficking.

12. Impunity for the various armed group crimes was described as "pervasive". Witnesses were generally too terrified of retribution to make any official complaint. Moreover, they generally did not believe that the police would be able or willing to take any real action.

## **B. Abuses by the armed forces**

13. The most common violations of human rights law reportedly committed by the armed forces fell outside the scope of my mandate. These abuses include forced entry into homes, stealing and public humiliation (including forced nudity). Such abuses appeared to be common and committed with impunity. I was informed of a number of grave cases of torture and sexual violence, including cases of rape and putting chilli on victims' bodies.

14. I was also provided information on a number of killings committed by the military. One case is emblematic of the problems. It involved the killing of one Ecuadorian and two Colombians on 18 January 2010. It began when the military encountered three men on a *piragua* (river boat). The military initially claimed that the men were wearing FARC uniforms, although the story subsequently changed and the men were said to have been wearing dark or camouflaged clothing. The military claim that, when instructed to stop, the men responded by opening fire. The soldiers returned fire to protect themselves. Officials stated that the *piragua* then took off. It

<sup>4</sup> Killings (reported to me as "killed during combat") took place on 10 October 2008, 13 March 2009, 18 January 2010 (three killed) and 18 April 2010 (two killed).

<sup>5</sup> 30 January 2008 (two killed), 3 February 2009 (one killed), 25 March 2009 (two died during rescue operation).

was subsequently revealed that two of the men had died at the scene, and a third had died from his injuries while being taken down river by civilians attempting to help him.

15. A number of elements in the above case make the military's version of events suspect. In part, it is difficult to understand why guerrillas were out on a boat in broad daylight on a river known to be patrolled (informed interlocutors noted that this would be exceptionally rare); why the military did not pursue the *piragua*; how a simple river boat could so successfully get away from a military patrol; or why the bodies were not picked up by the military. Testimony from civilian witnesses would, if accurate, explain many of these anomalies. They indicate that the men were civilians, not uniformed, not engaged in suspicious activity and did not fire at the military. At the time of my visit, the incident was being investigated. However, witnesses and the families of the deceased were under pressure not to testify. One of the witnesses told me that she received a call saying that if she pursued the case, she would end up dead. Some of those responsible for investigating have also allegedly received threats. Such threats appear to be common when officials are accused of abuses; in other similar cases of serious alleged abuses about which I was informed, witnesses, family members and non-governmental organizations have also been offered money or threatened in exchange for dropping cases.

16. Reports of abuses by security forces in Sucumbíos have increased significantly since mid-2009. Interlocutors suggested various reasons for this. In part, it was said to be due to the rapid militarization in the region and the increased numbers of troops on patrol, which, simply put, increases opportunities for abuse. Some experts also suggested that the military forces were not consistently well-trained and did not have much combat, counter-insurgency or other relevant field experience. They did not know how to best protect or even deal with civilians in such a complex, multi-armed actor environment. This partly explained cases in which, for example, victims – who has been forced by the FARC to give the guerrillas food – were then interrogated by the military, accused of being FARC supporters, and harassed or beaten.

17. Importantly, interlocutors stated that one of the most significant causes of the increase in reported abuses was a change in leadership among the military's top officials in the region. Previously, military relationships with communities were largely positive and officers spent time building trust. Today, however, the military are said to spend much less time with community members and to have become far more antagonistic and aggressive. Community trust has eroded, cutting the military off from civilian information, and thereby inhibiting the former's ability to gain important intelligence. To compensate for the loss, the military engage in abusive tactics to force information from civilians.

18. Military relations with civil society and humanitarian actors have also deteriorated with the change in leadership. Support for civil society has declined, with obstruction at military checkpoints as well as harassment of activists and raids on properties of non-governmental organizations. Cooperation has soured further following civil society attempts to obtain justice for victims of military abuses by publicizing incidents and seeking prosecutions of soldiers.



## II. Homicide and hired killers

19. The national homicide rate has skyrocketed in the past 20 years, almost doubling from 10.3 murders per 100,000 in 1990 to 18.7 in 2009. The rate for 2010 is expected to be even higher; the first five months of 2010 showed a 7.39 per cent increase over the same period in 2009<sup>6</sup>. The increase is attributed to various factors, including greater organized crime activity, expanded drug trafficking, high drug and alcohol abuse rates and economic insecurity. Ineffective policing, breakdowns in law and order and failures in the criminal justice system have led private citizens to resort to murder and made punishment unlikely.

20. The use of hired killers (*sicarios*) to carry out murders has been the subject of significant media attention and instilled fear in the population. These killings are commonly committed by masked men, working alone or in small groups, who shoot at their victim from a passing motorcycle. The killers are rarely identified and almost never captured.

21. I met with many officials, experts and witnesses in order to understand the dynamics and causes of this phenomenon. Hired killings are not new to Ecuador, and numerous cases of politically motivated hired killings occurred through the 1980s and 1990s. However, the extent and nature of the problem has significantly changed in recent years. Although media sensationalization has exaggerated the scale of the problem, it is clear that the number of hired killings has increased notably. They are increasingly used to "solve" a range of personal, business, narco-trafficking and organized crime problems<sup>7</sup>. Between 11 and 14 per cent of homicides in 2010 were estimated to be hired killings, amounting to around 450 killings per year. This has contributed significantly to the increase in the homicide rate.

22. In analysing the problem, it is important to distinguish between "professional" and unprofessional hired killers. The latter are poorly trained, relatively inexpensive and generally used in disputes within families or among neighbours. Such personal relationship disputes are now a major cause of hired killings. The deficiencies in the justice system are an important factor contributing to the use of hired killers in these contexts. Individuals conclude that taking private action to "resolve" a dispute is likely to be more effective than relying on the police and the courts. Such action is facilitated by the disturbing ease with which a private citizen can find a killer. In many towns, there are known locations (e.g., certain bars) where a killer can be readily hired. Killers have also been known to openly advertise their services on the Internet. They can be relatively inexpensive: police estimates ranged from \$200-\$10,000, depending on the victim, the "skill" and reputation of the killer, and how complicated the killing would be. Others said that killers could be hired in some areas for as little as \$20. Members of the police stated that the killers were predominantly uneducated, unemployed males (including, sometimes, minors). They may be recruited by criminal organizations, might join together in small informal groups, or operate independently. Because such killings are so rarely punished, becoming a *sicario* has become a desirable career choice for some otherwise poor and unemployed men, fuelling the growth of available and cheap killers.

<sup>6</sup> From 1,136 homicides from January to May 2009 to 1,220 in 2010. The rates in some provinces are significantly higher. In 2009, the provinces with the highest homicide rates were Esmeraldas (62.40), Sucumbíos (44.39) and Santo Domingo (38.5).

<sup>7</sup> Organized crime is a serious and growing problem in Ecuador. According to information received, there are over 700 gangs, many of which are based in Guayas and Pichincha.

23. More professional and thus more expensive killers are often hired by an "intellectual author", who pays a middleman to arrange the hit. The killers and middlemen are often linked to organized crime groups, and sometimes carry out political killings. In the past, many professional killers were foreigners, but the trade is now increasingly home-grown. I was also provided evidence that some police and ex-police have worked as hired killers. The nature of the professional killing "business" makes it especially important that investigations should not focus solely on the individual killers, but should examine the broader context and the various actors involved.

24. "Loan sharks" are also often implicated in hired killings. Because of the difficulty of obtaining bank loans, many poorer Ecuadorians have to turn to the informal sector and loan sharks, who charge exorbitant interest rates (reportedly as high as 10 per cent per day) and are known to use killers to punish those who cannot repay their loans, or to intimidate family members to pay.

#### **1. Government response**

25. The Government now acknowledges the seriousness of the problem, and in 2010 began to take strong measures to address it.

26. Expert advisers have been brought in from Colombia and France to assist at the policy level, and an inter-agency police team has been created to coordinate the police response. Importantly, a specialized police intelligence group (Unidad de la Lucha Contra el Crimen Organizado or ULCO) has been created to counter organized crime, including by researching the methods employed by hired killers and the causes of the killings. Witness protection is being strengthened, and rewards will be offered for information on organized crime activity.

27. In some cities, stronger steps have been taken to "geo-reference" criminal incidents, so that police patrols can be increased in especially affected areas, and greater attention has been given to the loan shark problem. The police also indicated that more would be done to investigate online advertisements posted by would-be hit men. In Guayas, motorcycles were required to display registration details, which led to a small drop in killings. Controls were also placed on alcohol consumption, and efforts were increased to close non-licensed premises.

#### **2. Settlement of accounts**

28. The measures taken by the Government to date are important and should be continued and strengthened. However, my investigations clearly indicated that a significant factor in the thriving business of hired killings is the near complete impunity that killers enjoy. In part, this is due to factors that are difficult for the Government to control, such as the reluctance of surviving family members to report killings and the absence or fear of witnesses.

29. Impunity also results, however, from the unwillingness of police and prosecutors to fully investigate all hired killings. From my meetings with police and prosecutor officials, it became clear that they consider many hired killings cases to be what they categorized as a "settling of accounts". While it is desirable to categorize different types of killings in order to shed light on the motives and causes, the "settling of accounts" category is currently being used in a highly problematic way, which seriously hinders efforts to reduce hired killings.

30. First, the category is ill-defined and does little to illuminate the problem or facilitate its resolution. I asked many different officials what they understood the term to mean, and received as many different answers. Among the competing interpretations suggested to me were any case of revenge killing; inter-gang or inter-criminal

violence; killings where the victim had a criminal record; or where both the victim and killer were believed to have records. Some used it where the victim had merely a police record, which can exist as a result of many forms of contact with the police, quite apart from actual criminality. Members of the police in Guayas told me that an estimated 40 per cent of victims of hired killers had police records, and so they assumed that many of those killings were connected to broader criminal activity. It was often simply assumed that the killings were part of organized crime rivalry, an assumption that curiously led to a lack of police interest in further investigation rather than the opposite, as might reasonably be expected.

31. Second, it gives unjustified importance to a victim's criminal or police record. It makes little sense to automatically treat every case in which a victim had a police record as a case of inter-gang violence. It makes even less sense to assume a settling of accounts without information about whether the killer or the person ordering the killing had a criminal record.

32. Third, it is clear, despite some official denials, that settling of accounts cases are investigated less seriously than other cases. I received reliable evidence from a range of sources, including officials, that cases in which victims have a police record are generally not comprehensively pursued. It was clear, especially in Guayaquil, that once the settling of accounts determination was made, in-depth investigations were rarely conducted by police and prosecutors. Such cases are either considered too difficult and not worthy of the same attention as cases involving "innocent" victims, or relatively easy to neglect because family members are too afraid to push them forward. This policy is mistaken and deeply counterproductive. It denies justice to the victim's family, leaves the perpetrator free to kill again and sends a message that it is easy to get away with murder. It also prevents the police from obtaining information on criminal networks that would facilitate more effective prosecutions against organized crime groups.

33. Fourth, the category provides a convenient cover for not pursuing killings in which the police themselves or other officials were involved. Once a case is categorized as a settling of accounts, the likelihood of a serious investigation diminishes dramatically. It is thus ideal for the purposes of covering up crimes.

### **III. Killings by police**

34. While I was provided information on some serious cases of unlawful killings by police, it did not warrant the conclusion that police killings are pervasive or carried out pursuant to official policy. The types of police killings include:

a) Killings connected with police work. This includes individuals tortured to death during purported interrogations, and criminal suspects killed when they could and should have been arrested;

b) Police involvement in hired killings. This could be due to police connections to organized crime, or as a second source of income for the police involved. I received allegations of police involvement in hired killings in Los Rios, as well as in the killing of a 23 year-old man in Lago Agrio on 8 March 2010;

c) Police involvement in social cleansing groups. Police throughout the country denied any involvement in social cleansing. There is no doubt, however, that it has occurred, as shown by the now infamous case of "JRG", who was shot by police on 20 February 2010. It was later discovered that JRG was himself a police officer, involved in executions (especially of suspected criminals) in Los Rios;

## d) Killings related to personal (e.g., familial, neighbour) disputes.

35. Estimates of the number of individuals killed by police varied, depending on the source. Because of the different periods covered, the statistics are difficult to compare. One non-governmental organization reported 164 extrajudicial executions by police from 2000 to 2006. According to information provided by the Ministry of Government, 27 individuals had been killed by the police in the period 2000–2009. The Police Inspector-General's office told me that the police were responsible for 90 incidents (104 killings) from 2005 to 2010. However, little meaningful information was provided on the circumstances of these cases such that a determination of the lawfulness of the killings could be reliably made. Officials simply recalled two cases of deliberate, premeditated murder by the police in the past year. Statistics provided by the police commander showed that there were 83 cases involving deaths caused by police from 2005 to 2010; 36 cases occurred during police operations, and 47 were accidents, intra-familial or interpersonal cases, or involved alcohol abuse. The 36 police operation cases were said to have occurred in exchanges with criminals. Guayas had by far the highest rate of killings during police operations (47 per cent).

36. My investigations revealed two significant problems with the way that the Government deals with these cases.

37. First, the quality of the information recorded by the Government with respect to police killings is poor. The information officially provided to me was very general in nature, and not revealing as to the extent, nature or causes of police killings. No one institution appeared to keep full records of complaints made against police, or of disciplinary and criminal processes and their outcomes. As a result, it was impossible to determine what proportion of the police killings were likely extrajudicial executions, and what proportion of those were appropriately punished. Until recently, not even complaints against police were tracked at the national level; each police station kept its own records, and while the "most important" cases were supposed to be brought to the attention of the Inspector-General, many were just kept in individual stations. The abysmal state of police statistics means that officials are unable to have any real sense of the extent of police misconduct, which are the particular problem areas or of changes in police conduct over time. For example, the statistics provided to me by the Inspector-General's office show a dramatic increase in the recorded number of police killings from 2005 to 2010. Just three killings were recorded in 2005, seven in 2006, 21 in 2007, 15 in 2008, 28 in 2009 and 16 to June 2010. The officials did not know, however, whether the actual number of killings had increased by 900 per cent or whether the increase was simply the result of improved record-keeping.

38. Second, all the evidence points to the conclusion that the internal affairs section of the police department, despite reasonably elaborate formalities, does not in fact operate effectively or independently in investigating allegations of police misconduct. There is no external police oversight mechanism to compensate for this gap. Senior police officials reported that, in the exceptional cases where police did kill, there were no cover-ups, and the alleged perpetrator would face both internal disciplinary and criminal justice procedures. However, officials in the Inspector-General's office openly recognized that control of the police force was inadequate, and that internal affairs sections were not accorded the necessary importance. Officials acknowledged the need for reform, and some changes were being implemented, including the creation of a centralized database of complaints against police and training for inspectors. While these are steps in the right direction, there remains a need for more far-reaching reform.

## IV. Social cleansing

39. Evidence from around the country indicates that social cleansing killings occur regularly, but it remains unclear if the Government is doing anything meaningful to address the problem. This is largely due to the continued official policy of denying the existence of such killings, despite clear evidence to the contrary.

40. Some of the killings are committed by illegal armed groups, often in connection with their drug trafficking operations. On one main road in Putumayo, Sucumbíos, for example, robberies on public buses were known to occur frequently. The road was also an important transport route for drugs and weapons, and the FARC and others armed groups fought each other for its control. In the month or so before my visit, some 30 bodies were found along the road. Each showed signs of having been tortured. Although the cases were still being investigated at the time of my visit, interlocutors noted that the evidence strongly suggested that the killings were carried out by traffickers intent on (a) making the route safer for trafficking; (b) gaining the support of the local residents, who were fed up with the robberies; and (c) using fear to encourage the population to accept the traffickers' control of the area.

41. In other cases, the killings appear to be part of an attempt by a group to gain control of an area by purportedly enforcing "law and order" and by punishing "undesirables". I was provided copies of social cleansing notices from Sucumbíos in which groups stated that they had "made the irrevocable decision to attack violence with violence", and threatened to murder sex workers and "drug dealers, thieves, carjackers, kidnappers, and young drug users". They also stated that the group already had its "first cleansing list" and would begin killing soon. They asked the community to collaborate by distributing the leaflets widely.

42. To my knowledge, similar flyers were distributed in La Concordia, Manabí and Guayaquil. The pamphlets all warned of the elimination of "criminals" and those who "have relationships with such people." In Guayas, LGBT activists had also received such notices.

## V. Rural juntas

43. Rural juntas (*Juntas de defensa del campesinado*) were originally formed by rural residents to promote development and to prevent cattle rustling and other common crimes. Their existence is largely explained by the lack of State presence in many rural areas of Ecuador and the consequent need for a substitute authority. However, I was provided detailed information about serious abuses committed by some juntas against the communities they were ostensibly created to protect.

44. The rural juntas are strongest in the Sierra provinces of Cotopaxi, Tungurahua, Chimborazo and Bolívar, and also in some areas of Los Ríos. There are no settled statistics on their size, but most estimates suggest at least 500 local juntas, with total membership of between 20,000 and 80,000 members. The juntas are organized by parish, and each local area has a president, elected by residents. The local juntas come together in a nationwide federation.

45. It was extremely difficult to obtain information on the juntas from officials. Official responses to my questions about the juntas varied wildly, and many officials were reluctant to speak about them in any depth. One asserted that juntas were simply "political" groups and did not abuse residents. One claimed that juntas had previously engaged in their own law and order activities, but now worked with the police and had received human rights training. Another stated that they were "social,

development organizations for rural areas" and had "no relationship with the police". One official stated that they were "organized civilian brigades" that sometimes conducted patrols and provided information to the police. He stated that they were not armed, although they were sometimes involved in rural security, and that police sometimes gave them uniforms. He stated that the police did not allow the groups to administer justice themselves, and that if the juntas detained an alleged criminal, they would hand him or her over to the police. A police intelligence officer stated that rural juntas were well organized to provide their own security, and that they had committed some violence against residents. One official recalled a case from Los Rios, in which officials investigated alleged "excesses" by a junta.

### **Abuses by juntas**

46. My interviews with representatives of non-governmental organizations, witnesses and victims painted, however, a much more disturbing picture. While some residents support the juntas because they provide security in the absence of the State, or facilitate basic service provision, others live in fear of the groups. They described cases in which juntas threatened, kidnapped, tortured or killed individuals. Cases of abuse generally fell into one of the four categories listed below.

#### **1. Personal animosity**

47. Many of the cases of abuse appeared to be motivated by personal animosity, implemented by the collective power of the junta. In one case, one member of a family was accused of the robbery and assault of someone with close ties to the junta. The members of the family were threatened and pushed off their land by junta members. In another case, following private disputes over land use with a junta member, the victims were abused and kidnapped by the local junta.

#### **2. Junta law and order**

48. Some cases appear to be the result of the junta's imposition of local "law and order". According to witnesses and domestic advocates, these groups punish and beat those who disobey their rules. They intervene in cases of alleged criminal activity, as well as domestic issues; for example, if someone complained to the junta that a neighbour had stolen his livestock or that his wife had left, the junta would step in to "resolve" the matter. In some areas, juntas impose strict curfews and patrol the streets at night. I spoke with individuals who never left their homes after dark for fear of being beaten for breaking the curfew.

#### **3. Control of local population**

49. Other abuses are related to junta attempts to secure and maintain control over an area. A lack of community support has both political and economic effects on a junta; they charge for their services, so support is necessary for a junta's existence. Juntas have threatened community members with retaliation (such as cutting off a family's water supply) for not supporting it.

#### **4. Prevention of accountability**

50. According to testimony by non-governmental organizations, juntas have used force to control the criminal justice system. If a junta member is involved in litigation, other members may threaten or kidnap opposing lawyers, judges or other officials not aligned with the junta's interests. Domestic advocates investigating the juntas have also received threats, including advice that "you can't touch the juntas without being stung".

51. Witnesses and non-governmental organizations informed me that officials rarely respond effectively to their complaints about junta activity. This was borne out by officials who were generally unwilling or unable to answer questions about junta abuses, let alone acknowledge the need to investigate juntas.

## **VI. Confusion between indigenous justice and lynching**

52. All too often, lynching (also called private or mob justice) is confused with indigenous justice in the media and by officials. In some cases, the confusion results from ignorance. In others, there appears to be an intentional conflation of two very distinct issues. The frequent mischaracterizations hinder genuine analysis of the issues, inhibit appropriate Government reforms and reinforce negative stereotypes of indigenous Ecuadorians.

### **A. Lynching**

53. Lynching is a major problem in Ecuador, deserving of significantly more Government attention than it presently receives. According to one report, at least 153 people were killed and 165 seriously injured in mob justice events from 1994 to 2008. One non-governmental organization reported 33 lynching cases in 2009. It is likely that these numbers are an undercount, as incidents in isolated areas are unlikely to be reported.

54. Generally, lynching involves community members, often acting in groups, attacking suspects accused of crimes such as stealing, violence or murder. Many lynching incidents occur shortly after the alleged crime took place, and appear to reflect a relatively spontaneous outpouring of anger at suspected criminal behaviour. The reports I received involved individuals being beaten unconscious to the point where they sometimes died, or being burned alive, stabbed or mutilated. For example, on 18 March 2009, a 35 year-old man in Quito was beaten and burned for allegedly stealing a bull. On 17 May 2009, in Los Rios, two youths, 16 and 24 years of age, were accused of killing a 17 year-old, pulled out of a police cell by a crowd, then beaten and burned to death.

55. In other countries where lynching takes place, it is largely driven by the lack of any (or any effective) policing and by failures in the criminal justice system, which lead individuals to believe that the only way to address crime is to take justice into their own hands<sup>8</sup>. The lack of State presence means that this response can be carried out unchecked, with little fear of punishment. Given the poor state of the criminal justice system in Ecuador and the fact that lynchings are known to occur most frequently in poor, rural and indigenous areas with little State presence, experience suggests that the same factors also encourage killings in Ecuador. The phenomenon has been poorly studied, however, and much more work is needed to address the root causes of the violence in the specific context of Ecuador.

### **B. Indigenous justice**

56. "Indigenous justice" is justice carried out in accordance with indigenous traditions. In stark contrast to lynching cases, it does not involve the arbitrary or vengeful application of violence. Indigenous justice is intended to reintegrate a wrongdoer

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<sup>8</sup> See A/64/187.

back into the community, and is a formal process conducted by indigenous leaders and community members.

57. Article 171 of the Constitution recognizes indigenous justice systems insofar as they do not violate the Constitution or human rights, and Ecuador has ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization. Some high-level Government officials, however, have attacked indigenous justice as being "savage" and "intolerable", and new legislation has been drafted with little consultation with indigenous groups.

58. Official statements and media accounts often give the impression that killings and beatings are common in indigenous justice. This is simply false. In fact, when pressed, interlocutors – academics, officials and non-governmental organizations – could only name one case of a death sentence being handed down following a formal indigenous justice process, and in that case the death sentence was not actually applied. Officials with knowledge of the issue noted that they actually had not received real reports of deaths related to indigenous justice for many years, and that any indications to the contrary resulted from confusing lynching with indigenous justice.

59. Such confusion reflects a failure to come to grips with the realities of lynching. In contrast to calls to minimize, restrict or abolish indigenous justice, it might actually be appropriate to strengthen it in situations in which lynching is caused by the absence of the State. Confusing lynching with indigenous justice strengthens racist stereotyping and reinforces anti-indigenous sentiment. Much official rhetoric was widely perceived as being designed to discredit indigenous movements and weaken their political power, especially since concerns about indigenous justice coincided with strong indigenous opposition to Government positions on issues such as mining and water.

## **VII. Threats to human rights defenders**

60. Murders of human rights defenders have not occurred in large numbers in Ecuador. However, I received numerous reports of threats against them, as well as against humanitarian actors, union activists and social movement and indigenous leaders. In some cases, activists were offered bribes to stop their work. In other cases, individual activists working for women's rights on the northern border were told they would be burned alive if they continued their work. LGBT activists in Guayas have received social cleansing notices, and some of those working to document alleged junta abuses have been threatened. One non-governmental organization received a letter threatening to kill its members for speaking out about a case they had presented to me.

61. Individuals working on extractive industry issues have frequently received threats. While mining in Ecuador has traditionally been small-scale and family run, since 2000 the Government has been promoting large-scale mining. This has intensified activist opposition and led to many reported attacks and death threats, including:

- June 2010: Alleged death threat against Santiago Escobar, a witness who testified that a Chevron contractor tampered with evidence relating to a trial against Chevron's activities in the Amazon.
- April 2010: Three indigenous Sarayaku men, whose community have been advocating against oil exploration in Pastaza province, were attacked with dynamite and shot.



- May 2009: Joel Vicente Zhunio Samaniego, who protested during a meeting between officials, locals and a mining company, was publicly threatened by officials.
- April 2009: Attacks and threats occurred against Etelvina de Jesús Misacango Chuñir in connection with her opposition to mining in Azuay.

62. In many such cases, official responses were said to be inadequate: threats were not investigated or protection was not adequately provided.

63. Other activists were killed. Iván Muela, a well-known union and labour rights lawyer, was shot four times on 21 January 2010 by two hit men on a motorcycle. The killers were unidentified at the time of my visit, but he had long received threats.

64. On 6 July 2010, during my mission, Germán Antonio Ramírez Herrera was kidnapped and murdered. His killers have yet to be found. He was a forensic doctor, trained in investigating allegations of torture, and had documented injuries suffered by prisoners following a police raid on the Quecedo prison in Los Rios. He had received threats previously, especially in connection with his stated intent to testify about prisoner abuse. I was informed that Dr. Ramírez had wanted to discuss these abuses with me, but he was killed before we were able to meet. I witnessed the fear this killing spread through the medical profession and activist communities in the country. Some of those with information were afraid to openly testify for fear of meeting the same fate.

## VIII. Impunity

65. Impunity for each of the forms of extrajudicial executions analysed in the present report is almost assured. Some officials were openly critical of the judicial system, describing it as "precarious" and having a "very, very low success rate". In fact, Ecuador has one of the lowest rates of accountability for killings in any country I have visited. Officials estimate that just 1 to 3 per cent of reported killings are punished. Given intelligence estimates that the police in Sucumbíos are probably notified of only 1 out of every 3 or 4 killings that take place, the overall conviction rate is probably less than 1 per cent. Corruption, fear of retribution, inefficiency, lack of will and inadequate training and resources at each stage of the criminal justice system ensure that most perpetrators are never punished.

### A. Police investigations and forensics

66. The quality and effectiveness of police investigations were roundly criticized by judges, prosecutors, ombudsmen and human rights actors.

67. The problems are evident from the earliest stages. In practice, police do not even begin to investigate murders unless the victim's family makes a complaint. Many witnesses and family members said they were too afraid of being killed to do so. As a result, numerous cases do not even get through the investigation phase. Sometimes the police inform complainants that they can only undertake investigations if the family of the deceased pay for vehicles and other travel expenses.

68. Interlocutors who regularly review police reports (such as prosecutors, judges and ombudsmen) noted that many police do not have the skills necessary for the complexities of murder cases. Some police acknowledged the need for better training. Judges described police investigations as "primitive" and often counter-productive. One prosecutor with over 40 years of experience described contemporary

police investigative practice as "little different from the 1970s". Prosecutors in Guayas noted that even basic computer and information technology was lacking in many police offices. Ombudsmen in some areas noted that the police often relied on intimidation and force to obtain information.

69. Forensic capacity is lacking. While the central forensics laboratory now has much of the necessary basic capacity (such as ballistics and toxicology) and had plans to acquire DNA analysis equipment by the end of 2010, regional capacity was much weaker. Police officials in Sucumbíos admitted that autopsies were not done well because of poor facilities. Prosecutors and judges around the country complained of the poor quality of forensic reporting, and that it hindered prosecutions. Some forensic reports are falsified and crime scene analysis is often very weak. Smaller towns may only have one forensic doctor, making timely and comprehensive examinations difficult. In some areas, such as Sucumbíos, forensic doctors charged victims' families for forensic services. The costs (for example, \$40 for a forensic exam, \$180 for blood work) are prohibitive for many families. While some officials denied that families ever had to pay for forensic services, I received ample evidence that they are being charged by certain offices.

70. Forensic laboratories are not structurally independent of the judicial police, leading to the perception that the laboratories may not always function with the necessary independence. This matters most in cases where police have been implicated in abuse or where police may have been threatened or bribed by perpetrators. Officials working in this area, including forensics specialists and police, stated that an independent forensics agency would be an important reform to address perceptions of bias.

## **B. Prosecution service**

71. While there are many dedicated individual prosecutors in Ecuador, interlocutors described their "complete mistrust" in the prosecution service as a whole, its "inefficiency", its widespread corruption, and hiring based on connections rather than merit. I was told that cases "can disappear for \$200". Ombudsmen told me that they repeatedly sent letters to prosecutors asking about the progress of cases, but rarely received replies.

72. Judges stated that homicide investigations were often deeply flawed and case presentations so unconvincing that it was impossible to convict. One judge described the work of prosecutors as "absolutely dreadful". Another stated that, in order to convict defendants, he had no option but to relax the way he applied standards of evidence and proof; otherwise, abysmal conviction rates would be even lower.

73. The situation in Sucumbíos was especially troubling. The prosecutor was roundly criticized for failing to carry out his duties. Interlocutors stated that it was difficult to convince him even to register complaints in some circumstances, such as when the alleged perpetrators were members of the military. In some cases, sustained advocacy by international and local non-governmental organizations was required in order to achieve registration, and ensuring effective investigations in sensitive cases was a herculean task.

74. Prosecutors often neglect cases that are not relentlessly pushed by the deceased's family. One family was advised by a police official not to pursue a murder case because the evidence might well be leaked and it would be easy to pay off the police, prosecutors or judges. Thus, prosecution would involve great personal risk, with little likelihood of success.

75. In Guayas, poor cooperation between police and prosecutors has been a major problem. A specialized police-prosecutor unit was recently created to focus on organized crime and to increase cooperation and effectiveness in such cases. It is yet too early to assess this much-needed reform.

### **C. Courts and the judiciary**

76. The judiciary too was often criticized for its susceptibility to bribery and other illegitimate influence, particularly in cases involving organized crime and officials. The courts were also strongly criticized for their slowness. One case filed in 2001 was not heard until 2010. Some delays are due to the lack of judges in many areas, which leads to unmanageable case loads. It is also due to the lack of accountability in relation to case management. Prosecutors stated that delays tended to be most acute in the National Court of Justice. The Government and the Chief Justice are to be commended for recent reforms seeking greater efficiency.

77. Many judges receive threats and some acknowledged the risks involved in judging sensitive cases. Judges, especially in remote areas, are vulnerable to intimidation by wealthy or violent defendants, and more systematic efforts are needed to protect them.

### **D. Witness protection**

78. Witness insecurity is extraordinarily high. Given the growth and power of organized crime and the use of hired killers, an effective witness protection programme is an absolute necessity in the fight against impunity. At the time of my mission, 3,625 individuals were under some form of protection. The programme can provide full protection to witnesses, as well as medical, social and psychological assistance. It has a presence in each of the 24 provinces, and offers a range of levels of protection.

79. Many witnesses, however, never enter the programme. Most of the witnesses I spoke with either did not know about or trust it. Many tried to avoid being noticed or identified at all costs, and thus did not make complaints to the police or prosecutors or speak to non-governmental organizations or the media. In essence, they felt they had to choose between personal security and justice.

80. To receive protection, victims or witnesses must present a complaint to the prosecutor. Witnesses often saw prosecutors as part of the problem, however. They were seen as susceptible to corruption, too connected to perpetrators or just ineffective.

81. Witnesses were also reluctant to trust the programme because its security is provided by Government police, and witnesses assumed collaboration between witness protection police and the rest of the service. In fact, the former are separate and specialized, but the perception of close links persists and needs to be addressed more forcefully.

82. To their credit, programme officials acknowledged that more could be done to raise public awareness about the programme. The programme planned to launch a 1-800 number, together with an outreach campaign. Although the Government significantly increased the programme's funding in 2011 from \$90,000 to \$1 million (of the \$5 million requested by the programme), further increases are needed.

## **E. Ombudsmen**

83. Ombudsmen are widely considered to be independent and reliable, and provide a trustworthy forum to which victims can make complaints. As a result, many complaints are received, making it also an important source of information about the functioning of the overall justice system.

84. Nevertheless, the ombudsman's office lacks power to require official action or to enforce decisions. It lacks teeth, even to compel the provision of information by the authorities.

## **F. Truth Commission**

85. The Truth Commission has been an important Government initiative to address endemic impunity. It began work in January 2008, and published its final report of some 2,400 pages on 7 June 2010. It investigated alleged crimes from 1984 to 2008, took over 600 witness statements and reviewed over 300,000 pages of declassified police and military documents. Its final report names over 450 alleged perpetrators against whom the Commission considered there were sufficient grounds to presume responsibility for wrongdoing. The bulk of the report addresses abuses committed from 1984 to 1988, during the Government of President León Febres Cordero. The Commission found that the Cordero Government responded to subversive groups through a range of unlawful means, including forced disappearances, torture, sexual violence and killings.

86. The report records 68 victims of extrajudicial executions. Many of the victims were members or presumed members of the clandestine leftist groups "¡Alfaro Vive, Carajo!" and M-19. Others were suspected criminals or innocent bystanders, as in the well-known 2003 Fybeca case, in which eight people were killed by police responding to a robbery. Some of the victims were killed during street marches.

87. Some with whom I met – particularly police and opposition political figures – did not believe the Commission was sufficiently independent to ensure the credibility of its findings. They felt that some Commission members were too close to alleged victims, that the composition of the Commission's support committee (because it included victims' families) undermined its independence, and that the Commission was unduly influenced by Government pressure. A number of police and military officials told me that the report only provided one side of the relevant history, especially as it pertained to attempts in the 1980s to counter clandestine groups. Some officials stated that the Commission was under pressure to focus on abuses committed from 1984 to 1988 (as opposed to abuses committed under the current Government). Others who strongly supported the Commission's findings on the Cordero period were nevertheless concerned that the Commission downplayed recent abuses, especially in Sucumbíos.

88. In contrast, many others considered that the Commission served a very important purpose by acknowledging the suffering of victims and families and by beginning the process of accountability. They felt that the composition of the support committee and the Commission's structure allowed the silence to be broken on Government abuses, and gave victims an important level of ownership over justice initiatives affecting them. Some expressed the view that those who criticized the Commission were "perpetrator groups" who would never be happy with any attempt to redress past wrongs.

89. Those who have criticized the Commission raise important concerns, and highlight the need for inquiries to be – and to be seen to be – independent and objective. I also have due process and security concerns about the manner in which alleged perpetrators were named in the final report. However, the detailed and extensive information recorded constitutes an enormous accomplishment, especially because of the large amount of official material declassified and the hundreds of witness and victim statements taken.

90. The challenge now is ensuring that this information is securely archived and followed up with criminal prosecutions in appropriate cases. In this respect, the Government's response to the Commission has so far been very positive. The Ministry of Justice told me it was planning to re-open cases mentioned in the report. The office of the prosecutor has recently set up a special department of 20 prosecutors to carry out Commission-related investigations, and was planning to set up regional justice centres. The Government will need to ensure that families are assisted during this process, that victim outreach occurs and protection provided when needed.

## **IX. Recommendations**

### **A. National police**

91. **The Government should establish a high-level expert commission to evaluate the performance of the police force. The commission should:**

a) **Study the effectiveness of police investigations, the causes of inadequacies and the role of the police force in sustaining high impunity rates;**

b) **Propose structural and operational reforms to enhance the police force's capacity to respond effectively to rising rates of serious crime, including extrajudicial executions;**

c) **Study whether there is a need for an independent forensics unit;**

d) **Study ways to ensure stronger civilian oversight of the police, including the possibility of creating a separate police ministry.**

92. **The Government should create a new entity to receive and investigate allegations of police abuse. This entity should have sufficient resources, power and independence to investigate allegations of police abuse in a credible, objective and effective manner.**

93. **Police recordkeeping, particularly in relation to allegations of police abuse, should be substantially improved. The Inspector-General should ensure that full records are kept of all complaints made, and that investigations, disciplinary actions, prosecutions and results are tracked. Statistics should be publicly reported on a regular basis.**

94. **The practice of charging civilians for needed forensic services should cease immediately.**

## **B. Hired killers**

95. The Government should build on its recent initiatives to address the problem of hired killings by adopting a national strategy to combat this growing phenomenon. Efforts should be made to:

- a) Study the causes of the growth of hired killings, with an analysis of how and why they occur;
- b) Expand "geo-referencing" of killings, and tailor policing accordingly;
- c) Promote greater cooperation between police and prosecutors;
- d) Promote investigation and prosecution strategies that target not only the hired killer but also the intellectual author, middleman and others involved;
- e) Address the problem of loan sharks and their role in hired killings, and to consider reforms to the formal loan sector to enable more citizens to take out legal loans;
- f) Require police to investigate all cases of hired killings thoroughly, regardless of whether families formally complain or the deceased had a police record;
- g) End the use of the vague "settlement of accounts" classification by police and prosecutors.

## **C. Witness protection**

96. The witness protection programme should be improved through increased funding and capacity, and far greater community outreach.

97. The programme should be administered independently of the police and prosecution services.

98. Consideration should be given to establishing a specialized programme or guidelines for the protection of human rights defenders.

## **D. Northern border abuses**

99. To address allegations of abuses by the armed forces operating along the northern border of Ecuador, soldiers should be given more extensive training, including:

- a) Training in how to work constructively with the civilian population and civil society;
- b) How to apply and distinguish between human rights and international humanitarian law standards;
- c) How to deal humanely with displaced persons and refugees;
- d) Improved training in countering illegal armed groups and trafficking.

100. Commanders should make clear that any abuse of civilians will not be tolerated. Civilians should be informed of how and to whom they can make complaints concerning the behaviour of the armed forces, and the confidentiality of complaints should be ensured.

101. More effort should be made to prosecute members of illegal armed groups, especially those that abuse civilians.

102. Independent investigations should be undertaken of allegations of military or police collusion with illegal armed groups in the north, especially in border towns experiencing very high levels of trafficking and illegal armed actor violence.

103. An independent evaluation of the performance of local prosecutors should be undertaken. In sensitive cases, such as those involving allegations against Government officials, consideration should be given, to attributing authority to prosecute to national-level prosecutors.

## **E. Truth Commission**

104. The Government and the National Assembly should follow up on the work of the Truth Commission, including by:

- a) Ensuring that relevant cases are re-opened and that criminal investigations are undertaken;
- b) Ensuring that victims and families can easily obtain information on the progress of investigations and are provided legal assistance where needed;
- c) Providing appropriate compensation to victims and families;
- d) Creating an archive of the Commission's documentation;
- e) Ensuring that witnesses have access to witness protection.

105. The Truth Commission should publish and widely disseminate a short version of its report, designed for a popular audience and translated into appropriate languages.

## **F. Lynching and indigenous justice**

106. Despite official and popular representations to the contrary, there are essentially no cases of indigenous justice in Ecuador that fall within my mandate (in other words, there are few, if any, cases of death following an indigenous justice process). The media and officials should be careful to clearly distinguish between lynching and indigenous justice.

107. Indigenous justice is recognized in the Constitution and is an important part of the country's legal system. Reforms should only be undertaken in consultation with indigenous groups.

108. A strategy to address the problem of lynchings should be developed by the Government in consultation with experts, civil society and indigenous and rural organizations. This should include reporting on the location and nature of lynching incidents, examination of their causes and prosecutions of perpetrators.

## **G. Rural juntas**

109. The Government should appoint an expert to report to it and the National Assembly on the current composition and operations of the rural juntas. Particular attention should be given to documenting any unlawful activities, such as "punishing" residents or interfering with the criminal justice system. Appropriate action should be taken to eliminate such practices.

110. The national police and prosecution services should establish a joint specialist team to investigate allegations of junta abuses, and prosecute in appropriate cases.

## **H. International community**

111. The international community should continue to monitor human rights issues in Ecuador, to provide appropriate advice and assistance and to cooperate with local groups.



## Appendix I

### Programme of the visit

I visited Ecuador from 5 to 15 July 2010. I travelled to Quito (Pichincha), Lago Agrio (Sucumbíos) and Guayaquil (Guayas).

I met with officials at all levels. This included the Minister and Vice Minister for Foreign Affairs, the Minister of Justice, the Minister for the Coordination of Internal and External Security, the Minister of Government, Police and Culture and the Vice Minister of Defence. I met with the mayors of Guayaquil and Lago Agrio and the Governor of Guayas. I met with the Attorney-General, members of the Prosecutor's Office, members of the Constitutional Court, the National Court of Justice and provincial criminal judges, the President and members of the National Assembly, the Chief of police and members of the police force throughout the country, the Police Inspector-General, the Chief of the Joint Command of the military and commanders in Sucumbíos, the Ombudsman and his regional representatives, and with members of the Truth Commission.

I also met with many non-governmental and humanitarian organizations, as well as the members of the United Nations country team, members of the diplomatic community, religious leaders, police association representatives, scholars and other independent experts. I also met with a large number of witnesses and victims, many of whom travelled long distances to meet me, and at risk to their personal security.

I am very grateful to the United Nations Human Rights Adviser in Quito and his superb staff for their assistance and advice in the preparation of my mission.

## Appendix II

### Comments on the advance unedited version of the report made by the Government of Ecuador

#### A. Aumento de la violencia de los grupos armados ilegales

9. *De hecho, en toda la región norte fue difícil hacerse una idea clara de la eficacia de la respuesta de la policía y el ejército ecuatorianos a los grupos armados ilegales. Las estadísticas facilitadas por oficiales militares no son fáciles de conciliar entre sí. Por un lado, entre 2007 y 2009 el número de efectivos en la región se cuadruplicó. El número de operaciones militares se incrementó sustancialmente, pasando de apenas 22 en 2007 a 250 en 2009. La información proporcionada por el ejército también indica un rápido aumento de las "instalaciones clandestinas" de grupos armados descubiertas: 18 en 2005, 53 en 2007 y 183 en 2009.*

El Comando Conjunto de las Fuerzas Armadas ha informado que las operaciones en el año 2009 fueron de 248. Las instalaciones clandestinas desarticuladas por las Fuerzas Armadas en el año 2005 fueron 12; 2007 fueron 47; 2009 fueron 156, por lo que es necesario que los datos sean rectificadas.

#### B. Violaciones cometidas por las fuerzas armadas

13. *Las violaciones más comunes de las normas de derechos humanos cometidas presuntamente por las fuerzas armadas caen fuera del alcance de mi mandato. Comprenden el allanamiento de morada, robos y actos de humillación pública (como el hecho de forzar a las personas a desnudarse en público). Estos abusos parecen ser comunes y quedan impunes. Fui informado también de varios casos graves de tortura y violencia sexual, incluidos casos de violaciones y de aplicación de ají en el cuerpo de las víctimas.*

El Ministerio de Defensa Nacional tiene conocimiento de algunas denuncias presentadas contra miembros de Fuerzas Armadas en frontera norte, sobre las cuales se solicitó al Comando Conjunto de las Fuerzas Armadas, se remita la información sobre el estado de la causa dentro del proceso judicial, considerando que es potestad de esta Secretaría de Estado dar el respectivo seguimiento a cada denuncia:

- Denuncia presentada por la señora Lourdes Catalina Pin Días.- Habitante del sector El Palmar, de la Parroquia Santa Elena, el 30 de julio de 2008, a las 11H00 comparece ante el señor Comisario Nacional de Policía del Cantón Putumayo y denuncia un supuesto allanamiento por parte de personal militar, mismo que supuestamente ingresó a su domicilio, sin ninguna autorización, interrogando a sus habitantes. La recurrente no ha efectuado hasta el momento el reconocimiento de su denuncia ante la autoridad competente.
- Denuncia presentada por el señor Jorge Antonio Becerra Carvajal Carnet de Refugio. 97.425.17, en la Fiscalía No. 4 de la Provincia de Sucumbíos, consta la Indagación Previa No. 512-08 a cargo del señor Dr. Olver Jaramillo, iniciada por presunto abuso de autoridad por parte de una patrulla militar ecuatoriana, la misma que el día 4 de septiembre de 2008, a la altura del estero denominado el Danto, supuestamente procedió a decomisar una moto sierra marca Huqsuarno No. 228 XP, serie 965820500 de color tomate, una cartuchera y un

machete, el día 15 de Diciembre de 2008. El fiscal encargado del proceso dispuso la práctica de las siguientes diligencias: 1) recibir versiones del denunciante y de posibles testigos; 2) el reconocimiento del lugar de los hechos; y 3) que se realicen exhaustivas investigaciones. Sin embargo, conforme consta de fojas 11 a la 15 la Policía Judicial ha puesto en conocimiento del Fiscal, la imposibilidad de efectuar dichas diligencias por falta de colaboración del denunciante.

- Denuncia presentada por el señor Nilson Aragón Sinisterra C.C 76.278.012.- con fecha 4 de noviembre de 2008, presenta la denuncia por abuso de autoridad en contra de personal militar por cuanto al efectuar el aterrizaje un helicóptero militar ocasionó la muerte de alrededor de 300 pollos, causándole un perjuicio económico de aproximadamente de USD \$2.050. Esta denuncia fue puesta a conocimiento del señor Fiscal No. 5 Felipe Villota. Sin embargo, el denunciante jamás compareció.
- Denuncia presentada por Ariel Silva Rodríguez C.C. 1.123.207.143, en la Fiscalía No. 3 de Sucumbíos, a cargo del Dr. Beltrán, consta la denuncia presentada el 4 de noviembre del 2008, por supuestos abusos de autoridad y detención ilegal en contra de los miembros de la armada ecuatoriana, mismos que le detuvieron conjuntamente con una poma de diesel de aproximadamente 20 galones, para luego supuestamente golpearlo y entregarlo a la Policía de Nueva Loja. En el presente caso el denunciante no compareció a realizar el reconocimiento de la denuncia, razón por la cual no se ha dado trámite alguno.
- Denuncia presentada por la señora Paula Henaos contra Cabo Franklin Grefa por presunta violación a su hija menor de edad. Se informó mediante Ofc. DDH-2009-0031-OF al ACNUR que el imputado no se encontraba en actos del servicio, y que éste presentó una denuncia a la recurrente por acusaciones falsas y amenaza con arma de fuego, la recurrente salió del país el 10 de junio de 2010 a Canadá en cumplimiento a los programas de reasentamiento para refugiados de ACNUR.
- Denuncia por maltrato físico, psicológico e intento de asesinato, presentada por Brenda Goyes Cortez en contra de la Policía Nacional y el Ejército Nacional. La acción fue presentada ante la Junta Cantonal de Protección de Derechos de la Niñez y Adolescencia "Lago Agrio", la cual se encuentra signada con el expediente 041-2009 de 17 de agosto de 2009. El día 15 de agosto de 2009, personal militar se encontraba en el sector Fuerzas Unidas del Recinto Puerto Nuevo, parroquia Pacayacu, cantón Lago Agrio, realizando operaciones conjuntas con personal policial y el señor Ab. Felipe Villota, Fiscal Distrital de Sucumbíos. El personal que asistió al operativo, realizó varios allanamientos, amparados en la orden judicial emitida por el Juzgado Tercero de Garantías Penales de Sucumbíos. Conforme a lo estipulado en el Art. 194 numeral 3 del Código de Procedimiento Penal, procedieron a revisar viviendas y a entrevistar a varias personas entre ellas, los señores Segundo Isidro, Claudia María Palma Cedeño y Brenda Jakeline Goyes Cortéz. En estas operaciones el señor Fiscal verificó que no existió abuso, maltrato o tortura a ningún ciudadano del sector; en una de las viviendas que no estaba habitada como resultado del operativo se encontró municiones, pólvora, tñner y una alimentadora que se puso a órdenes del señor Fiscal por intermedio de la Policía, material que fue destruido por seguridad, consta en actas que reposan en la Fiscalía Distrital de Sucumbíos de acuerdo a lo dispuesto en el artículo 201 del mismo cuerpo legal.
- Se recepta la acusación de la intervención abusiva de tropas militares ecuatorianas en la propiedad privada de una de las organizaciones de la Federación

de Mujeres de Sucumbíos, en la zona el Progreso. A respecto, el personal militar del BS-55 "PUTUMAYO", realizando actividades de patrullaje en el sector el Palmar hasta COEMBI, el 02 de enero del 2010, realiza el reconocimiento de una vivienda nueva deshabitada a la que llega una representante de la Federación de mujeres de Sucumbíos "UNIDAS POR LA PAZ", quien indica que es la encargada de la vivienda, sin exhibir documento que acredite su aseveración, motivo por el cual se le sugiere que realice los trámites de legalización del predio.

- En el caso de la presunta violación a la señorita. Perea Saavedra Aura, por personal militar perteneciente a la BS-56 "TUNGURAHUA", se abrió la Indagación Previa N°. 116-2010, dirigida por el Dr. José Beltrán, Agente Fiscal que realiza el procedimiento respectivo, de acuerdo a lo dispuesto en el Art. 160 de nuestra Constitución que dispone que los miembros de las Fuerzas Armadas serán juzgados por los órganos de la Función Judicial, en razón de que la presunta infracción penal habría tenido lugar cuando el personal militar realizaba actividades particulares, en horarios distintos a los laborales.

Es necesario observar que la Constitución de la República del Ecuador determina en el Capítulo Tercero de la Función Ejecutiva, Sección Tercera, Fuerzas Armadas y Policía Nacional Art. 160 [...] "los miembros de las Fuerzas Armadas y de la Policía Nacional serán juzgados por los órganos de la Función Judicial; en el caso de delitos cometidos dentro de su misión específica serán juzgados por salas especializadas en materia militar y policial". Bajo esta consideración, las Fuerzas Armadas Ecuatorianas no poseen tribunales u órganos de justicia propios que juzguen los posibles actos ilegales, evitando de esta manera cualquier tipo de injerencia en la justicia. Es derecho de todas y todos los ecuatorianos de acuerdo a la norma constitucional, el acceso a la justicia y su efectivo ejercicio, a través de una participación constante en el proceso, para evitar de esta manera la impunidad y consecuentemente determinar autores cómplices y encubridores respecto del cometimiento de un delito.

Se debe considerar que el procedimiento de investigación, sobre cualquier denuncia, es competencia privativa de la Fiscalía, Capítulo cuarto Función Judicial y justicia indígena, sección séptima, Fiscalía General del Estado artículo 192 "La Fiscalía dirigirá la investigación preprocesal y procesal penal; durante el proceso ejercerá la acción pública con sujeción a los principios de oportunidad y mínima intervención penal, con especial atención al interés público y a los derechos de las víctimas".

*14. También recibí información sobre varios homicidios cometidos por el ejército. Un caso emblemático ilustra los problemas que existen. Se trató de la muerte de un ecuatoriano y dos colombianos, ocurrida el 18 de enero de 2010. El incidente comenzó cuando el ejército se encontró con tres hombres que viajaban en una piragua. Los militares sostuvieron inicialmente que los hombres vestían el uniforme de las FARC, pero más tarde la historia cambió y se dijo que llevaban ropa oscura o de camuflaje. El ejército sostiene que cuando les ordenaron detenerse, abrieron fuego en su contra. Los soldados respondieron disparando a su vez. Los oficiales declararon que después de eso la piragua se había alejado. Posteriormente se supo que dos de los hombres habían muerto en el acto, y el tercero había sucumbido a las heridas mientras era transportado río abajo por algunos civiles, que intentaban ayudarlo.*

Las Fuerzas Armadas ecuatorianas actualmente, no han recibido sentencias emitidas por juez competente que determinen la responsabilidad penal de miembros de Fuerzas Armadas, respecto de delitos de homicidio, considerado en el informe como un hecho verificado.

15. *Varios elementos de este caso hacen que la versión del ejército resulte sospechosa. En parte, cuesta comprender por qué tres guerrilleros se habrían encontrado en un bote, a plena luz del día, en un río que se sabía que estaba patrullado (interlocutores informados observaron que eso habría sido excepcionalmente raro); por qué los militares no persiguieron la piragua; cómo pudo una sencilla embarcación fluvial alejarse así de una patrulla militar, o por qué los militares no recuperaron los cuerpos. El testimonio de los testigos civiles, si es exacto, explica muchas de estas anomalías. Los testigos indicaron que los hombres eran civiles, no uniformados, que no estaban realizando ninguna actividad sospechosa y que no abrieron fuego contra los militares. Cuando realicé mi visita, estaba en curso la investigación del incidente. Sin embargo, los testigos y los familiares de los muertos estaba siendo objeto de presiones para que no testimoniaran. Una testigo me dijo que había recibido una llamada en que se le había advertido de que si llevaba adelante la causa acabaría muerta. Al parecer, algunos de los responsables de la investigación también han recibido amenazas. Esas amenazas parecen ser comunes cuando hay oficiales involucrados: en otros casos similares de graves violaciones presuntas de los que fui informado, testigos, familiares y organizaciones no gubernamentales (ONG) habían recibido ofertas de dinero y amenazas para que abandonaran las causas.*

El caso detallado en los numerales 14 y 15 del informe, suscitado el 18 de enero de 2010, ha llegado a conocimiento del señor Fiscal de Sucumbíos, con el expediente N°. 037-2010, en el cual se encuentran sindicados oficiales y un señor General, lo que evidencia que Fuerzas Armadas no ejerce presiones o intimidaciones para evitar que se inicien acciones legales.

Respecto del mencionado caso suscitado el 18 de enero de 2010, esta Secretaría de Estado no puede determinar aspectos de hecho o de derecho sobre un proceso de investigación instaurado ante la instancia competente. Sin embargo, si resultado de este proceso se determinan responsabilidades por acción u omisión y se emite una resolución judicial, ésta será cumplida a cabalidad por las Fuerzas Armadas.

Además, se debe observar que la descripción de los hechos en el informe no incluye la versión entregada a la fiscalía por parte de Fuerzas Armadas, actualmente no existe sentencia ejecutoriada, contra el personal militar sindicado.

Es necesario establecer que el compromiso de Fuerzas Armadas con la sociedad civil, es estructural, y en este contexto se han tomado medidas de prevención como los procedimientos a seguir en caso de una presunta violación a los derechos humanos, emitidos por el Comandante General de la Fuerza Terrestre en el año 2011.

16. *Los informes de violaciones cometidas por las fuerzas de seguridad en Sucumbíos han aumentado considerablemente desde mediados de 2009. Algunos interlocutores sugirieron varias razones que podrían explicar este aumento. Por una parte, se dijo que podía deberse a la rápida militarización de la región y al mayor número de soldados que patrullaban la zona, lo que, de por sí, aumentaba las oportunidades de cometer abusos. Algunos expertos también señalaron que las fuerzas militares no siempre estaban bien preparadas y no tenían gran experiencia en el combate, la contrainsurgencia u otras tareas sobre el terreno. No sabían cuál era el mejor modo de proteger o incluso de tratar a los civiles en ese complejo entorno en que había múltiples agentes armados. Eso explicaba en parte los casos en que, por ejemplo, víctimas que habían sido forzadas por las FARC a proporcionar alimentos a los guerrilleros habían sido luego interrogadas por el ejército, acusadas de ser seguidoras de las FARC, y hostigadas o golpeadas.*

En la normativa de las Fuerzas Armadas ecuatorianas se encuentran reglas de conducta apegadas a los derechos humanos, mismas que son transversalizadas en las

disposiciones operativas, cualquier hecho de agresión a la ciudadanía es sancionado administrativamente, de ser el caso será puesto a conocimiento de las autoridades competentes.

17. *Un elemento importante es que algunos interlocutores afirmaron que una de las causas del aumento de las violaciones notificadas había sido un cambio ocurrido en los más altos mandos del ejército en la región. Antes, las relaciones del ejército con las comunidades eran en su mayor parte positivas y los oficiales se preocupaban de inspirar confianza. Ahora, sin embargo, los militares dedicaban, al parecer, mucho menos tiempo a compartir con miembros de la comunidad y se habían vuelto más antagonistas y agresivos. La confianza de la comunidad había disminuido, lo que había privado al ejército de la información que antes obtenía de los civiles y reducido así su capacidad de disponer de importante información de inteligencia. A fin de compensar esta pérdida, los militares empleaban tácticas abusivas para obligar a los civiles a proporcionar información.*

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18. *Las relaciones del ejército con la sociedad civil y los agentes humanitarios también se han deteriorado con el cambio en los altos mandos. El apoyo a la sociedad civil ha mermado y hay casos de obstrucción en los puestos de control del ejército, acoso de activistas y redadas de los locales de ONG. La cooperación se ha deteriorado aún más tras los intentos de la sociedad civil de obtener justicia para las víctimas de los abusos del ejército dando publicidad a los incidentes y abogando por el enjuiciamiento de los soldados.*

Como se señala en el informe, efectivamente se ha incrementado personal militar en frontera norte. De conformidad con el artículo 158 de la Constitución de la República "las Fuerzas Armadas tienen como misión fundamental la defensa de la soberanía y la integridad territorial", de ello se desprende que Fuerzas Armadas deben desplegar operaciones para garantizar condiciones de seguridad que permitan a las personas que habitan en la frontera norte el ejercicio de sus derechos. Por consiguiente, el incremento del personal militar, es un esfuerzo del Estado por precautelar el derecho a la seguridad de los ciudadanos y ciudadanas de la frontera norte; y, la incomodidad de la población por el aumento del personal militar, es una reacción lógica a las actividades de mayor control, pero no se puede catalogar como un hecho concreto que ha desencadenado presuntas violaciones masivas a los derechos humanos.

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