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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Additional information supplied by the State party*

Addendum

ECUADOR

* At its sixty-third session the Human Rights Committee considered the fourth periodic report of Ecuador (CCPR/C/84/Add.6) (see CCPR/C/79/SR.1673 and SR.1674) and received the additional information appended.

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## Introduction

1. Since February 1997 Ecuador has been making major changes in its domestic legal system and in its political structure; these changes have had an impact on the functioning of the machinery of State. In view of the sequence of events which began on 5 and 6 February 1997 with the departure of the earlier regime, Ecuador requested the Human Rights Committee to consider its fourth periodic report on the International Covenant on Civil and Political Rights at a later date than that initially set, to enable a compilation to be made of the changes in this field which have taken place since that date to be made in an additional document. In the light of the foregoing, Ecuador has pleasure in submitting that additional information to the Committee in this report.

## I. ECUADOR'S NATIONAL PLAN FOR HUMAN RIGHTS

2. Ecuador's National Plan for Human Rights derives from the commitments accepted by States during the World Conference on Human Rights held in Vienna in 1993, the impact of which has been further strengthened by the celebration in 1998 of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights. The preamble to the plan contains the following passage: “Ecuador, faithful to its cultural identity as a peaceful people living in solidarity with humankind and in its capacity as a State respecting international relations and agreements, has accepted responsibility for promoting, by every means, the awareness, preservation, promotion, protection and development of and respect for human rights.”

3. In November 1997 the Ministry of External Affairs submitted a first draft of a National Plan for Human Rights in Ecuador to State bodies, civil society and the international organizations accredited to the country. The plan called for some comments, mainly on the subject of the legal machinery which would give it force of law.

4. In response to the opinions expressed the Chancellery prepared a draft of an executive decree reflecting the principal objectives of the National Plan and the comments made on the original document by the bodies involved in the Plan. The draft decree was presented to public opinion on 10 December 1997 by the Minister of External Affairs, Ambassador José Ayala Lasso, at a special ceremony which marked the beginning of the commemoration by Ecuador of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights.

5. The Ministry of External Affairs also asked all the institutions concerned for their views on the draft executive decree and on the working methods which might be adopted to secure approval of the National Plan. The majority of the participants in the process decided to hold a National Seminar for the Drafting and Approval of the National Plan for Human Rights in Ecuador. The seminar took place on 26, 27 and 28 March 1998; it was attended by over 120 delegates from government institutions, civil society and international organizations. It was the first meeting at national level between the Government and civil society to discuss the subject of human

rights in Ecuador. The seminar was convened as a result of earlier periodic meetings between the Ministry of External Affairs and representatives of governmental and non-governmental organizations, the city of Quito and other regions in the country; at those meetings the initial consensus of views needed to ensure the unanimous adoption of the decisions taken during the seminar was reached.

6. At the same time civil society submitted its own proposal to the Government in the form of a special document which was analysed during the meeting.

7. The decisions taken at the National Seminar covered the following subjects:

(a) The improvement of the initial draft of the executive decree, which became a new document*; it was approved in May 1998 by the constitutional interim President of the Republic. The new version formulates concrete objectives which take into account strategies for action described later in this document. It also requires the Government, jointly with civil society, and within 60 days following the publication of the decree in the Registro Oficial (R.O.), to draw up a plan of operations following the guidelines in the National Plan referred to below;

(b) The preparation of the National Plan for Human Rights for Ecuador (appended to the draft executive decree, annex 2) based on the initial proposal made by civil society and on the views expressed during the seminar by all the sectors represented therein; this document has also been approved by the President of the Republic. The plan lays down the principal objectives - bearing in mind the strategies for action defined in the executive decree - in the field of human rights, namely the development of legislation in both national and international contexts, civil and political rights, economic and social rights and collective rights. For each group or sector liable to require protection (indigenous and Negro peoples, girls, juveniles, the elderly, women, persons under the age of sexual consent, aliens, prisoners, the handicapped, the environment and communications) specific objectives are laid down. It is also specified that the Plan of Operations is to form an integral part of the National Plan;

(c) The submission of a request to the National Constituent Assembly approved by popular vote in November 1997 for the introduction of a constitutional amendment providing that in the field of human rights Ecuador shall be governed by a State policy to be formulated through a National Plan which the Executive is required to publish and which will be designed to coordinate action by the State with that undertaken by civil society.

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* The annexes referred to in this report may be consulted in the Secretariat archives.

## II. CASES SUBMITTED TO THE HUMAN RIGHTS COMMITTEE

8. Reference is made to communications Nos. 480/1991 and 481/1991 submitted respectively by José Luis García Fuenzalida and Jorge Villacrés Ortega against the Government of Ecuador. In order to comply with the decisions taken by the Committee on 15 August 1996 and 24 April 1997, the institutions of State with competence in the matter in question were informed of the resolutions adopted by the Committee and were requested to comment on them.

9. In this connection Ecuador observes that, in accordance with the relevant principle of international law, any violation of, or failure to comply with, an international obligation which has given rise to prejudice must be adequately compensated. It accepts the views of the Committee as expressed in the decisions on those two cases, namely that the facts submitted by the two petitioners offer evidence of violations of human rights committed by Ecuador under the articles mentioned in each decision, and undertakes to extend genuine compensation to both petitioners. To give effect to the obligation referred to above, the legal system in Ecuador contains specific provisions allowing the award of compensation to individuals in respect of prejudice caused by State officials or employees. Article 23 of the Constitution currently in force states that:

> "The State and other public-sector bodies shall be required to compensate individuals for prejudice suffered by them as a consequence of public services or of acts committed by officials or employees of those services in the course of the performance of their duties".

10. As stated above, in the cases which have been submitted to the Committee for consideration and decision, the Government of Ecuador expresses to the Committee its complete willingness to comply with any decisions taken.

## III. ADDITIONAL INFORMATION RELATING TO EACH OF THE ARTICLES OF THE COVENANT

### A. Article 1

11. The Committee has recommended that States parties describe the constitutional and political processes which permit in practice the exercise of the right of self-determination. Consequently the interim President of the Republic exercising the powers conferred on him by article 58, paragraph (b), of the Constitution, called for a popular vote in which all Ecuadorian citizens could take part. They were invited to express their views on the following fundamental aspects of national life:

(a) The ratification of the people's mandate to remove President Abdalá Bucará from office, conferred on Congress in February 1997. By a majority (75.76 per cent) the people of Ecuador confirmed that mandate;

(b) Ratification of the appointment by Congress of Dr. Fabián Alarcón as interim President. The people also approved that appointment (68.37 per cent in favour);

(c) The convening of a National Assembly for the purpose of reforming the Constitution of the Republic (the members of the Assembly were elected by popular vote in November 1997 and completed their work in May 1998. The reforms, which are described later in this document, will come into force in August 1998);

(d) The setting of ceilings on election expenditure and the establishment of machinery to verify the origins of resources provided for political campaigns. By a majority the citizens accepted this measure as a means of combating corruption;

(e) The method of electing members of Parliament and of local councils; the choice lay between complete lists of political parties or names in individual lists or between party lists. The citizens decided in favour of a method of electing the persons concerned from among individuals in a single list or from a number of political party lists. This method of election was in fact used in the most recent elections to offices of these types, held on 31 May 1998;

(f) The appointment of the members of supervisory bodies; this task should be performed by Congress alone without any need for presentation of short lists by the Executive. This proposal was accepted and is to come into force under the new Congress, the members of which were elected on 31 May 1998 and which will begin its work on 10 August of the same year. This measure was accepted as a proposal designed to combat corruption in those bodies by ensuring that under this form of appointment their members will be completely independent of the Executive;

(g) The appointment of the members of the Supreme Court of Justice; this should be the responsibility of the judiciary itself. Appointments should not be made for fixed terms; and the criteria of professional excellence and service in the judiciary should be observed. This form of appointment was also approved (the subject will be returned to later);

(h) The National Council of the Judiciary, established under the current Constitution, should be confined to exclusively administrative functions, and its members should be appointed by the Supreme Court of Justice. This proposal was accepted by a majority of the people;

(i) The Constitution should lay down the principle of removal from office of persons who, having been elected by popular vote, fail to comply with the criteria of legality, morality and efficiency relevant to the performance of their duties. This possibility was also approved by the citizens.

12. The decision to organize a popular vote on matters of fundamental and nationwide importance - not merely to elect representatives every so often but also, and principally, to deal with matters relating to the administration of justice and the electoral system - is proof that the State has given force to the right of the people of Ecuador to self-determination, particularly if in a popular vote the people expresses the desire to see a regime relinquish power and to accept the appointment of a new one.

## B. Article 2

13. As regards the obligation of the State to respect, and to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the Covenant, mention should be made, in addition to the material on this article contained in Ecuador's fourth report, of other legal and administrative safeguards which have been given practical effect.

### 1. Paragraphs 1 and 2

#### (a) Dissemination of knowledge of the rights guaranteed under the Covenant

14. If the individuals subject to Ecuador's jurisdiction are to be able to enjoy their rights, it is important that all of them should know what those rights are. The Government has therefore been conducting training activities relating to the content of the international covenants on human rights within State authorities such as the police, the armed forces and other institutions, in agreement with international intergovernmental and non-governmental organizations. The most recent training seminar, on the preparation of reports to be submitted to the United Nations treaty bodies (held on 8-18 December 1997), was attended by representatives of a number of State institutions and of civil society. This made possible a more widespread and intensive dissemination of the contents of the international covenants on human rights, thanks to the cooperation of the Office of the United Nations High Commissioner for Human Rights.

15. In addition, the decree to establish the National Plan for Human Rights provides (art. 7, para. 8) for “a commitment by the Government to stimulate the creation and use of channels to give the population direct access to information on human rights and the means of safeguarding those rights; and to promote equality of access to the educational resources and systems relating to human rights, with emphasis on the need to have freely available full information on those resources and on the guarantees given to the citizens for the protection of the dignity and integrity of the individual”.

16. The Government of Ecuador, through the Ministry of Education and Culture, approved a project entitled “Human rights: education for peace” by ministerial decision published in the Registro Oficial No. 82 of 1 June 1997. The programme was launched in October 1997 as a pilot project and conducted in a number of secondary schools in the city of Quito. It is designed to introduce the subject of human rights into the school curriculum in a manner cutting across several subjects; it covers both the theoretical study and the practice of human rights. It is directed towards fifth-grade students and will be taken into consideration in the award of baccalaureates.

17. The project is being implemented under the Ministry's “New cultural departure” programme through the “student participation” scheme. So far only 10 secondary schools in Quito have accepted the programme; but it has proved a success. It is hoped that the project can be extended in practice to the other regions of the country. To that end the National Plan contains provision for the possibility of obtaining international cooperation.

18. A number of interesting ideas have been put forward for the incorporation of the subject in study programmes at the pre-school and school levels; however, owing to the State's budget deficit and for reasons of force majeure, such as the El Niño disaster and the fall in oil prices, their implementation has proved impossible.

19. At university level professorships in human rights in the Central University of Ecuador (at postgraduate level) in the Human Rights Institute and in the Faculty of Law in the Catholic University of Quito (at undergraduate level) have been active since 1994. The interest which professionals have shown in the subject has been demonstrated by the increase in the numbers of lawyers specializing in the subject; they even represent victims before international human rights tribunals and serve as university professors in human rights and related subjects.

(b) The situation of foreigners with regard to the Covenant

20. Ecuador has been concerned to include in its domestic legislation provisions protecting and safeguarding the civil rights of foreigners in the country. Article 14 of the Constitution, entitled “Equality of rights for foreigners”, states that: “As a general rule, foreigners shall enjoy the same rights as Ecuadorian nationals, subject to the restrictions laid down in the Constitution and the laws. Foreigners are debarred from the exercise of political rights.” That exclusion is admitted under article 25 of the Covenant.

21. The restrictions other than those relating to participation in politics derive from article 18 of the Constitution, which restricts the right of foreigners to own property. Those restrictions apply to non-renewable natural resources, products of the subsoil and all minerals or substances different in nature from the soil; to property in frontier areas; and to property in areas reserved by competent State bodies. The justification for these restrictions is that the assets mentioned are deemed in domestic legislation to be national assets; in other words, since they belong to the nation, they may not be privately owned.

22. In all other respects foreigners enjoy all the civil rights embodied in the Covenant without any restriction other than those already mentioned.

23. It is important to mention that the right of asylum for foreigners is guaranteed in the Constitution itself, article 17 of which states: “In accordance with the law and international agreements, the State recognizes the right of asylum for foreigners”. Ecuador is a party to the 1951 Geneva Convention relating to the Status of Refugees and to its 1967 Protocol. Under the regulations governing the implementation of those international instruments Ecuador accepts as refugees substantial numbers of persons from various parts of the world. This fact has been publicly proclaimed, inter alia, by the Office of the United Nations High Commissioner for Refugees, which has officially expressed its gratitude to the Government of Ecuador as the country with the highest rate of admission of refugees in the whole of South America.

24. Article 15 of the Constitution provides for selective immigration, which is admitted under the provisions of the Covenant; but it is customary to make exceptions on humanitarian grounds. For instance, article 13 of the regulations for the implementation of the Geneva Convention relating to the Status of Refugees, published in the Registro Oficial No. 933 of 12 May 1992, states that "No person shall be refused entry at the frontier, deported, expelled, extradited or subjected to any measure obliging him to return to the territory in which his physical integrity or personal freedom is endangered ...".

25. The National Plan for Human Rights contains a special paragraph on the rights of foreigners and migrants. Article 27 of the relevant decree establishes an "obligation on the part of the State to take concrete steps to protect the human rights of foreigners of both sexes resident in the country, giving special attention to the rights of refugees and in application of international standards on the subject ... and in due time to promote legislation to regularize the situations of foreigners permanently resident in the country".

2. Paragraph 3

26. In Ecuador's fourth periodic report full details were given of the constitutional and judicial remedies introduced during the period covered by that report. However, a more detailed description is needed of the practical implementation of those remedies and the limitations and difficulties affecting that implementation.

27. In the first place, the creation of a Commission for Truth and Justice in September 1996 was mentioned in paragraph 33 of the fourth report. In this connection Ecuador reports that that Commission has ceased to exist in law as a result of the lack of financial support from the government of the former President, Mr. Abdalá Bucará. Some of the features and general aims of that Commission have been incorporated into the features and objectives of other institutions of State and civil society involved in the preparation of the National Plan for Human Rights; for instance, there is a consensus regarding the investigation and resolution of problems relating to violations of human rights.

(a) Creation of the Office of the Ombudsman

28. One serious limitation facing the national government relates to the establishment of the Office of the Ombudsman and its branches in the provinces. The first Ombudsman was appointed by Congress under the powers assigned to it by the basic Act; but he had to resign on account of the budgetary restrictions which prevented the setting up of his office and the allocation of resources for its day-to-day activities.

29. As a result of this situation, a provision was included in the National Plan for Human Rights (p. 14) setting as an urgent and priority objective the appointment of the Ombudsman as soon as possible under the conditions and within the time-frame set in the Constitution and the law. The Plan also provides for a commitment on the part of the State to respect the autonomy of that institution and to provide it with the material, technical and financial

resources needed for its proper functioning. This is a commitment which will have to be met, since the National Plan has already been approved by the Executive in its entirety.

(b) The Constitutional remedy of habeas data

30. This remedy is being applied in practice; lawyers invoke it in their submissions, and is accepted in the competent administrative or judicial authorities. However, recourse to it is relatively rare, since the majority of the population is unaware of its existence. The only restriction on this remedy - which is laid down in article 30 of the Constitution - is that it may not apply to documents reserved for reasons of national security.

(c) The Constitutional remedy of amparo

31. Initially this remedy was not invoked by individuals. However, since 1997, following the adoption of the relevant Act, it has been resorted to frequently. Among other institutions, the Supreme Court of Justice has handed down decisions regulating the handling of various applications for relief brought forward. The difficulty regarding this remedy lies in the disinclination of certain judges to admit it, notwithstanding the fact that they are required to do so. This difficulty should be overcome by action to promote greater awareness of its existence.

32. The activities provided for under the National Plan include programmes of training and awareness development for judges, police officers and members of the armed forces on the subject of the constitutional and judicial remedies currently available.

(d) The remedy of petition

33. This remedy was also approved as part of the constitutional reform of 1996 (art. 22, No. 11). It relates to the submission of complaints and petitions to the authorities and the issue of a reply within a reasonable time and in a manner in conformity with the law. The only restriction on this remedy is that it cannot be invoked in the name of the people. It did not previously exist in Ecuadorian legislation, with the result that the authorities ignored complaints or delayed replying to or handling them. This reform is a significant step forward in the field of constitutional remedies; in practice it is frequently invoked by individuals, particularly with regard to the Executive.

(e) The right to compensation for judicial error

34. Article 25 of the Constitution provides that the State is civilly liable when an innocent person is arbitrarily imprisoned or detained on account of a judicial error. Provision already existed for the payment of compensation by the State in respect of acts committed by its officials and employees in the performance of their duties; it is now contained in the amended article 23 of the Constitution, to which reference was made earlier. In line with this provision is article 459 of the Code of Criminal Procedure, which allows the parties in a court case to institute proceedings against

judges and magistrates in criminal courts for compensation for damage and prejudice caused by illegal acts, delays and wrongful detentions of accused persons committed by them. In addition, article 126 of the Constitution establishes the liability of courts and tribunals of all kinds in respect of prejudice they may cause to the parties by delays, denials of justice or breaches of the law.

35. These provisions are generally invoked by individuals when they considered that their rights have been adversely affected; in practice, however, some judges deliberately fail to initiate compensation proceedings, especially if the latter will be prejudicial to their colleagues. They therefore allege lack of competence and other grounds laid down by law.

(f) Establishment of the Constitutional Court (previously known as the Court of Constitutional Guarantees)

36. The reforms introduced in 1996 gave the Constitutional Court a measure of autonomy, principally because it is required to take cognizance of decisions denying constitutional remedies and appeals provided for in the remedy of amparo in addition to the constitutional powers it previously enjoyed. To regulate its working the Constitutional Control Act (R.O. 99, 2 July 1997) was adopted.

37. In spite of the fact that the Constitutional Court has been granted broader terms of reference than it possessed before 1996, it is still not completely independent of Congress, since that body can summon members of the Court for a political trial and remove them from office. For that reason the reforms of the judiciary include a provision to the effect that the body responsible for supervising the Court and deciding on the removal of its members from office shall be the National Council of the Judiciary.

38. The National Plan for Human Rights, in the annex to the executive decree (p. 14), contains the following passage: “The State undertakes to respect the autonomy of this High Court and the decisions emanating from it. The State recognizes that the Constitutional Court is the supreme body for the interpretation of the fundamental legislative instrument of the State.”

39. Finally, with regard to the general scope of constitutional remedies, the National Plan states in article 5, paragraphs 3 and 9, of the executive decree that “The Government undertakes to promote the proper implementation of the constitutional remedies, adopting a broadly-based approach favouring the fundamental rights and initiatives deriving from the implementation of penal legislation and in compliance with the principles contained in international human rights instruments”.

## C. Article 3

40. As regards equal enjoyment of all civil and political rights by men and women, some steps forward, and additional constraints and difficulties need to be reported.

1. Establishment of the National Council for Women (CONAMU)

41. The Council was established in March 1997 as an autonomous body, independent of the Executive, to frame policies and activities for the benefit of Ecuadorian women; its proposals were put into effect by the former National Directorate for Women (attached to the Ministry of Social Welfare), which has continued to implement the policies laid down in the Equality of Opportunities Plan 1996-2000.

2. Participation of women in the exercise of power and in decision-making

42. The Equality of Opportunities Plan calls for an "equitable sharing of responsibilities between women and men, not only to improve the quality of life of women and their daughters, but also to provide more opportunities for participation in decision-making".

43. According to statistics produced by CONAMU, the representation of women at decision-making levels in Government and in the private sector is still inadequate. This situation is due to a number of structural and ideological barriers. These barriers can be surmounted by specific measures such as the following:

(a) Coordinated action with the National Secretariat for Administrative Development, government bodies and the judiciary, to establish annual targets which will bring the level of participation by women at decision-making levels up to 25 per cent by the year 2000;

(b) Support for reforms to the legislation governing elections and parties designed to guarantee greater access to elective office for women until a level of 30 per cent has been reached;

(c) To promote and stimulate the presence of women in all high-level committees and bodies such as official delegations abroad and diplomatic posts;

(d) The provision of incentives for enterprises and organizations in civil society to adopt non-discriminatory policies and practices with a view to increasing the numbers of women in their respective organizations and admitting them to higher positions;

(e) Coordination of action with the associations of provincial and municipal councils with a view to securing equitable participation by women in the processes of modernization and decentralization, and in decision-making, negotiation and management, at local, provincial, regional and national levels;

(f) Promotional activities and the provision of incentives to induce the political parties to include the gender perspective in their programmes and to take steps to enable women to participate in the leadership of parties on equal terms with men;

(g) Coordinated action with the National Secretariat for Administrative Development to review the criteria applied to the recruitment and appointment of women in advisory and decision-making bodies and promotion to higher-level posts with a view to ensuring that those criteria are relevant and do not discriminate against women;

(h) Coordination of action with the Ministry of Labour and the Ecuadorian Vocational Training Department with a view to redesigning recruitment and career development programmes in order to ensure that women - and especially young women - enjoy equality of access to training in the fields of management, entrepreneurial knowledge and leadership techniques.

44. Statistics concerning the representation of women in decision-making:

(a) Within the Executive:

(i) In 1990 there were 12 ministries but no women ministers. Out of the 34 posts of under-secretary, 5 (15 per cent) were occupied by women. Of the 105 directors, 15 (14 per cent) were women;

(ii) Of the 120 officials in the higher entities of public administration, only 20 (17 per cent) were women;

(iii) In 1992 out of 22,283 posts of directors and officials in higher-level bodies in public administration, 5,786 (26 per cent) were occupied by women and 16,497 (74 per cent) by men;

(iv) During the 1990s the occupation by women of top-level posts in the public administration was as follows:

In 1990: 5 women under-secretaries and 15 national directors;

In 1992: 1 woman Minister (Minister of Social Welfare), 3 under-secretaries, 1 member of the board of management of the Central Bank, 1 supervisor of companies and 1 President of the Military Board;

In 1996: 1 woman vice-president of the Republic, 3 women ministers of State (ministries of tourism, of the environment and of social welfare), 1 woman secretary of the Indigenous Nationalities Board and 1 woman director of the CONAMU;

(b) In the national public administration

(i) As a result of greater accessibility to decision-making (managerial) posts for women, the latter now occupy 26 per cent of such posts;

(ii) The education sector is the sector with the highest percentage of women;

(iii) In 1990-1991, out of a total of 127,466 teachers at all levels, 56 per cent were women and 44 per cent men;

(iv) Out of a total of 170,748 officials employed in teaching, administration and services during the school year 1995-1996, 99,994 (59 per cent) were women and 70,774 (41 per cent) were men;

(c) In the administration of justice:

In 1994, of the 21 posts of national directors, assessors in the Supreme Court and higher courts and of secretaries to the Supreme Court, only one (4 per cent - a post of Secretary to the Supreme Court) was occupied by a woman;

(d) In the Supreme Court of Justice:

(i) Prior to 1996, out of a total of 28 judicial posts in the Supreme Court of Justice, only one was occupied by a woman (in her capacity as interim minister); 27 men were judges and co-judges. In that year no post of judge, attorney-general, prosecutor or controller was occupied by a woman;

(ii) In 1994, there were five women (3 per cent of the total) in judicial posts, serving as judges in higher and district courts. In that year two women entered the Quito Higher Court, bringing the proportion of women judges up to 3.8 per cent;

(iii) In 1997, 8 electoral colleges (judiciary and judges; Federation of Advocates; indigenous and Negro peoples; human rights associations; chambers of production, labour and master craftsmen; sectional governments) submitted 72 candidatures for the elections to judgeships of the Supreme Court; only 5 of them (7 per cent) were women;

(e) In the judiciary:

(i) In 1994 there were women in some sections of the judiciary, especially in the tenancy and labour jurisdictions;

(ii) In 1994, out of 571 posts of members of district tribunals and criminal, civil, labour, tenancy and transit courts and Ombudsmen's offices, 14 per cent were occupied by women (serving as members, judges and Ombudsmen);

(iii) In 1997 there were six women serving as inspectors in the specialized police stations for women and the family in six of the provinces in the country (Quito, Guayaquil, Cuenca, Ibarra, Esmeraldas and Ambato);

(f) In external services:

(i) In 1989, 7.1 per cent of diplomatic posts were occupied by women;

(ii) In 1994, approximately 30 per cent of chancery career staff were women; they held the ranks of first, second and third secretaries. During the same year, 50 per cent of the participants in diplomatic training courses were women; and

(iii) In 1994, only 3 (4 per cent) of the 69 ambassadorial posts were occupied by women;

(iv) During the same year, 45 (15 per cent) of the 305 diplomatic officials, and only 6 (18 per cent) of the 33 consular officials, were women.

45. In 1990, there were 74 non-governmental organizations for the advancement of women; 25 of them (34 per cent) were national and 74 (66 per cent) operated in a single province.

46. In 1994-1995 there were 692 social advancement organizations, 239 working with children and 212 with women.

3. Participation in political activity

47. In 1997 a reform to the 1991 Labour Protection Act was adopted requiring at least 20 per cent of managerial posts in enterprises to be occupied by women. Similarly, article 55 of the revised Elections and Political Parties Act requires that "the registration of multiple candidate lists which do not include a minimum of 20 per cent of women as titular candidates and alternates respectively shall be refused".

48. However, notwithstanding the widespread publicity given to these rules, they did not receive the desired reception, and only a few political parties complied with them. As a result, the National Assembly as constituted following the November 1997 elections consists of 63 men and only 7 women.

49. Statistics concerning the participation of Ecuadorean women in political activity:

(a) In the legislature:

(i) Titular deputies in the National Assembly: in 1996, 12 national candidates were elected; all were men;

(ii) Deputies in provincial assemblies: in 1996, out of 70 national candidates elected, 4 (6 per cent) were women and 66 (94 per cent) men;

(iii) During the period 1988-1997, out of a total of 5,260 successful candidates at elections, 437 (8 per cent) were women and 4,823 (92 per cent) men.

(b) In local authorities (1996 elections):

(i) Governors according to the data for the most recent general elections, held in May 1996, no woman was elected to the post of governor in any of the 27 governorships in the country;

(ii) Prefects: a woman was elected to the post of prefect in only one of the provincial prefectures (Tungurahua);

(iii) Provincial counsellors: 5 (6 per cent) out of 80 provincial counsellors are women;

(iv) Municipal councillors: 63 (7 per cent) of the 841 municipal councillors, and 6 (3 per cent) of the 173 presidents of municipal councils, are women.

(c) In the executive bodies of the majority political parties (as a proportion of the total number of executive posts):

(i) In 1994, 9 per cent of the members of national executive bodies registered with the Directorate of Parties of the Supreme Electoral Tribunal were women.

In 1997 the 13 national executives of political parties registered with the Directorate of Parties of the Supreme Electoral Tribunal were in the hands of men;

(ii) In 1994, 13 per cent of the provincial executive bodies of political parties registered with the Supreme Electoral Tribunal were in the hands of women.

4. Violence

50. Since the adoption of the Act Prohibiting Violence against Women and the Family was passed in 1995, successes have been achieved and difficulties have emerged. On the one hand, the specialized police stations for women (Comisarías para la Mujer) throughout the country have been strengthened. For example, under the plans for training in police stations of this type, 36 training activities were conducted in 1996, and efforts are being made to establish a special data bank for these police stations in which they will be able to record all cases of violence reported to them. On the other hand, the great majority of the members of the National Police, for example, do not apply the statutory provision requiring that a person committing an act of violence is to be arrested without a court order if caught in flagrante delicto; for the view that acts of violence committed between spouses or cohabiting persons are “private matters” is still prevalent.

51. In addition, many police officers do not enter the homes of offenders - notwithstanding the issue of written orders to intervene (boleta de auxilio) to protect the woman concerned - on account of fear of committing breaches of the law. However, the latter does not apply to cases of violence within the family; in such cases entering a home without a court order is an exception to general legislation on the subject, the boleta de auxilio, under the relevant legislation, serving as a substitute.

52. Another constraint encountered is the fact that the imposition of penalties in respect of acts of violence within the family is rare, as some of the provisions of the Code of Criminal Procedure, which run counter to the Act Prohibiting Violence against Women and the Family (for instance, the provision debarring one spouse from bringing criminal charges against the other), are still in force and are still being applied by the courts.

53. One important step forward has been the approval by the Supreme Court of Justice of a draft project to establish family courts, in the training of judges for which the National Council for Women will participate. These special courts will correct some of the deficiencies observed in the general machinery of justice and described in the previous paragraphs.

54. Conversations with the deans of the faculties of law in the universities of Quito, Guayaquil and Cuenca have begun with a view to establishing professorships on the human rights of women.

55. The most recent constitutional reforms, approved by the National Constitutional Assembly in April 1998 and scheduled to come into force in August of that year, introduced a number of important new provisions; one of these was the prohibition of physical, psychological and sexual violence and moral coercion of all kinds, both in public life and in the home. The State is to adopt measures to prevent, eliminate and punish acts of violence against women, old people, young children and juveniles; to secure the equitable participation of women and men in electoral processes and in managerial and decision-making bodies in public life, the administration of justice and supervisory bodies; the recognition of household work as productive work; and the right of a woman to take free and responsible decisions concerning sexuality and reproduction free of all coercion by her spouse.

56. The National Plan for Human Rights, in articles 21, 22 and 23 of the relevant executive decree, lays a number of obligations on the State to promote equality of rights between men and women, for example, by "institutionalizing the gender aspect in public policies and the implementation of the National Equality of Opportunities Plan".

57. Finally, during the first week of June 1998 Congress approved in second reading a proposal to designate sexual harassment as an offence automatically giving rise to criminal investigations, whether committed in public or in private.

## D. Article 4

58. As regards declarations of national emergency, some aspects not covered in the fourth report require mention here.

### 1. Functioning of the public authorities during states of emergency

59. Once a state of emergency has been decreed, the police and the armed forces assume the role of supervising the implementation of the decree and for preserving public order. For instance, when states of emergency have been decreed on the occasion of stoppages of work among workers in a number of strategic sectors (such as oil) the police and the armed forces have ensured that no vandalism or abuses of public or private assets occurred.

### 2. Scope of suspension of certain constitutional guarantees

60. Between January 1995 and April 1997 several states of emergency were decreed. Firstly, there was that decreed in January 1995 on account of the undeclared state of war with Peru; this declaration was followed by others,

such as that relating to the maintenance of public services in the energy sectors (17 January 1996); the call-up of medical and professional staff in health services (18 February 1996); the call-up of public transport personnel (17 March 1996); callings-up for the maintenance of internal order (4 February 1997); and callings-up to overcome the stoppage of work among health-service personnel (26 April 1997). In accordance with constitutional provisions, the rights which may be suspended relate to the inviolability of the home; the inviolability of correspondence; freedom of movement within the country; freedom of assembly and association for peaceful ends; detention subject to court order; and prior censorship of communication media.

61. The remedies available to individuals to obtain compensation in respect of possible abuses committed by the public authorities during states of emergency are the same as those described in section III.C of this report; they may not be suspended during a state of emergency. This implies that if any person feels aggrieved on account of a raid on his home during such a period, he may invoke the constitutional remedy of amparo before the competent court. If detained without a court order, he may invoke habeas corpus, which is also not liable to suspension during an emergency. In accordance with article 23 of the Constitution, individuals may also require payment of appropriate compensation by the State.

62. It should be mentioned that only during the period of emergency declared on 27 January 1995, on the occasion of the war with Peru, was the guarantee of freedom of movement within the country suspended; a curfew was also declared, but only for a very few days and at set hours until the emergency was over. During the other periods of emergency this fundamental guarantee was not suspended; equally, there was no censorship of the communication media, which covered events during each of these special periods in total freedom. Even during the emergency on 5, 6 and 7 February 1997, which led to the departure of the then President Bucarám, the media had ample facilities to perform their work and inform the world of what was happening. No complaints have been lodged concerning raids on homes or the opening of private correspondence during the periods of emergency. On the other hand, cases of detention without a court order did occur in respect of flagrant offences such as vandalism committed during the demonstrations.

63. It is important to note that the Government has specifically recognized that many of the declarations of states of emergency made during 1996 and 1997 did not meet with the requirements of the Constitution, which states that a state of emergency may be declared only in the event of war or external aggression (as in the case of the 1995 war) or of serious domestic upheaval or disaster. The Inter-American Commission on Human Rights took this view in its report on the human rights situation in Ecuador. The Government of Ecuador undertook in April 1997 to refrain in future from decreeing states of emergency except, and solely, in the cases expressly provided for in the Constitution, since to act otherwise would imply an abuse of power by the Executive to suppress demonstrations and acts which could be dealt with by other resources available to the machinery of public order. Consequently no new state of emergency has been decreed since April 1997.

64. The states of emergency mentioned above were annulled by the current President of the Republic through Executive Decree No. 1031 of 8 January 1998. The annulment was immediately communicated to the United Nations and the Organization of American States.

## E. Article 5

65. As was stated in the section of the fourth report concerning general trends in Ecuadorian legislation (paras. 6 to 10), the Ecuadorian legal system gives primacy to the national constitution over international standards (art. 94 of the Constitution). However, many, if not most, of the provisions of the Covenant have already been incorporated into domestic legislation. Consequently no disputes between the two systems arising from conflicting interpretations have so far arisen in Ecuadorian courts, at least in theory. However, difficulties arise in practice regarding certain provisions in the Covenant when the courts are unable to identify those provisions within the domestic legal system and consequently apply them in a restrictive manner or not at all. The cause of this problem lies in the fact that the majority of judges interpret written provisions in an almost literal fashion without resorting to other mechanisms of legal interpretation which would permit application of the provisions of the Covenant, even though they are not expressly embodies in domestic legislation.

## F. Article 6

### 1. Arbitrary deprivation of life and forced disappearance

66. In the fourth report mention was made of the domestic legislation protecting the right to life and abolishing the death penalty and of the clear evidence that such cases of arbitrary deprivation of life and forced disappearance as have occurred in Ecuador were isolated cases and did not constitute a systematic practice of violation of human rights. Nonetheless, mention must be made of some difficulties encountered and advances made in this field.

67. The majority of the cases of arbitrary deprivation of life committed by members of the police or the armed forces have been brought before regional human rights protection bodies. The most serious difficulty the State has encountered in the punishment of some cases of criminal liability has been the existence of the “police jurisdiction” or the “military jurisdiction”, under which public officials who commit offences in the performance of their respective duties must be brought before their own courts and under their own criminal procedures. The problem lies in the fact that representatives of public order have committed crimes of deprivation of life and forced disappearance, not only in the performance of their respective duties, but also outside that framework. Many of the criminal courts of the police force and the armed forces claim competence even when the crimes in question have not been committed in the performance of the specific duties of their members. The most serious problem which has arisen in practice is that the majority of these special courts, notwithstanding the existence of weighty evidence of guilt, have dismissed the charges, protecting or covering the accused; this situation has given rise to total impunity.

68. On the other hand, other cases of crimes committed by law enforcement officers outside the framework of their respective duties and referred to the ordinary courts are affected by a generalized defect in the administration of justice in Ecuador, namely the slow pace of legal proceedings, particularly where an accused person appeals against a sentence. The slow pace of the legal proceedings gives rise to extinction by prescription of both charges and penalties.

69. One of the subjects considered during the seminar on the National Plan for Human Rights was the abolition of the special courts for cases of forced disappearances, arbitrary deprivation of life and torture. However, the consensus necessary for its inclusion in the final document was not reached.

70. However, the National Plan does define certain important objectives and strategies for the protection of the right to life. Article 5, paragraph 2, of the executive decree refers to “the commitment of the Government to promote reforms in criminal legislation designed to define forced disappearance and discrimination as crimes of genocide (and, if appropriate, to introduce the reforms necessary to define concepts); the introduction of machinery and instruments for participation in and supervision of the work of the National Police by civil society and to punish violations of human rights; and a commitment by the State to eradicate immunity”. In addition, in the section of the Plan entitled “urban security and the security of the individual” (arts. 31 to 34 of the executive decree) provision is made for a number of mechanisms such as: “improvement of the criteria for the selection, admission and skills training of members of the armed forces and the National Police; a requirement that all members of the armed forces and the National Police follow compulsory courses in human rights; and the issue by their managerial bodies of codes of conduct so that individual officers on duty accused of violations of human rights can be suspended, and internal investigations can begin immediately, without prejudice to due legal process”.

71. Equally, the annex to the executive decree (p. 3), in the section on “development of legislation”, provides for “the designation of crimes against humanity as imprescriptible as regards both proceedings and penalties, and the implementation of the legislation necessary for the provision of social and financial compensation to victims of violations of human rights”.

72. Another significant advance in the field of forced disappearances and deprivation of life is the fact that the Government of Ecuador has begun proceedings to compensate the families of persons who lost their lives in isolated incidents which have occurred during the past 10 years (such as the cases of the brothers Andrés and Santiago Restrepo and Consuelo Benavides as a result of arbitrary acts committed by the National Police and the armed forces). These proceedings began when the cases were submitted to the Inter-American Commission on Human Rights and the Inter-American Court for Human Rights respectively, and the two international bodies informed the Government of Ecuador of their willingness to promote amicable settlements in both cases. The Office of the State Procurator-General is the body responsible for fixing the amount of compensation payable in each case. In May 1998 the Procurator signed amicable settlement agreements with the families in both cases; one will receive $2 million and the other $1 million. At the time of preparation of this report it is known that the State has paid

$1 million to the family of Consuelo Benavides. In the case of the Restrepo brothers, the Government has undertaken to make a search for the bodies of the two youths. That search would be conducted in an organized and objective fashion and independently of the police forces. In addition, criminal proceedings would be introduced against other persons involved who had not been charged. The Office of the State Procurator-General also announced that compensation would be paid to six peasants in the Putumayo zone (at the frontier with Colombia), who had been arbitrarily detained and tortured by the police.

### 2. The right to a healthy environment

73. In addition to the creation of the Ministry for the Environment, Ecuador has introduced into its domestic legislation reforms establishing the right to a healthy environment as a substantive element in the protection of the life of the country's inhabitants. Article 12 of the executive decree containing the National Plan for Human Rights contains the following passage: “To establish as a general objective the definition of mechanisms to guarantee the protection and the right to live, of both present and future generations, in a healthy and ecologically balanced environment so that they can achieve specific targets in the field of sustainable development”.

### 3. International legal instruments

74. Ecuador has ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty, and also the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (R.O., No. 222, 24 December 1997). Ecuador has not yet ratified the Inter-American Convention on Forced Disappearance of Persons.

## G. Article 7

75. Some progress has been made in Ecuadorian legislation with regard to the prohibition of torture.

76. There is a constitutional provision (art. 22, para. 19 (f) (iii)) designed to eliminate torture. It provides that no statement made by a detainee shall have any value as evidence unless made in the presence of his defending counsel or of the prosecutor on duty at the time. In practice, when evaluating evidence, the courts attach no weight to statements made without those safeguards. The effect of that provision is strengthened by the fact that during the phase of submission of evidence, defence lawyers may challenge statements made in circumstances where the requisite conditions are not met.

77. A difficulty in the application of that provision arises where the individuals concerned do not have either a lawyer of own (for financial reasons) or a defence counsel appointed by a court. As there are only 24 public defence counsel in the whole country, they have difficulty in attending all cases of detention.

78. Article 135 of the 1996 Constitution provides for the appointment of public defence counsel to safeguard the interests of indigenous communities,

workers and persons without financial resources. In addition, Ministerial Decision No. 060 of 17 December 1997 provides for the establishment of a School for Prosecutors with its headquarters in Quito and branches in the other districts of the country. It is hoped that as a result of these two measures the numbers of officials in the two categories will be increased and the constraints mentioned earlier overcome.

79. Another factor which may help to eliminate torture in criminal investigations is the effective implementation by the Office of the Public Prosecutor of article 142 of the Constitution, according to which that office is required to conduct preliminary inquiries and promote criminal investigations with the support of the judicial police. What happens in practice is that the prosecutors merely sign reports drafted by the police after the latter have questioned the detainee and forced him to state to the prosecutor that he has signed his statement without being subjected to any physical or psychological pressure.

80. A reform of the Basic Act to regulate the Office of the State Procurator-General (R.O. 26, 19 March 1997) detached the Office of the Public Prosecutor from it. The additional autonomy given to the Office of the Public Prosecutor has enabled it better to safeguard the interests, and the rights of defence, of society, and it can now conduct preliminary inquiries and pre-trial investigations with greater flexibility and independence from the State authorities. The reform has also brought the judicial police under the authority of the Office of the Public Prosecutor.

81. According to information received from the latter, the public prosecutors issued 11,502 reports during the second half of 1997. However, even that figure proved inadequate in the light of the numbers of criminal cases before the country's courts. Ultimately the School for Prosecutors will be extremely useful as a means of improving the skills and efficiency of the officials concerned.

82. Complaints of torture brought against police officers and members of the armed forces, like those relating to arbitrary deprivation of life and forced disappearances, have encountered the same obstacles as those mentioned earlier on account of the existence of special police and military jurisdictions. In some of those cases punishment could not be inflicted because the proceedings and penalties were extinguished by prescription on account of the protection given by those courts.

83. The numbers of complaints concerning torture and ill-treatment committed by prison staff have increased on account of overcrowding in prisons. Although article 22 of the Code on the Execution of Sentences stipulates that disciplinary measures shall consist solely of isolation at night, either individually (in maximum-security prisons) or in homogenous groups (in medium-security prisons), together with fixed schedules, regulation of rest periods and indirect communication (in maximum-security prisons) and regulation of visits (in medium-security prisons), abuses are committed in the treatment of prisoners. There was even a case brought against the Government of Ecuador concerning the death of a prisoner due to blows inflicted by a member of the prison staff. All that has been learned from the ensuing

investigation is that the staff member in question was dismissed in accordance with article 114 of the Act concerning the Civil Service and Administrative Careers but that no criminal proceedings were brought against him.

84. Prisoners in medium- and minimum-security wings are generally allowed to receive visitors. Prisoners in minimum-security wings are allowed exeats; these are regulated and evaluated.

85. Cases have been observed of cruel treatment in schools inflicted by teachers and of elderly persons in hospitals and centres designed for them. The Government hopes that these practices will diminish following the establishment of institutional commissions (in the educational sphere), which will investigate such cases, and the effective implementation of the provisions of the Elderly Persons Act (published in R.O. 806, 6 November 1991).

86. The National Plan for Human Rights sets as a priority objective the reduction and elimination of torture inflicted for purposes of police investigations (art, 4, para. 1, of the executive decree). This is to be achieved by reforms and programmes and by changes in the legal system and the existing systems of detention, investigation and imprisonment (art. 5, para. 1, of the decree). It also contains a commitment by the Government to ratify the Inter-American Convention to Prevent and Punish Torture.

## H. Article 8

87. The report described in detail the provisions of domestic legislation prohibiting slavery, servitude and forced labour and the difficulties encountered in certain sectors vulnerable to exploitation, such as women and children.

### 1. Forced labour among minors

88. It should be stated that in practice many minors are subjected to forced servitude without any remuneration (especially in the rural sector) and are forced to work without pay on the lands of other persons in exchange for board and lodging. In the urban sector, however, informal employment of minors, although prohibited by law, has been observed; they are obliged to work full time and are unable to enjoy their earnings, which go to their parents or to other individuals providing them with board and lodging. Even night work by minors has become a widespread practice in the cities; this means that they are exposed to ill-treatment and sexual violence.

89. The National Institute for the Child and the Family is the State institution responsible for implementing government policies benefiting minors. As its tasks are based on the principles of the Convention on the Rights of the Child relating to the exploitation of child labour, it has implemented the Programme for the Protection and Education of Working Children. The Ministry of Social Welfare, the Social Emergencies Investment Fund (FISE) and non-governmental organizations are also active in this field. One of the successes of this programme has been the establishment of the National Committee for the Progressive Eradication of Child Labour with headquarters in Quito, which was created by Executive Decree No. 792 (R.O., 7 November 1997).

90. One of the subjects which gave rise to major differences of opinion during the seminar at which the National Plan for Human Rights was drafted was precisely the subject of the abolition of child labour. Some NGOs were in favour of abolition, but others were not; consequently, the necessary consensus on the subject was not reached. However, the discussions did lead to the inclusion in article 16 of the executive decree of a statement to the effect that "Measures should be adopted for the regulation and eventual abolition of child labour and for the protection of working adolescents and young persons." Article 18 also provides for concrete measures to prevent the exploitation of the labour-power of minors.

2. Work in penal establishments

91. Article 22 of the Code on the Execution of Sentences provides that sentenced persons shall be required to work in social rehabilitation centres. In maximum-security prisons such work is common; it is regulated and performed in groups of no more than 20 persons. Work in medium-security prisons is compulsory and regulated and comprises vocational training. Work in minimum-security prisons is compulsory and self-regulated and comprises skill upgrading and training.

92. There is no knowledge of complaints of breaches of these rules. In practice the prisoners perform their work in workshops and training centres in which no distinction is made between maximum-, medium- and minimum-security prisoners on account of the lack of the infrastructure needed to bring the prison facilities into line with the above-mentioned classification.

3. Other forms of compulsory service

93. The domestic legal system provides for compulsory military service. Such service is governed by duly regulated procedures and requirements, and must be performed by all male citizens after reaching age 18 (women may be called up if the needs of national defence justify such a step). There are exemptions from this obligation; these include male youths who are family breadwinners and have parents and younger brothers and sisters dependent on them; married men while living with their wives; monks and priests; handicapped persons; unsuitable persons (i.e., persons suffering from poor physical or mental health), persons held in prison; and persons residing abroad.

94. The Elections Act requires that citizens of both sexes over age 18 may be required, as a civic obligation to be discharged without fee, to form part of the staff of polling stations during elections; they may also be required to count ballot papers.

## I. Article 9

95. Paragraphs 1 and 2 of this article, concerning liberty and security of person, were fully analysed in the fourth report. As regards paragraph 3, the report indicated the time limits within which a detainee: (a) must be brought before a judge to be charged (48 hours); and (b) may be held in pre-trial

detention (preventive custody). The law stipulates that the latter form of detention may continue until evidence is submitted by the prosecutor and the defence; it ends with an order to continue or to file the case.

96. It should be added that pre-trial detention orders are not issued when the offence concerned is punishable by a prison sentence not exceeding one year in duration (Code of Criminal Procedure, art. 179) and, if the offence concerned is punishable by imprisonment, where the person charged offers a surety, which may be in the form of a money deposit, a bond or a lien on immovable assets (art. 180 of the Code). Cases where repetition of a previously committed offence is alleged are excepted; sureties are not admitted.

97. In practice requirement that individuals must be brought before a judge within 48 hours following their arrest is complied with inconsistently. In cases of ordinary offences the necessary steps are taken immediately. On the other hand, where offences relating to drug trafficking are involved, weeks may elapse before the detainee is brought before a judge owing to extensions in the duration of police inquiries. Another factor which makes compliance with the rule difficult in many cases is that individuals who are suspected of offences of this kind are arrested in large-scale raids together with other persons, and the opening of the trial proceedings begins at the same time for all of them.

98. The most serious difficulty met by the Government with regard to preventive detention is the general failure to comply with the time limits mentioned above. The result is that non-compliance has become the general rule rather than the exception as required by the Covenant. The majority of the cases of violations of human rights brought against Ecuador during the last few years, particularly before the regional international organizations, relate to cases of preventive detention which has become indefinite detention pending a firm decision which is not taken; in practice this implies periods of detention of up to five to six years. When a reasonable period of preventive detention has been completed, the courts frequently refuse to release detainees because the only precautionary measure they trust to ensure the presence of the detainee at the trial is a money deposit. This facility is only available to detainees with financial resources; thus this possibility of ending their preventive detention is denied to persons without sufficient means. The most serious cases arise in connection with drug trafficking offences, since the relevant legislation debars detainees in this category from offering the surety referred to in article 180 of the Code of Criminal Procedure.

99. The mistrust shown by the courts in other measures guaranteeing the appearance of the defendant is partly due to the lack of an infrastructure in the police forces which will enable them to keep watch over the persons concerned and prevent them from absconding and subsequently escaping trial.

100. In addition, the current crisis in the administration of justice - which is due not only to financial considerations, as has frequently been alleged as a justification for the slow pace of handling of cases, but also to almost general corruption among judges and employees in the judiciary - is having a direct effect on the speed (or rather, lack of speed) of judicial

investigations and, ultimately, on compliance with the statutory time limits, particularly those relating to preventive detention. There are cases of pre-trial investigations (the first stage in proceedings on a case) which linger on for two or three years, even though the law requires them to be completed within a maximum of 60 days. If at the end of that period reliable elements of proof of guilt have not been found, the judge is required to dismiss the case and release the defendants.

101. Another factor which worsens further the situation of defendants is the fact that in cases of drug trafficking offences, once the pre-trial investigation stage has been completed by a decision to dismiss the case or to recommend a sentence, that decision must be referred to higher courts, which are equally contaminated by corruption and negligence. This gives rise to yet further delays in the discharging or sentencing of defendants.

102. However, certain advances have been made in Ecuadorian legislation, designed to reduce the duration of preventive detention. In the fourth report mention was made of reforms in the Penal Code (Act 05, R.O. 22, 9 September 1992) which to some extent have reduced overcrowding in the prisons, which was directly and precisely due to the indefinite character of preventive detention. The Act added four new and unnumbered articles to article 114 of the Penal Code, which dealt with the extinction and prescription of proceedings and penalties. These articles are facilitating the release of individuals who have spent a long time in provisional detention without any proceedings having been initiated or any penal sentence inflicted. To that end the new articles provide that persons who have been detained for a period equal to or greater than one third of the maximum period of sentence for the offence in respect of which they are being detained shall immediately be released by the courts. These reforms excluded from their implementation persons detained in respect of offences mentioned in the Narcotic and Psychotropic Substances Act. The situation was eased when that exclusion was temporarily set aside by the Constitutional Court in December 1997 (R.O. 222, 24 December 1997) on the grounds that it was discriminatory. It is hoped that following that constitutional suspension persons detained in respect of drug trafficking who have spent more than the legal period in prison will be released on the same terms as persons charged with ordinary offences. This has in fact been the case.

103. In addition, on 17 May 1996 article 33 of the Code on the Execution of Sentences was amended to enable inmates, whether sentenced or not, who during the period of their sentence or detention have been of good behaviour and shown interest in their rehabilitation to obtain automatic reductions in their sentences equivalent to 180 days for every year which had elapsed since their admission, to be granted compulsorily and automatically by the National Director of Rehabilitation. According to information received from that directorate, the adoption of that provision resulted during 1997 in reductions of the sentences of 2,900 inmates (25 per cent of the country's total prison population).

104. Furthermore, article 37 of the Code was amended to empower governors of prisons and provisional detention centres to refuse to admit individuals without a detention warrant or an imprisonment order, and also to release immediately citizens whose detention has not been legalized within 48 hours,

with an obligation to report the fact to the competent courts. Failure by a prison governor to comply with that provision can give rise to civil, criminal and administrative liability. The application of this provision is restricted in that it is not applicable to persons charged with drug trafficking offences.

105. An amendment was also made to the Narcotic and Psychotropic Substances Act (art. 105, second paragraph, R.O. 173, 15 October 1997). The amendment provides that drug addicts or consumers apprehended in possession of narcotic or psychotropic substances for their personal consumption shall be deemed to be ill and may not be detained in a prison, but instead must be sent to a health centre for rehabilitation treatment. In view of its special nature, the new provision will have retroactive effect. There have been many cases of drug addicts who have spent more time than prescribed by the law in prison owing to extensions of their preventive detention on the grounds that they were subject to the exclusions contained in narcotics legislation. According to information supplied by the Narcotic and Psychotropic Substances Board, a programme of physical and mental rehabilitation of drug addicts in prison has been launched in cooperation with the judiciary. It hoped that the amendment, together with this programme, will permit the release of some 3,000 consumers. Since the amendment is retroactive, it can also benefit drug addicts and apprehended before its adoption.

106. The Office of the Public Prosecutor has also proposed a reform to article 119 of the Constitution to require judicial decisions and sentences to be handed down in strict chronological order with a view to speeding up the handling of cases.

107. The subject of compensation for persons illegally detained or imprisoned has been dealt with in detail in section III.C. of this report.

108. The National Plan for Human Rights also provides (in art. 4, para. 2, of the executive decree) for the “application of the favor libertatis principle, under which a court will refrain from ordering deprivation of liberty except in exceptional cases where there is an imminent risk that the person charged will abscond or where that measure is necessary to determine the truth of the charges and to avoid the destruction of evidence”.

## J. Article 10

109. The fourth report described in detail the provisions of domestic legislation governing the prison system in Ecuador; it also mentioned certain shortcomings and difficulties as well as advances in the field of rehabilitation achieved under programmes for prisoners conducted by non-governmental organizations. Since paragraph 2 (a) of article 10 distinguishes, among persons deprived of their liberty, between accused and convicted persons as regards the type of imprisonment, reference is made to the earlier sections on article 7 (concerning torture) and article 9 (concerning persons deprived of liberty). The following section examines certain elements restricting implementation of paragraph 2 of this article with regard to accused and convicted persons.

1. Segregation of accused from convicted persons

110. Owing to a lack of financial resources, the country's prisons do not have an infrastructure sufficient to permit the provision of separate premises for accused and convicted persons, bearing in mind the fact that the former are presumed to be innocent until an executory sentence has been inflicted. Only persons in provisional detention are housed separately from the other prisoners. Even the provision of the Code on the Execution of Sentences which provides for the establishment of separate maximum-, medium- and minimum-security prisons is not applied on account of these financial difficulties. The situation is worsened by the overcrowding in provisions which, notwithstanding the most recent reforms, still exist.

111. The national censuses of the prison population carried out in 1993 and 1995 by the Supreme Court of Justice and the National Directorate for Social Rehabilitation resulted in the release of large numbers of prisoners under the reforming provisions attached to article 114 of the Criminal Code mentioned above. The process was assisted by NGOs following-up on proceedings. The measure benefited not only persons who had been in detention for the period of the maximum penalty or longer, but also persons in respect of whom no legal detention order had been issued and persons whose sentences had been reduced for good behaviour.

112. Following these releases, the National Directorate for Social Rehabilitation began redesigning and expanding a number of prisons. For instance, in the city of Portoviejo a new prison with modern installations has been built with a capacity of over 600 persons. New buildings have also been built in the prisons at Tulcàn, Ibarra, Azogues, Cuenca, Esmeraldas, Machala, Tena and Quevedo, and the buildings in the prisons of Quito and Guayaquil have been renovated.

113. As regards the treatment of inmates, reference is made to the section on article 7 inasmuch as the law permits prisoners in medium- and minimum-security prisons to receive visits from family members and the granting of controlled exeats to inmates of minimum-security prisons.

114. In 1997 the Government decided to increase the food budget for prisoners and to improve the preparation of food.

115. In the annex to the decree (p. 12) the National Plan requires the introduction of a process of classification and location according to whether the persons concerned are accused or convicted and according to the type of offence, but without any preferential treatment being granted. In this connection the Inter-American Commission on Human Rights has observed that special prisons have been constructed in Ecuador for members of the National Police following the sentencing of the police officers implicated in the disappearance and death of the Restrepo brothers. Now that the Plan has been approved measures will have to be taken to open these prisons to other detainees without discrimination.

116. As regards social reintegration, the Plan lays an obligation on the Government to give assistance to an individual even after his release; to

resort to alternative types of penalty as means of punishment; and immediately to adapt the prison structure to enable prisoners to live in hygienic and healthy conditions.

2. Treatment of delinquent juveniles

117. In both law and practice, juveniles are segregated from adults, during both trial proceedings and the serving of sentences. There are detention centres reserved exclusively for delinquent juveniles, and cases of ill-treatment of inmates occur in those centres just as in prisons for adults.

118. Under the most recent reforms adopted by the National Constituent Assembly, the legal services dealing with juveniles have been transferred from the Executive (Ministry of Social Welfare) to the judiciary. This implies that judges in juvenile courts will be appointed and supervised by the Supreme Court of Justice. The department will be a specialized one and subject to the relevant regulations.

119. For further information on this subject the Committee is referred to the Boletín Estadístico del Sistema Penitenciaria Ecuadoriano for the year 1997 appended to this report.

## K. Articles 12 and 13

120. The information on these articles supplementing that contained in the fourth report will be found in section III.B.2 of this report.

## L. Article 14

121. As regards the administration of justice in Ecuador, it is considered important to provide information additional to that given in the fourth report showing the difficulties and the progress made in that field.

1. Depoliticization of justice

122. One of the principal causes of the violations of human rights within the meaning of paragraph 1 of this article was the problem of almost generalized corruption and negligence in the handling of cases observed in earlier paragraphs. The most recent appointments of judges in the Supreme Court of Justice were effected in 1997, not by Congress but by a special commission made up of representatives of different sections of civil society and of the State. That Commission evaluated the short lists submitted by all the sectors of the country, in consequence of which it appointed 31 judges, all of them highly qualified and independent of political parties. These judges will remain in office for indefinite periods and may be removed only if they commit breaches of the law or constitutional provisions. This objective was achieved by decision of the citizens as expressed in the referendum held in 1997. To give the judges of the Supreme Court greater independence, the most recent constitutional reforms (in April 1998) provided that they were to be appointed for life.

123. Another result of the May 1997 referendum was the establishment of the National Council of the Judiciary. The Council will be an autonomous body

with responsibility for the administration and governance of the judiciary; its functions will include the appointment of judges in lower-level courts and tribunals and the imposition of disciplinary sanctions on all judges who commit breaches of the law. This should help to reduce corruption within the judiciary and enable judges in courts and tribunals to devote themselves exclusively to the administration of justice, to the exclusion of administrative matters. The composition and functions of the Council are laid down in the basic Act establishing it, which was approved by Congress on 8 January 1998 and accepted by the Executive on 23 January of the same year.

124. The National Plan goes further than the above-mentioned Act; the annex to the decree (p. 13) contains the following passage: "The State undertakes to furnish, in respect of the National Council of the Judiciary, a generally acceptable, democratic and participative Act defining its functions, which shall include the appointment of all judges, including police, military and juvenile court judges."

125. To ensure the complete independence of the Council, steps have been taken to depoliticize it and safeguard it from the influence of power groups or political parties. To that end article 2 of the basic Act mentioned earlier provides that its membership shall consist of the President of the Supreme Court of Justice and seven members appointed by the Court in plenary session and consisting of the following: three members, none of whom shall be members of the Court itself, selected by the Court in plenary session; one selected by the judges of the district administrative tribunals and the higher courts; one selected by the deans of the faculties of law of the universities recognized by the National Council of Universities and Technical Colleges (CONUEP) and one by the Presidents of the Ecuadorian Colleges of Advocates.

126. The most recent constitutional reforms approved by the National Assembly provide for jurisdictional unity; in other words, every judge must be a member of the judiciary. To avoid discrimination and to ensure equality of all persons appearing before tribunals and courts, as required by paragraph 1 of this article of the Covenant, administrative tribunal judges are to be abolished. Previously cases affecting individuals were not treated with independence or impartiality, since there were judges accountable to the Executive.

### 2. Special courts

127. In Ecuador trials of civilians by military or police courts are prohibited by law. However, as mentioned earlier, the difficulties arising in connection with the special courts, to which reference was made earlier in this report in section III.G.1 (for example, the lack of impartiality and independence within the military and police authorities), have in some cases given rise to impunity. Moreover, since there are no tribunals independent of the organs of State, members of the armed and police forces themselves have been subjected to discriminatory trial proceedings and biased sentences.

128. In this connection the National Plan (p. 14 of the annex to the decree, on the subject of the judiciary) provides that "the Government of Ecuador

shall require the enforcement of the constitutional provisions relating to ordinary crimes where these are committed by officers responsible for public order; trials in such cases shall be conducted by the ordinary judiciary".

3. Strengthening of the system of oral hearings

129. Before the constitutional reforms of April 1998 oral hearings took place only in criminal trials at public hearings conducted before a criminal court. The absence of oral hearings during the other stages of trial proceedings (such as pre-trial investigation) and in civil cases made for the development of corruption in the judiciary, since everything had to be put down in writing and the documents prepared by officials of the judiciary, the majority of whom hold up proceedings unless they receive a bribe or other financial reward for every document they transmit. The reform will be introduced over a four-year period, the ultimate aim being the achievement of the necessary infrastructure for proceedings to be conducted orally; this will permit a substantial reduction in the level of corruption in the judiciary. The reforms also provide for the introduction of juries and of private mediation or arbitration bodies in order to reduce the number of disputed civil cases and to establish non-contentious machinery for the settlement of disputes. To this end, posts of "judges of the peace" have been created to hear complaints at local level, thus making it unnecessary for the proceedings to go forward to the judiciary and increase the numbers of pending cases.

4. Public nature of proceedings

130. Proceedings and sentences are still public except in cases of crimes and offences involving juveniles, sexual crimes and crimes endangering national security, as required by article 14 of the Covenant. With the extension of oral hearings the public character of proceedings will be strengthened still further; however, those proceedings may not be transmitted by the communication media or recorded by persons not concerned in the trial. This will avert an undesirable phenomenon which has emerged in Ecuadorian society and runs counter to the presumption of innocence, namely the "parallel trials" conducted in advance by the media.

5. The presumption of innocence

131. In practice this fundamental principle is recognized by the majority of courts, which refrain from sentencing in the absence of reliable evidence of criminal liability.

6. The judicial safeguards mentioned in paragraph 3 of article 14

132. The fourth report states that the judicial safeguards required under article 14 of the Covenant are fully incorporated into domestic legislation. In practice, however, some of them are not complied with on account of the lack of financial resources available for the administration of justice. For instance, an individual may not have enough money to be able to pay an interpreter or a lawyer; but the number of expert interpreters or publicly appointed defenders are so few in number that they are unable to attend all

trials where this is the case. The safeguard to the effect that no person is compelled to testify against himself or to confess guilt cannot be guaranteed where the investigating officials have resorted to torture. A few cases have been brought against the Government of Ecuador alleging that the police, after torturing a detainee during the inquiries preceding the pre-trial investigation, have forced him to sign a confession of guilt. It is hoped that the reforms already mentioned and designed to eradicate torture will permit the full enforcement of this safeguard. The freedom of advocates to practice their profession is fully guaranteed in law and in practice.

133. The mechanisms for the provision of compensation required under paragraph 6 of article 14 were analysed earlier.

134. With a view to reducing and eliminating corruption within the country, the Constitutional Assembly adopted provisions making acts of corruption relating to misuse of State funds by peculation, extortion, bribery and illicit enrichment imprescriptible as regards both legal action and penalties. The proceedings will continue until the persons concerned have been apprehended; they may be tried - particularly those who abscond - in absentia, thus preventing impunity. In addition, it was decided that officials elected by popular vote must, as a prior condition for their entry into office, make sworn declarations of their active and passive assets at the beginning and end of their periods of office and allow banking secrecy to be lifted.

135. The Anti-Corruption Commission was created in March 1997; it was established in its definitive form by the National Assembly. It will begin its work on 10 August 1998 with the appointment of the Committee on Civic Control of Corruption. It has seven members, to be appointed by the new President of the Republic by executive decree; they will be selected from short lists submitted by civil society and State entities. Its responsibilities will be the same as previously, namely the receipt of complaints and the conduct of inquiries concerning cases of corruption and publication of the results thereof.

## M. Article 15

136. The fourth report describes in detail the provisions in domestic legislation relating to the non-retroactivity of criminal laws and allowing offenders to benefit from laws imposing lighter penalties once they have been promulgated.

137. In practice the courts comply fully with these principles; first, for example, the adoption of subsequent legislation more favourable to offenders has brought about the release of a number of individuals awaiting trial or serving sentences. This has been the case with the reform of the Drugs Act, under which drug addicts are no longer considered as delinquents but as individuals needing treatment.

138. As was seen earlier in connection with article 4 of the Covenant, these constitutional guarantees cannot be suspended by declarations of a state of emergency.

## N. Article 17

### 1. Arbitrary and unlawful interference

139. The fourth report analyses the provisions safeguarding individuals against interference in their private lives. However, a distinction must be made between the illegal interferences committed by private individuals as well as State officials and involving failure to comply with the requirements of the Constitution and the law (generally relating to authorization from a competent judge) and other exceptional cases where such authorization is not required, such as flagrante delicto, prevention of the commission of a crime or in cases of force majeure as fire, flood, etc. Arbitrary interferences are those which, although authorized by the competent judge or in line with legal requirements, are executed in an abusive fashion and, ultimately, are not in line with the provisions of the Covenant.

### 2. Inviolability of the home

140. Ecuadorian law defines the home as the place where an individual habitually resides or carries on his business.

141. The fourth report describes the legal provisions protecting that inviolability. In practice, however, there have been isolated cases of breaches of the inviolability of the home which were not only illegal but also arbitrary. Most of those incidents were committed by officers of the National Police, either in searches for delinquents or for purposes of making inquiries. These breaches of the Covenant arise from the fact that article 203 of the Code of Criminal Procedure, relating to searches, is not clearly interpreted by police officers. For instance, to undertake a search for a delinquent which originates in a report that the person concerned is in a particular house, a legal authorization issued by the competent judge must be obtained, and that authorization must contain an order for preventive detention, unless the person concerned has committed a crime or offence in open view, or is committing a crime or offence inside the house, with a view to assisting the victims. The increase in delinquency in the country has given rise to arbitrary acts of this type. The degree of arbitrariness was even greater when under previous regimes the armed forces were authorized to perform police functions. However, the present Government has rescinded that authorization.

142. In this connection the National Plan for Human Rights requires the armed forces of Ecuador to refrain from exercising police functions within civil society except under a state of emergency.

143. Reports have also been received of isolated cases in which the National Police has raided homes without obtaining appropriate court orders for purposes of harassment or persecution of citizens who have reported irregularities committed by individual police officers.

144. As was mentioned in section III.C, concerning rights and remedies in law, violations of these rights can be reported through the machinery mentioned in that section, both in peacetime and in times of emergency. In practice, the persons concerned have had recourse to that machinery.

### 3. Inviolability of correspondence

145. As a rule the reports strictly apply the constitutional provisions concerning the inviolability of correspondence, principally by refusing to admit documents obtained in violation of those rights as evidence in contentious proceedings.

146. With the creation of the constitutional remedy of habeas data, which was analysed in detail in section III.C of this report, it is intended that citizens should be able to have recourse to the courts or to the Ombudsman to report violations of that right, both in peacetime and under states of emergency.

147. The personal data of every Ecuadorian citizen - namely the data strictly necessary to establish his or her parentage, date of birth and civil status - are stored at the civil identification and registration centres. As stated earlier, article 30 of the Constitution establishes the right of access of every individual to data or information concerning him or her held by public or private bodies and the right to know the purpose for which it is kept and the use made of it. An individual may also request the competent court or official to update, rectify, strike out or annul data or information which is erroneous or unlawfully affects his or her rights.

## O. Article 18

148. In addition to the information on the contents of this article provided in the fourth report, it is important to mention that domestic legislation does not allow suspension of freedom of conscience and religion in any manner whatsoever, even during states of emergency. This is true of both the absolute freedom to have a religion and of the freedom to manifest it in public or private.

149. Ecuador has, through the appropriate legal machinery (Ministry of the Interior, by ministerial decision), recognized the existence of religions other than the dominant religion (Roman Catholicism), such as the Evangelical, Protestant, Orthodox, Buddhist and Islamic faiths. It has also recognized certain variants of those religions, known as “sects”. Members of those faiths have full freedom, in law and in practice, to practise them, either by using places of worship or by publicizing their beliefs in writing.

150. The Constitution also allows parents to choose whether their children shall or shall not receive a religious education. In practice this right is applied fully, since parents register their children in the religious or lay institutions of their choice.

## P. Article 19

151. Freedom of expression is one of the constitutional guarantees which may be suspended under a state of emergency. However, as stated earlier, even during those special periods citizens and the communication media have had full freedom to disseminate knowledge of events. Obviously, the communication media respect the limitations on that right - relating to national security and public order and morals - laid down in the Constitution and the laws.

152. In Ecuador the profession of journalist is exercised openly and with little restriction. The numbers of printed, radio and television media in the country are high in relation to the number of inhabitants, and those media reflect all political, economic and social opinions held within the country and abroad. There are also foreign newspapers and magazines, and, thanks to technological progress, any ordinary citizen can obtain satellite access to television channels in various countries of the world. Ecuadorian journalists have complete freedom to seek and receive the information necessary for their work, both inside and outside the country. The incorporation of the Internet into television, radio and printed media systems has opened the possibility of even broader access. Foreign journalists also perform their work in complete freedom in Ecuador.

153. In Ecuador nobody is persecuted for his political opinions. Both civil society and the communication media bring strong moral pressure to bear on the institutions of State when the latter violate the law, particularly by acts of corruption and abuses of power. This pressure has, for example, enabled cases of violations of human rights to be extensively commented on and has, ultimately, brought about their investigation and solution through that freedom of expression. The pressure of public opinion has also brought about the resignation, not only of ministers, but also of a Vice-President and a President of the Republic, for breaches of the law and abuses of power.

## Q. Article 21

154. In addition to what is stated in the fourth report it is important to explain that in Ecuador no authorization to exercise the right of peaceful demonstration or assembly is required from any body whatsoever. Citizens demonstrate freely in the streets and in public places. The police have been instructed not to put a stop to such events unless, and only unless, they become violent and degenerate into acts of vandalism. Suppression, when it does occur, is effected by appropriate means. Cases of violent suppression in which firearms have been used are rare. Such cases have been investigated, and their negative consequences were found to be due to accident rather than intent. However, complaints have been lodged in cases of detention for vandalism in which during the investigation process police officers used torture as a means of obtaining statements.

155. It should be mentioned that the right of peaceful assembly is in fact suspended during states of emergency. This may be the reason why previous Governments resorted to declaring states of emergency with such facility, namely with a view to preventing the citizens from demonstrating publicly.

## R. Article 22

156. In Ecuador social organizations are approved by the ministry with competence for the sector of social activity in which each association is involved. The procedure is brief and reasonably flexible. All that is required is that the statutes of the association should be in line with its aims and purposes and approved by ministerial decision.

157. The National Plan for Human Rights contains a special section on "citizen participation" (p. 15 of the annex to the decree). In that section, the Government of Ecuador undertakes to "guarantee participation in public affairs by civil society, and especially by popular and non-governmental organizations; to receive proposals relating to economic, social and cultural policies and the security of the citizen which seek to defend human rights, and to channel petitions submitted by those organizations relating to cases of individual and collective violations of human rights".

158. The Political Parties Act contains provisions permitting the establishment of political parties without major restrictions; those restrictions include the requirement of a set number of signatures of citizens approving its creation and the setting down of concrete ideologies. In addition, during recent years groups of independent persons, known as "social movements" and not adhering to any specific party doctrine, have been established in Ecuador. The only restriction on the formation of political parties is that if a particular party fails to obtain a specified number of votes in two successive elections it must be dissolved. This rule is a consequence of a restrictive economic policy followed by the State, since the latter cannot furnish State resources to political groups which do not enjoy sufficient popular acceptance.

159. The political parties pursue their propaganda activities in Ecuador openly and without being subject to major restrictions.

160. The right of free association may not be suspended, even when a state of emergency is in force.

## S. Article 23

161. As regards rights pertaining to the family and to marriage, certain items of information in addition to that submitted in the fourth report need to be provided here.

162. With regard to de facto unions, the law guarantees equality of rights for the cohabitants and for children born during such unions. In other words, children born within a de facto union now have the same rights as children born in wedlock. When the Act regulating unions of this type was promulgated, the number of applications for recognition of paternity, affiliation, alimony, inheritance rights, etc, increased. Before the promulgation of that Act, patriarchal Ecuadorian society did not recognize the rights of children born in unions which were not deemed to be civil marriages.

163. In Ecuadorian legislation there are reasonable restrictions on the contracting of marriage, even where the contracting parties express their free and full consent. These include impossibility to contract marriage on grounds of legal incompatibility (the insane, deaf mutes who cannot communicate in writing and persons who have not reached puberty or are under age 12 (for a girl) or 14 (for a boy)) and on grounds of kinship (first and second degree of consanguinity and first degree of affinity, i.e. marriage with parents, children, grandparents, grandchildren, brothers, sisters, parents-in-law and sons- and daughters-in-law).

164. In Ecuador there is full freedom to marry through a civil or religious ceremony. Religious marriages, unlike civil marriages, do not have to be registered; but the churches do register them as a means of verifying their membership.

165. There is no element of compulsion in family planning policies. In practice, however, some of them are discriminatory, mainly because Ecuadorian society requires the woman, but not the man, to undergo contraceptive treatment, which is often painful and harmful to the woman's health.

166. Ecuador has promoted the reuniting of families consisting of Ecuadorian and foreign nationals for economic or political reasons. In the latter case the regulations concerning refugees in Ecuador permit such reunification provided that the consular requirements in the different countries are complied with.

167. As regards equality of rights of spouses during marriage and following its dissolution, article 8 of the Constitution stipulates that “neither marriage nor its dissolution shall change the nationality of the spouses”. Consequently, neither spouse loses his or her nationality on account of marriage or divorce.

168. As regards the use by a woman of her maiden name, she is required to take the name of her husband, on social rather than legal grounds. However, in recent years this practice has fallen into disuse, particularly among the new generations of professional women.

169. Notwithstanding the stipulations of the Constitution and the Civil Code, in practice equality in marriage is still a distant goal, particularly as regards the administration of the household and its assets and joint decision-making concerning the education of children and all other aspects of marriage. This is particularly true in households in which the woman has not received any vocational training, devotes herself exclusively to looking after the house and the children and is consequently financially dependent on her husband. It is hoped that the most recent reforms will bring about not only progress in legislation but also a cultural advance in the field of matrimonial questions.

## T. Article 24

170. As regards the civil rights of children, some advances made in Ecuadorian domestic legislation and some difficulties other than those already referred to in the fourth report should be mentioned here.

171. In articles 8, 10, 14 and 23 of the Covenant certain problems relating to paragraph 1 of article 24 were covered. These included the segregation of juvenile delinquents from adults, as regards both trial and rehabilitation; the non-publication of judgements or other matters concerning juveniles, in pursuance of the principle of the higher interest of the child; the exploitation of the labour-power of minors and the mechanisms which the Government is promoting; and the equality of civil, filiation and inheritance

rights of children born in and out of wedlock. All these provisions are evidence of the recognition in law that children must be guaranteed greater protection than that extended to adults.

172. The fourth report described in detail the legal provisions protecting children in Ecuador in accordance with the Convention on the Rights of the Child and article 24 of the Covenant. In practice these provisions are far from being complied with for the economic and social reasons already described in the fourth report. Children living in extreme poverty in Ecuador still have their labour-power exploited; they are marginalized and used for prostitution, the sale of organs and drug trafficking; most of them have dropped out of school or are illiterate. They are even exploited as labour and physically and morally ill-treated by their own parents. Although the Act Prohibiting Violence against Women and the Family has laid down certain rights and safeguards for women and children, the ill-treatment of children has not ceased, and to some extent society deliberately overlooks the fact that parents are ill-treating their own children. The reasons for the ill-treatment of children derive from poverty and economic constraints burdening the family unit, ill-treatment of one spouse by the other and other cultural problems such as that of respect for one's elders. Reports of ill-treatment of children are extremely rare, on the grounds that family matters are deemed to be exclusively “private matters”. The latter consideration has made it difficult to punish parents by the restriction or deprivation of parental authority or by penal sentences, as required by the relevant legislation.

173. The freedoms of expression and religious belief of children are restricted by the ill-treatment they suffer and by the fact that parents impose their own beliefs and convictions.

174. Ecuador's initial report on the Convention on the Rights of the Child (CRC/3/Add.44) contains the following passage: “Ecuador possesses a body of law to protect the rights of children that contrasts sharply with an actual situation in which all the guarantees for their realization do not exist. The implementation of the law encounters obstacles of a social, economic and political nature which impede the full observance of children's rights.”

175. Even so, the latest measures taken in areas of concern to children reflect the recent development of a social movement seeking to promote their welfare. Its activities have given rise to significant advances benefiting children. For instance, an inter-institutional group has been formed consisting of the Permanent Forum of Organizations for and with Boys, Girls and Adolescents; the Working Boys' Programme; Pro Justitia; The National Institute for Children and the Family; The Ministry of Social Welfare; Defence for Children International - Ecuador; The National Council for the Modernization of the State; and UNICEF. The creation of this body has enabled a discussion to begin on the new institutional structure for children in the country; for the responsible bodies within the existing structure have suffered from the same defects as other State entities, such as corruption, inefficiency and lack of creativity.

176. The National Institute for Children and the Family, together with other entities of the State (such as the Ministry of Social Welfare) and of civil society, has prepared a number of programmes designed to reduce the incidence of practices which violate the rights of children. These programmes are as follows:

- Citizens' Action for the Promotion of Kindness
- Protection and Education for Working Children
- Growing up with our Children
- Volunteers for Children and the Family
- Development Centres for Small Children
- Mutual Aid Medical Action
- Information Network on Children and the Family
- Office of the Defender of Children and Juveniles

177. The Office of the Defender of Children and Juveniles is a standing, autonomous, representative and non-jurisdictional municipal body which, through the exercise of a public authority, adopts administrative measures to promote the rights of boys, girls and juveniles and to enforce their implementation and restoration. The members of these offices are persons democratically elected by civil society and formally appointed by the mayor or the president of each canton. Their task is to enforce, safeguard, defend, promote and supervise rights, adopting an integrated and indivisible approach. They will give advice and guidance on the rights of children and on the mechanisms available to enforce both their observance and their restoration. They will use non-judicial methods to settle cases in which boys, girls and juveniles are at risk or have had their rights violated. To that end they will have recourse to the specialized public or private services providing care in each locality (medical and psychological care, legal and social assistance, etc.).

178. The National Plan for Human Rights, in article 18 of the executive decree, provides for “concrete action to mobilize public opinion with a view to establishing a new cultural model favourable to boys, girls and juveniles in order to prevent illicit trafficking in minors and in their organs, illegal adoptions, child and juvenile prostitution, exploitation of labour-power and drug use”.

179. The latest constitutional reforms, adopted in April 1998 and which will come into force next August, give high priority to the rights of children, recognizing them as citizens and protecting four categories of rights, namely rights relating to survival (life, health, adequate standard of living, social security); rights relating to development (education, culture, etc.); civil rights (preservation of the child's identity, name and nationality, its right

not to be separated from its parents and the right to enjoy special protection against all forms of exploitation and cruelty); and participatory rights (freedom of thought, expression, conscience and religion, the right to be consulted and the rights of free association and peaceful assembly).

180. These provisions give minors equality of rights with adults. Their implementation is a challenge for the Government of Ecuador.

## U. Article 26

181. In the field of non-discrimination some progress has been achieved which deserves consideration.

### 1. Decriminalization of homosexuality

182. The Constitutional Court, by decision No. 106 (R.O. 203, 27 November 1997), suspended the application of article 516 of the Penal Code, which declared homosexuality an offence, on the grounds that it constituted discrimination based on sexual orientation and was not in line with article 26 of the Covenant, this notwithstanding the fact that the Constitution does not prohibit discrimination on grounds of "other status", as required by the Covenant.

183. The National Plan for Human Rights contains a separate section (in art. 25 of the decree) concerning the rights of sexual minorities, "guaranteeing such persons the right not to be discriminated against on account of their sexual proclivities, and facilitating satisfaction of their economic, social and cultural needs by means of non-discriminatory laws and regulations". It also provides that "the officials responsible for State security shall not perform any acts of persecution or harassment against individuals on account of their sexual proclivities"; for such practices are extremely common within the country.

### 2. Adoption of the Elderly Persons Act

184. The Elderly Persons Act (Act No. 27, R.O. 806, 6 November 1991) formally prohibits discrimination on the grounds of age. In addition, the Act requires certain benefits to be granted to the elderly, such as the right to use certain public services (for example, land and air transport), and to pay certain State taxes and contributions, at 50 per cent of the normal rates. These provisions were adopted bearing in mind that not every difference in treatment constitutes discrimination, since the criteria on which that differentiation is based are reasonable and objective and have a legitimate purpose, namely that of bringing an end to the discriminatory treatment of elderly persons. Some of those provisions, and principally those relating to taxes and contributions, are being complied with in practice. On the other hand, the entitlements relating to certain public services are not being met in full owing to the lack of a collective awareness of the desirability of providing favourable treatment for the elderly.

### 3. Adoption of the Disabilities Act

185. The Disabilities Act (Act No. 180, R.O. 996, 10 August 1992) creates an obligation to take certain measures on behalf of the disabled, such as the construction of walkways and paths for them to move about on and to give them easier access to public places. The private sector is required to reserve a percentage (fixed by law) of its jobs for disabled persons. The latter also enjoy tax exemptions and preferential rates in transport services.

186. These provisions are not yet fully implemented on account of the lack of a culture of solidarity, which has not yet taken root in the Ecuadorian environment; in this respect the situation is similar to that described in paragraph 184. There are 8,230 disabled persons registered with the National Council for the Disabled. Of these, 807 are suffering from visual disability, 2,514 from mental disability, 1,653 from hearing disabilities and 3,295 from physical disabilities.

187. The latest constitutional reforms, adopted in April 1998, provide that the State shall guarantee the provision of preventive measures and of care and rehabilitation for persons with disabilities as well as the utilization of goods and services and vocational training and reintegration.

188. The National Plan for Human Rights contains special sections on the rights of elderly and disabled persons.

## V. Article 27

189. Mention must be made of the remaining difficulties, and of certain advances achieved, in the field of the rights of ethnic, religious and linguistic minorities.

190. Notwithstanding a measure of political participation secured during the last few years, members of the indigenous peoples have not yet - with a few exceptions mentioned below - succeeded in rising to managerial posts in the public services on equal terms. The situation is particularly serious as far as the Negro population is concerned; their access to working life and to the educational and religious sectors is still restricted. The requirements of bilingual intercultural education at the national level has not yet been met, and there are only very few written texts in indigenous languages. In the judicial sphere there is manifest discrimination against persons belonging to these groups.

191. In March 1997 the National Planning and Development Council for the Indigenous and Negro Peoples was established as an autonomous entity independent of the State to frame and implement policies benefiting the peoples concerned. Since members of the indigenous and Negro minorities in the country have been appointed to the decision-making posts in that council, it is hoped that its establishment will overcome these difficulties.

192. The National Plan for Human Rights contains two sections specifically concerning the Indian and Negro populations.

193. The most recent constitutional reforms, adopted in April 1998, introduced interesting changes with regard to the protection of these minorities. The traditional ownership of community lands, which may not be seized, disposed of, divided or lost with the passage of time, is safeguarded. The “collective” intellectual property rights of these peoples in their ancestral knowledge, and their right to develop their cultural, historical and artistic heritage, respecting their own systems, practices and knowledge in the medical field, are recognized; and in the judicial field, the indigenous authorities will have the right to administer justice and apply their own rules and procedures for the settlement of disputes in accordance with their own customs or common law, provided that these do not run counter to the Constitution.

194. The Government of Ecuador has also ratified the ILO Convention (No. 169) concerning indigenous and tribal peoples in independent countries.

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