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مجلس حقوق الإنسان

الدورة الثالثة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، كريستوف هايتز

إضافة

متابعة التوصيات القطرية - إكوادور*

موجز

يقدم المقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، في هذا التقرير الذي أعده عقب الزيارة التي قام بها إلى البلد في الفترة من ٥ إلى ١٥ تموز/يوليه ٢٠١٠، تحليلاً للخطوات التي اتخذتها إكوادور لتنفيذ التوصيات التي قدمها المكلف بالولاية السابق في تقرير زيارته (A/HRC/17/28/Add.2). وقد وثق المقرر الخاص خلال زيارته عمليات قتل خارج القضاء يرتكبها أفراد الأمن، والشرطة، وجماعات مسلحة غير مشروعة، وقتلة مأجورون. وسجّل أيضاً حالات قتل دون محاكمة وتطهير اجتماعي واعتداءات من جانب العصابات الريفية، باعتبارها مشكلة خطيرة تواجهها بعض مناطق البلد.

* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيُعمّم باللغة التي ورد بها فقط.

كما استقصى عمليات قتل أفراد من الفئات الضعيفة، مثل المدافعين عن حقوق الإنسان والسكان الأصليين. وخلص إلى أن الإفلات من العقاب يؤدي دوراً كبيراً في وقوع هذه الأنماط من القتل.

وقد اتخذت الحكومة، خلال الفترة المشمولة بالتقرير، بعض الخطوات للتحقيق في ادعاءات التعرض للإيذاء على يد القوات المسلحة والشرطة، منها تقديم التدريب المكثف في مجال حقوق الإنسان. ومن ناحية أخرى، لم يُحرز تقدم كبير في مكافحة الإفلات من العقاب. ويؤدي انعدام المساءلة في حالات الإعدام خارج القضاء إلى تنامي الشعور بالعجز عن الدفاع عن النفس لدى المواطنين. ولذلك، بات الأمن هو الشاغل الرئيسي للسكان في إكوادور. ويحث المقرر الخاص الحكومة على تنفيذ التوصيات الواردة في تقرير الزيارة، ولا سيما التوصية بوضع نهاية للإفلات من العقاب.

Annex

[English and Spanish only]

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Follow-up to country recommendations: Ecuador

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I. Methodology

1. In paragraph 8 of its resolution 17/5, the Human Rights Council urged States to cooperate with and assist the Special Rapporteur on extrajudicial, summary or arbitrary executions in carrying out his mandate, to supply all necessary information requested by him and to ensure appropriate follow-up to his recommendations and conclusions, including providing information on the action taken on those recommendations.

2. The Special Rapporteur concurs with the previous mandate holder on the importance of follow-up reports as critical components of country visits to assess the progress made in respecting the right to life and the status of implementation of the respective recommendations within a certain time frame.

3. In accordance with the established practice,¹ the present follow-up report concerns the recommendations made by the previous mandate holder, following his visit to Ecuador in 2010. The Special Rapporteur requested information from the Government and other actors about the steps taken to implement the recommendations in the visit report and about difficulties encountered or lack of implementation. In addition, information was sought on the current situation concerning extrajudicial executions in the country, particularly on whether and how the situation has improved, deteriorated or remained the same. This follow-up report was finalized on 26 February 2013.

4. The Special Rapporteur thanks the Government of Ecuador for its responses dated 8 November 2012 and 14 February 2013 and for providing information on measures taken to implement the recommendations contained in the visit report. He also expresses his gratitude to all stakeholders who contributed to the present report.

II. Introduction

5. In the present report, the Special Rapporteur analyses the steps taken by Ecuador to implement the recommendations made by the previous mandate holder, following his visit to the country from 5 to 15 July 2010. The visit report (A/HRC/17/28/Add.2) was presented to the Human Rights Council at its seventeenth session.

6. During his visit, the Special Rapporteur documented lynching, social cleansing and abuses by rural juntas. In addition he investigated cases of extrajudicial killings by the police, armed forces, illegal armed groups and hired killers. He emphasized that impunity was a significant cause and aggravator of all of these types of killings.

7. Since the country visit, improvements have been made in certain areas. The Special Rapporteur notes that several human rights training courses for armed forces have been conducted. However, some problem areas have been addressed either insufficiently or not at all. These relate mainly to allegations of police and armed forces abuse; accountability failures for extrajudicial killings; and lack of information and transparency regarding investigations.

¹ In 2006, the previous mandate holder initiated follow-up reports on country visits to assess the extent to which States implement recommendations.

III. Ecuador-Colombia border killings

A. Growth of illegal armed group violence

8. Given the growing number of illegal armed groups in the northern border provinces of Sucumbíos and Esmeraldas, the Special Rapporteur recommended that specific training in countering these groups, and regarding drugs and weapons trafficking, be improved. No information has been received on the intention to provide such specific training. Nevertheless, the Government has taken some steps to comply with its obligation under article 158 of the Constitution, which provides for human rights education for members of the armed forces and the national police force. According to the Government's response to the Special Rapporteur of 8 November 2012, in 2012, the Ministry of National Defence, with the technical support of the Office High Commissioner for Human rights (OHCHR), has drawn up the human rights, gender and interculturalism syllabus for armed forces training schools. The Special Rapporteur encourages the State to implement and evaluate the impact of such training and to improve and give sufficient priority to specific training in countering illegal armed groups and trafficking.

9. The response by the State to the Special Rapporteur on progress in the implementation of the recommendations indicated that there has been a reduction in homicides throughout the 2011-2012 period.² However, the Special Rapporteur is concerned at various reports arguing that the security situation along the northern border with Colombia has not improved, but has become more complex and pressing.³ Illegal armed groups are still carrying out killings, often in connection with their drug trafficking operations. Furthermore, the Special Rapporteur observes that rural Ecuadorians, indigenous groups and displaced Colombians continue to be seriously affected. It is difficult for civilians to meet the various groups' interests and harassment escalates as each group vies for control.

10. The Special Rapporteur is particularly disturbed by information indicating that prosecution of drug and weapons traffickers in general has still not been fully achieved, for various reasons, including lack of financial resources, fear of reprisals, and the lack of personnel specialized in trafficking.

11. Furthermore, the Special Rapporteur regrets the lack of progress towards improved protection for indigenous groups and displaced Colombians. The lack of accountability for violations committed against these vulnerable groups places them at grave risk. In December 2010, the Committee against Torture recommended that Ecuador guarantee the physical integrity of the civilian population in the provinces along the northern border; and ensure that investigations be carried out into the murders and abuses committed in that region, and that the perpetrators be brought to justice.⁴

12. In this context, the Special Rapporteur notes progress regarding criminal laws and procedures, such as the draft Integral Criminal Organic Code developed by the Ministry of Justice, Human Rights and Religion (Ministerio de Justicia, Derechos Humanos y Cultos), which provides for 12-year prison terms for traffickers and up to 14 years if trafficking

² Response by the State to the Special Rapporteur, 14 February 2013.

³ United Nations Country Team (UNCT) submission to the UPR on Ecuador, second cycle, 21 November 2011, available from: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf

⁴ CAT/C/ECU/CO/4-6 and Corr.1, para. 14. See also CRC/C/ECU/CO/4, paras. 68-69.

involves children and minors. In addition, Ecuador has undertaken relevant efforts to update the National Plan against Trafficking. However, it has been reported that the Plan does not have funding for its implementation.⁵

13. The Special Rapporteur reiterates that efforts to prosecute members of illegal armed groups, especially those which abuse civilians, should be made. The Special Rapporteur notes that in 2011, 4,336 persons were detained for drug trafficking, possession of drugs, and other offences.⁶ However, the Special Rapporteur would have appreciated more detailed information on the prosecution of members of illegal armed groups.

B. Abuses by the armed forces

14. The current Special Rapporteur, further to review of the information made available in the preparation of the present follow-up report, notes reports indicating the continued occurrence of abuses by members of the armed forces and the persistent high rate of impunity. It has been reported that members of the armed forces have committed abuses and human rights violations in border communities, such as the provinces of Esmeraldas and Sucumbíos, and in the context of agreements on land management and control, as well as in connection with State-backed mining projects.⁷ The Special Rapporteur is gravely concerned at information indicating the continued occurrence of violence against some members of indigenous groups by the armed forces in order to secure the interests of oil, mining and logging companies operating in indigenous territories.⁸

15. In the country visit report, the Special Rapporteur observed that military forces were not consistently well trained and did not have much combat, counter-insurgency or other relevant field experience. They did not know how best to protect or even deal with civilians in such a complex, multi-armed actor environment.⁹ Furthermore, the Special Rapporteur urged the Government to provide extensive training on how to work constructively with the civilian population and civil society and on how to apply and distinguish between human rights and international humanitarian law.

16. In this regard, the Special Rapporteur notes as positive the technical cooperation project initiated between the Ministry of Defence and the German Technical Cooperation Agency (GIZ). He welcomes information indicating that training was conducted with the objective of strengthening military crisis management capabilities.¹⁰ The Special Rapporteur also notes that in 2011 the Ministry of National Defence requested the Joint Command of the Armed Forces to organize the training of Northern Border I (Frontera Norte I) military personnel.¹¹ The Special Rapporteur recommends that related training progress reports be made public as a measure of transparency and that the impact of training be monitored and evaluated.

17. The Special Rapporteur welcomes the Agreement signed on 2 October 2012 between the Ministry of Justice, Human Rights and Religion, the Coordinating Ministry of

⁵ UNCT submission to UPR, 21 November 2011, available from: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf

⁶ Response by the State to the Special Rapporteur, 14 February 2013.

⁷ COSCE submission to the UPR, para.32, November 2011, available from: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/COSCE_UPR_ECU_S13_2012_CoalitiondeOrganizacionesdeSociedadCivielenEcuador_S.pdf. See also, A/HRC/WG.6/13/ECU/3.

⁸ CERD/C/ECU/CO/20-22, para. 17. See also, CERD/C/ECU/CO/19, para. 14.

⁹ A/HRC/17/28/Add.2, para. 16.

¹⁰ Response by the State to the Special Rapporteur, 8 November 2012.

¹¹ Ibid.

Heritage and the Ministry of National Defence on the implementation of the Training Modules on the Collective Rights of Peoples and Nationalities in Ecuador for the Armed Forces. These modules were prepared with the support of OHCHR. The Special Rapporteur reiterates that it is important for human rights to be part of the training curricula for agents of the security forces. Courses should be presented on a regular as opposed to a one-off basis and should reach all members of the security forces in order to make them aware of the importance of respect for human rights.¹²

18. The Special Rapporteur welcomes the fact that the draft Integral Criminal Organic Code aims to define the most serious human rights violations and crimes against international humanitarian law, as well as crimes against humanity, enforced disappearances and extrajudicial executions.¹³ However, the current wording of the Code may contribute to impunity for crimes committed by police or the armed forces.

19. The previous Special Rapporteur also recommended that extensive training be conducted on how to deal humanely with displaced persons and refugees. The response by the State to the Special Rapporteur on progress in the implementation of the recommendation indicated that the Refugee Directorate (Dirección de Refugio) of the Ministry of Foreign Affairs, following the adoption of Executive Order 1182, 30 May 2012, organized training on refugees for the judiciary, police and armed forces, private organizations, media, educational and civil society. Training courses were held in all northern border provinces and in Guayas, Azuay and Santo Domingo de los Tsáchilas.¹⁴

20. The Special Rapporteur encourages the Government to continue the coordination between the Ministry of Foreign Affairs, National Police and Armed Forces, and to ensure the timely exchange of information on the situation of refugees in the country. While the Special Rapporteur notes that several human rights training courses for the armed forces have been conducted, he regrets that the Government did not provide specific information on the impact of the training and on specific training for civilians on how and to whom they can make complaints concerning the behaviour of the armed forces.

21. As noted in the mission report, one of the most significant causes of the increase in reported abuses was a change in leadership among the military's top officials in the region, which is carried out every two years. The Special Rapporteur would have appreciated more detailed information on current military relations with civil society and humanitarian actors. The Special Rapporteur reiterates that commanders should make it clear that violations of civilians' rights will not be tolerated.

22. In relation to the confidentiality of complaints, the Special Rapporteur welcomes information indicating that the Ministry of Defence, through its Department of Human Rights and International Humanitarian Law, has drawn up protocols for processing, filing and tracking records on human rights and gender-related violations by members of the armed forces.¹⁵ The Special Rapporteur encourages the authorities to pursue their efforts to ensure the confidentiality of complaints.

¹² Submissions by la Comisión Ecuémica de Derechos Humanos del Ecuador (CEDHU) and the Centre for Civil and Political Rights (CCPR) on follow-up to the Human Rights Committee, September 2011, available from: <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

¹³ Response by the State to the Special Rapporteur, 8 November 2012.

¹⁴ Ibid.

¹⁵ General Order N. 82, 30 April 2012, and Supplement to the Official Registry N.716, 4 June 2012.

IV. Homicide and hired killers

23. In the country visit report, the Special Rapporteur documented the phenomenon of so-called hired killers (*sicarios*), who reportedly carry out killings and instil fear in the population. The hired killers work alone or in small groups, and commit these killings normally by shooting victims from a passing motorcycle. More professional and hence more expensive killers may be hired by a “mastermind” (*autor intelectual*), who pays a middleman to arrange the hit. “Loan sharks” (*chulqueros*) are often implicated in hired killings.¹⁶

24. The previous Special Rapporteur indicated that a number of factors contributed to the killings, including deficiencies in the justice system; the lack of accountability for violations; greater organized crime activity; and increased drug trafficking. Citizens concluded that taking private action to “resolve” a dispute is likely to be more effective than relying on the police and the courts. In addition, the Special Rapporteur notes that the growing public concern about insecurity and the problem of hired killers have increased xenophobic sentiments against people of Colombian origin. The Special Rapporteur therefore welcomes information indicating that awareness campaigns have been undertaken to combat xenophobia against Colombian citizens.¹⁷

25. The Government has acknowledged that the current legislation does not define the crime of acting as a “hired killer” nor its variables; and that there are thus no records of this type of crime. However, the Government indicated that the question of including criminal measures against hired killers in the draft Integral Criminal Organic Code is under debate in the National Assembly.¹⁸ The fact that this category is not defined in the law does not facilitate resolution of the problem and the Special Rapporteur therefore welcomes this initiative.

26. The Special Rapporteur further notes that the State General Public Prosecutor’s Office has a special technical mechanism known as the *Delitoscopia*, which is used for qualitative and quantitative data collection, processing, analysis and dissemination of security and penal justice indicators.¹⁹ The Special Rapporteur also welcomes information indicating that most information acquired through the *delitoscopia* covers all 24 Ecuadorian provinces and 224 cantons of the country.²⁰

27. The Government has taken some steps to promote greater cooperation between police and prosecutors. For instance, in order to implement citizens’ security, the Public Prosecutor’s Office set out mechanisms through which to coordinate with the national police and combat impunity. Since 2010, public prosecutors and police chiefs have held meetings on coordination, training and updates. Similar meetings are held at the provincial level. Instructions, manuals and resolutions designed to improve the work of the Judicial Police have also been issued.

28. The Government also indicated that Chapter II of the Criminal Code concerns those responsible for crimes. This chapter determines the guilt of the direct or indirect perpetrators, receivers and accomplices. The Government also specified that, since 2011, three steps had been proposed in relation to killings by hired killers: prevention, response, and social inclusion.²¹ While acknowledging the steps taken by the Government to target not only the hired killer but also the mastermind, middlemen and others involved, the

¹⁶ A/HRC/17/28/Add.2, paras. 20, 23 and 24.

¹⁷ Response by the State to the Special Rapporteur, 14 February 2013.

¹⁸ Response by the State to the Special Rapporteur, 8 November 2012.

¹⁹ Response by the State to the Special Rapporteur, 14 February 2013.

²⁰ Ibid.

²¹ Response by the State to the Special Rapporteur, 8 November 2012.

Special Rapporteur notes that efforts should continue to punish these killings. Therefore, measures taken by the Government to date are important and should be continued and strengthened, especially the thorough investigation of all cases of hired killings.

29. As recommended in the visit report, consideration should be given to addressing the problem of loan sharks and their role in hired killings, and to considering reforms to the formal loan sector to enable more citizens to take out legal loans. Information has been received on the establishment of new forms of borrowing and provision of loans at a lower interest rate, which should remove the need to use informal lenders. The Special Rapporteur also notes that the National Police have statistics on usury to identify organizations linked to this crime, and studies to define public policies and legislation in relation to the matter are ongoing.

1. Settlement of accounts

30. The previous mandate holder underlined that many officials considered hired killings cases to be what they call “settling of accounts”. The previous mandate holder found that, despite some official denials, settling of accounts cases were less seriously investigated than other cases. Concern has been expressed that a zone of impunity seemed to have been created. The Special Rapporteur thus reiterates that this denies justice to the victim’s family and leaves perpetrators free to kill again. The Special Rapporteur takes note of the information provided in the response by the State that the National Police and the State General Public Prosecutor’s Office do not use “settlement of accounts” as a classification.²² However, according to various sources of information, the term is still used.

2. Homicides in places of detention

31. Deaths in centres for social rehabilitation and prisons remain worrying. The authorities need to act upon their responsibility to protect the rights of those detained. The recurrence of and lack of transparency surrounding such deaths have continually been denounced. The Special Rapporteur has been informed that, between 2008 and 2012, 23 deaths, resulting either from the use of force by public officials or from the failure to protect the right to life of the detained person, occurred within the country’s rehabilitation centres. From January to November 2012, 11 deaths were reported in the following provinces at places of detention: Guayas (4), Imbabura (1), Pichincha (2), Sto. Domingo de los Tsachilas (2) and Tungurahua (2).²³ In most cases firearms and knives were used. The Special Rapporteur is concerned at reports indicating that a number of factors contribute to the increase in reported deaths in centres of social rehabilitation and prisons, including lack of adequate training on controlling fights among inmates; insufficient measures to prevent deaths in custody; absence of control of the entry and possession of weapons; and the authorities’ refusal to acknowledge their responsibility as guarantors of the rights of those under custody. The Special Rapporteur notes that subsequent attempts by the Government to address homicides in prisons have led to the adoption of training for prison officers on the appropriate use of lethal weapons as well as random visits by Government authorities to prisons to observe performance of the obligations by employees and, if necessary, the taking of disciplinary measures.²⁴

32. In the preparation of the present report, the Special Rapporteur has received information regarding multiple arbitrary killings of prisoners, including the following:

²² Response by the State to the Special Rapporteur, 14 February 2013.

²³ Submission by CEDHU for the present report.

²⁴ Response by the State to the Special Rapporteur, 14 February 2013.

- On 15 August 2012, in one of the cells of pavilion A, Guayaquil Social Rehabilitation Centre for Men N.2, known as “La Roca”, Walter Poveda Salazar was killed, after being shouted at a number of times. In February 2012, Jose Luis Arroyo Quiñónez was also killed in the same Centre;
- On 27 September 2011, in the prison of Bellavista de Santo Domingo, a prisoner, Edgar Espinoza Aguirre, was killed after an alleged assault by the guards when he was trying to escape with other prisoners.

33. Similar cases in the prisons of Quevedo, El Rodeo and Quito have been reported.

34. Internal control mechanisms fail to fulfil their function. The Special Rapporteur is concerned about reports indicating that authorities keep the number of detainees who have been killed inside the prisons and centres of rehabilitation confidential. The Special Rapporteur therefore recommends strengthening the work of the National Human Rights Institution as the national prevention mechanism.²⁵

V. Killings by police

35. The mission report revealed serious cases of unlawful killings by police, in particular of the following types: killings connected with police work, police involvement in hired killings, police involvement in social cleansing, and killings related to personal disputes, such as matters concerning family and neighbour relationships.

36. In the preparation of the present follow-up report, the Special Rapporteur received information indicating the continuing incidence of killings by the police: from August 2010 to October 2012, 19 extrajudicial executions by police and military were reported.²⁶ A specific case of extrajudicial execution by the police took place in Guayaquil in June 2010. The victim, a man driving to the gas station near the Centro Comercial Plaza Mayor de la Alborada, was allegedly killed by a hooded man believed to be a police officer. The investigation of this extrajudicial execution has been subject to delays. Among the police officers involved in the case, only the District Chief of Police has testified. It was also reported that on 25 July 2011, 51-year-old shopkeeper Julio Antonio Baquerizo died after being beaten by two national police officers.²⁷ The Special Rapporteur welcomes information indicating that the officers presumed to be involved have been subject to an administrative investigation by the Department of Internal Affairs.²⁸

37. The Special Rapporteur is also concerned at reports indicating that violence is used to maintain order and discipline in prison and centres for social rehabilitation.²⁹ Reportedly, most acts of violence take place during criminal investigations, during arrests, in the street, in police vehicles, at the police station or in temporary detention centres.³⁰ On 30 July 2011, Wilson Livipuma Naula was transferred to the Provisional Detention Centre in Machala, but after eight hours it was reported that the detainee had been killed.³¹ The lack of adequate measures to protect prisoners' lives while in custody and impartial investigation of police misconduct is of particular concern.

²⁵ Optional Protocol to the Convention against Torture, ratified by Ecuador on 20 July 2010.

²⁶ Submission by CEDHU for the present report.

²⁷ Submission by ACAT – France for the present report.

²⁸ Response by the State to the Special Rapporteur, 14 February 2013.

²⁹ Submission by ACAT – France for the present report.

³⁰ Ibid.

³¹ Submission by CDH for the present report.

38. The State indicates that since 2011 the State General Public Prosecutor's Office has drawn up strategies for investigations and prosecution of hired killers, organized crimes and unjustifiable acts by police officers and that progress in this area has been made.³² In September 2012, six police officers from Manta were sentenced to 25 years in prison.³³

39. The previous mandate holder concluded that the quality of the information recorded by the Government with respect to police killings was poor and that the internal affairs section of the police department did not operate effectively or independently in investigating allegations of police misconduct.

40. In connection with these conclusions, the previous mandate holder recommended that the Government should create a new entity to receive and investigate allegations of police abuse. The reports submitted by the State indicate that in 2010 the Ministry of Interior created the Human Rights Violations Investigative Unit, an entity independent from the National Police, which receives complaints against police officials filed by other police officials or any citizen.³⁴ The Special Rapporteur would have welcomed concrete information relating to the number of complaints that this unit has received that resulted in an investigation and a determination against those responsible.

41. In relation to police recordkeeping, the Special Rapporteur takes note of the information provided in the response by the State that since 2011 the Ministry of Interior has increased its logistical goods and services for investigations. The General Directorate of Personnel of the National Police, which is the office dealing with police human resources, has an automated record of offences, unprofessional conduct and judgements concerning police staff.³⁵ In addition, the Special Rapporteur notes that the General Inspectorate of the National Police is considered to be the office in charge of investigating and sanctioning disciplinary offences committed by police officials.³⁶ The Special Rapporteur would have welcomed information relating to the number of investigations into cases of police misconduct that have been conducted since 2010, the number of investigations that have determined those responsible, and the type of disciplinary sanctions imposed.³⁷ Furthermore, the Special Rapporteur emphasizes the need for the investigations to be undertaken in an independent manner, and observes that the General Inspectorate of the National Police may not comply with this criteria.

42. The Special Rapporteur notes that there is an inadequate information flow on reasons for detention, a lack of notification to family members, and a lack of data on abuses by the police and on the progress of investigations. The Special Rapporteur regrets that a lack of adequate information is a persistent problem in various areas of the system, as well as, to a certain extent, in the courts. As indicated in the visit report, statistics should be publicly reported on a regular basis to record the impact of State policies.

43. While these are steps in the right direction, there is still the perception that police abuse persists;³⁸ there remains a need for more far-reaching reform to improve police recordkeeping, particularly in relation to allegations of police abuse. The Special Rapporteur also emphasizes the recommendation for the State to study ways to ensure

³² Resolution N.001A – FGE – 2013 of 18 January 2013.

³³ Response by the State to the Special Rapporteur, 8 November 2012.

³⁴ Response by the State to the Special Rapporteur, 14 February 2013.

³⁵ Response by the State to the Special Rapporteur, 8 November 2012.

³⁶ Response by the State to the Special Rapporteur, 14 February 2013.

³⁷ Submissions by CEDHU and CCPR Centre to the Human Rights Committee, available from: <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>

³⁸ Submission by the Defensoria del Pueblo de Ecuador for UPR 2012, available from: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/DPE_UPR_ECU_S13_2012_DefensoriadelPueblodelEcuador_S.pdf

stronger civilian oversight of the police.³⁹ In addition, the Special Rapporteur notes that by Executive Decree 632 of 17 January 2011,⁴⁰ the Ministry of Interior became the legal, judicial and extrajudicial representative of the National Police.⁴¹ However, the Special Rapporteur reiterates the recommendation for the Government to consider establishing an independent and separate police ministry. A situation where the Ministry of the Interior identifies those responsible for killings before a proper investigation is conducted should be avoided.

VI. Rural juntas

44. The Government response indicates that it is necessary to differentiate the rural parish juntas (*juntas parroquiales*), decentralized autonomous governments, which promote public safety, in coordination with other public institutions and citizens, especially with the National Police and municipalities,⁴² from the *juntas de hecho*, which are not regulated by the Government, to defend the interests of peasants.

45. The Special Rapporteur welcomes the clarification made in the response of the Government. However, he notes the absence of specific information provided on the matter of documenting any unlawful activity by the rural juntas, such as “punishing” residents or interfering with the criminal justice system. During his mission, the Special Rapporteur received reports of serious abuses committed by some juntas (*juntas de defensa del campesinado*) against the communities. According to witnesses and domestic advocates, these groups punished those who disobeyed their rules. According to testimony by non-governmental organizations, juntas have used force to control the criminal justice system.⁴³

46. Concern has been expressed that rural juntas continued to violate the rights of members of the communities when they are not aligned with the junta’s interests.⁴⁴ The Special Rapporteur reiterates that appropriate action should be taken to eliminate such practices. In addition, despite the recommendation made by the previous mandate holder in the country visit report, no experts have been appointed to report to it and the National Assembly on the composition and operations of the rural juntas.

47. Finally, the Special Rapporteur welcomes information indicating that the State General Prosecutor’s Office, by resolution No. 001B-FGE-2013 of 18 January 2013, established a team of specialists to investigate allegations of abuses by juntas.⁴⁵ The Special Rapporteur recommends that the resolution should be implemented in order to proceed with prosecutions where appropriate.

VII. Confusion between indigenous justice and lynching

48. The previous mandate holder mentioned in his report that “indigenous justice” is justice carried out in accordance with indigenous traditions. In stark contrast to lynching cases, it does not involve the arbitrary or vengeful application of violence.⁴⁶ He noted that,

³⁹ A/HRC/17/28/Add.2, para. 91.

⁴⁰ Decreto Ejecutivo N. 632, 17 January 2011.

⁴¹ Response by the State to the Special Rapporteur, 8 November 2012.

⁴² Article 238 of the Constitution. See also, Article 158 of the Electoral Act, Code of Democracy, Official Gazette Supplement 578 of April 27th, 2009.

⁴³ A/HRC/17/28/Add.2, para. 50.

⁴⁴ Submission by CEDHU for the present report.

⁴⁵ Response by the State to the Special Rapporteur, 14 February 2013.

⁴⁶ A/HRC/17/28/Add.2, para. 56.

despite official popular representations to the contrary, there are essentially no cases of indigenous justice in Ecuador that fall within his mandate. This is to say that there are few, if any, cases of death following an indigenous justice process.

49. While the Special Rapporteur welcomes the fact that the current Constitution and the Organic Code of the Judiciary recognizes the right of indigenous peoples and Afro-Ecuadorian communities to administer justice in accordance with their cultures and traditions, and that the Constitutional Court has recognized indigenous justice as a judicial social practice whereby indigenous communities apply ancient beliefs and convictions under their own procedures, the Special Rapporteur expresses concern that the development of the legal framework regulating the competencies of the indigenous administration of justice is a slow process.

50. As the Draft Law of Coordination and Cooperation between Indigenous and Ordinary Justice is stalled in the National Assembly, the Special Rapporteur reiterates that these reforms should be undertaken in consultation with indigenous groups.

51. The Special Rapporteur was informed that in early 2012 efforts were made to contribute to a better understanding of local realities and cultural rights in the administration of indigenous justice in Ecuador. For instance, the Coordinating Ministry of Heritage, and the Office of the High Commissioner for Human Rights published the book *Living Justice: Legal Pluralism and Indigenous Justice in Ecuador*. Furthermore, in order to provide a technical tool for public officials, these institutions prepared and delivered texts concerning training modules on collective rights for the Armed Forces, National Police, Ombudsman and the Judiciary. The Special Rapporteur welcomes information indicating that at the end of 2012 the Ministry of Justice, Human Rights and Religion undertook the first training course for the armed forces and public officials on collective rights.⁴⁷ The Special Rapporteur recommends that these modules be monitored.

52. The Government recognizes the need not to present so-called “lynching” as an implementation of the decisions of indigenous justice. As recommended in the visit report, consideration should be given to ensuring that the media and officials clearly distinguish between lynching and indigenous justice.⁴⁸ Confusing lynching with indigenous justice strengthens racist stereotyping and reinforces anti-indigenous sentiment. Therefore, the Special Rapporteur encourages the Government to ensure respect for and recognition of the traditional systems of justice of indigenous peoples and encourages official statements and media accounts to avoid confusion.

53. The previous mandate holder indicated that a strategy to address the problem of lynching should be developed by the Government in consultation with experts, civil society and indigenous and rural organizations. The response by the State to the Special Rapporteur on progress in the implementation of this recommendation indicated that the State General Prosecutor’s Office has sought to recruit individuals belonging to indigenous communities. Thirteen indigenous prosecutors are now serving in the provinces of Morona Santiago, Bolivar, Napo, Pastaza, Guayas, Loja, Imbabura and Chimborazo. In addition, there are 8 prosecution secretaries and 13 assistants. However, the current situation continues to raise concern. The Government has not provided further information on measures taken to include in reporting on the location and nature of lynching incidents examination of their causes, and prosecution of perpetrators. The Special Rapporteur reiterates that the phenomenon is still poorly studied and deserves much more Government attention than it presently receives.

⁴⁷ Response by the State to the Special Rapporteur, 14 February 2013.

⁴⁸ A/HRC/17/28/Add.2, para. 58.

VIII. Threats to human rights defenders

54. In the country visit report, it was noted that threats against human rights defenders, as well as against humanitarian actors, union activists and social movement and indigenous leaders had been made. A lack of investigation into threats and inadequate provision of protection were also noted.

55. The current Special Rapporteur, following review of the information available in the preparation of the present follow-up report, notes reports indicating the continued occurrence of threats against members of indigenous and peasant associations, as well as human rights and environmental activists and protesters.⁴⁹ Several incidents of killings and death threats have been reported, including:

- Killing of Marlon Lozano Yulán, a member of the organization Land Union and Life (Unión Tierra y Vida). On 21 July 2011, Mr. Yulán was shot at when he was at the intersection of Rumichaca and Manabi streets, in Guayaquil. Reportedly, several other leaders from various associations that fight for access to land have also been threatened and killed.⁵⁰ The Special Rapporteur together with other Special Rapporteurs⁵¹ sent a joint allegation letter on 30 November 2011. The Special Rapporteur acknowledges the information provided by the State in relation to this case indicating that protection measures have been granted to the family of the victim.⁵²
- On October 2011, César Ricaurte, Head of Fundamedios, gave a presentation about freedom of expression in Ecuador (together with a coalition of Ecuadorian press freedom groups before the Inter-American Commission on Human Rights). Subsequently, Mr. Ricaurte received death threats. Several organizations condemned the attacks and called on the Government to ensure his safety.⁵³ The Special Rapporteur notes that following the complaint made by César Ricaurte in October 2011, he was granted adequate protection measures.⁵⁴
- During the visit of the previous Special Rapporteur, German Antonio Ramírez was kidnapped and murdered. He was a forensic doctor, trained in investigating allegations of torture, and had documented injuries suffered by prisoners. The Special Rapporteur is gravely concerned about information indicating that the prosecutors conducting the investigations in this sensitive case have failed to carry out their duties and that an effective investigation was not carried out. In connection with this case, the Committee against Torture has requested the Government to provide adequate protection to the members of the national network of forensic experts and all human rights defenders, and to initiate a programme for the protection of professionals who, through their investigations, are able to bring to light facts concerning alleged cases of torture and ill-treatment.⁵⁵

⁴⁹ Submission to the Special Rapporteur by ACAT-France for the present report.

⁵⁰ Ecuador JAL 30/11/11 Case N. ECU 3/2011, A/HRC/19/44, 23 February 2012.

⁵¹ Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

⁵² Response by the State to the Special Rapporteur, 14 February 2013.

⁵³ JS1 submission to the UPR. JS1 para. 30, p. 6, available from: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRECStakeholdersInfoS13.aspx>

⁵⁴ Response by the State to the Special Rapporteur, 14 February 2013.

⁵⁵ CAT/C/ECU/CO/4-6, para. 12.

56. Overall, the Special Rapporteur concludes that the persistent lack of accountability for violations committed against human rights defenders and vulnerable groups continues in the country. The Special Rapporteur reiterates that the State should continue to assure effective protection measures, through judicial or other means, to individuals and groups in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.⁵⁶ Furthermore, he recommends that the State should meet its obligation to fully investigate and bring to justice the perpetrators of violations of human rights under the terms of articles 2, 6 and 7 of the International Covenant on Civil and Political Rights. It is also important that State officials should recognize the legitimacy of the work of human rights defenders, and not contribute to an atmosphere in which they are seen as enemies.

IX. Impunity

A. Police investigations and forensics

57. In the country visit report, the Special Rapporteur indicated that the quality and effectiveness of police investigations were roundly criticized by judges, prosecutors, ombudsmen and human rights actors. The Special Rapporteur urged the Government to study the effectiveness of police investigations, the case of inadequacies and the role of the police force in sustaining high impunity rates.

58. The Special Rapporteur notes subsequent attempts to evaluate the performance of the police. As of November 2011, the State General Public Prosecutor's Office, the Judiciary Council, the Public Defence Office, the National Police, and the Ministry of Justice, Human Rights and Religion formed the Inter-institutional Commission, to which the Judicial Police presents weekly statistics to safeguard the efficiency of the law enforcement bodies involved.

59. The Special Rapporteur is concerned about various reports indicating that a high rate of impunity persists. From January to December 2012, 618 homicides were reported in Guayas. In Manabí only 34 of the 292 homicides reported in 2012 have resulted in convictions for the perpetrators to date.⁵⁷ The response by the State to the Special Rapporteur on progress in the implementation of the recommendations indicated that the State General Public Prosecutor's Office presented a report of 214 cases of crimes against life, for which 199 convictions were handed down.⁵⁸ In addition, the Special Rapporteur notes that the National Directorate of Judicial Police and Investigation expressed its commitment to respect human rights in all processes.

60. Regarding the structural and operational reforms to enhance the police force's capacity to respond effectively, the Special Rapporteur welcomes the fact that the draft Integral Organic Criminal Code provides for the introduction of separate criminal measures for extrajudicial executions.⁵⁹ Furthermore, the Special Rapporteur notes that the Human Rights Department of the National Office of Education, in accordance with the Integral Strategic Plan for the Modernization and Transformation of the National Police of Ecuador for the 21st Century, 2004-2014 has implemented the Programme of Integral Continuous Training to provide training in human rights, citizen security and use of force, with the

⁵⁶ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, para. 4, adopted by Economic and Social Council resolution 1989/65.

⁵⁷ Response by the State to the Special Rapporteur, 14 February 2013.

⁵⁸ Response by the State to the Special Rapporteur, 8 November 2012.

⁵⁹ *Ibid.*

collaboration of 126 human rights instructors.⁶⁰ Another important development in this field, noted by the Special Rapporteur, is the drawing up of mandatory guidelines on the use of force, firearms and detention procedures for the police with the technical support of, among other actors, OHCHR. The Special Rapporteur recommends that these guidelines should be implemented through effective training, equipment and a monitoring system.⁶¹

61. As recommended in the visit report, the State should continue police structural and operational reform to enhance the police force's capacity to respond effectively to rising rates of serious crimes. The Special Rapporteur notes reports indicating that armed forces are performing regular citizen security activities all over the country, without the proper training, and despite the fact that the Constitution expressly differentiates their mandate from that of the police. The Special Rapporteur therefore recommends that the reform should be aligned with international human rights standards and take into account the conclusions and recommendations from the Report on Citizen Security and Human Rights issued by the Inter-American Commission on Human Rights in 2009.⁶²

62. The Special Rapporteur notes that all services rendered by the Integral Centres on Legal Medical Investigations and Forensic Sciences are free.⁶³ However, the Special Rapporteur regrets information indicating that civilians continue to pay all expenses for forensic services. Among the regrettable consequences is the fact that the victims or the family of the victims are not able to pay the rates, and therefore, numerous cases do not get through the investigation phase. The Special Rapporteur reiterates that the practice of charging civilians for forensic services should cease immediately.

63. In the country visit report, it was indicated that some forensic reports were falsified and forensic laboratories were not structurally independent of the judicial police. The response by the State to the Special Rapporteur indicated that the State General Public Prosecutor's Office, in cooperation with the judicial police, maintains studies on training, criminal competencies, and forensic medicine for criminal investigation. Furthermore, the Special Rapporteur notes that the construction of eight Integrated Research Centres for Forensic Medicine and Science has been planned.⁶⁴ Furthermore, the Special Rapporteur is very concerned that laboratories may not always function with the necessary independence. Therefore, he reiterates the recommendation that a study on whether there is a need for an independent forensic unit to be undertaken.

B. Prosecution service

64. At the time of the country visit in 2010, interlocutors described their "complete mistrust" of the prosecution service as a whole, its "inefficiency", and its widespread

⁶⁰ Reformulación Plan Estratégico de Modernización y Transformación Integral de la Policía Nacional del Ecuador para el siglo XXI 2010-2014, 2014, p. 24, available from:

http://www.policiaecuador.gob.ec/fileadmin/policiaecuador-repositorio/Archivos/PLAN ESTRATEGICO POLICIA NACIONAL_revisado.pdf

⁶¹ UNCT submission to UPR, 21 November, 2011, available from:

http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf

⁶² OEA/Ser.L/V.II. Doc. 57, Report on Citizen Security and Human Rights, 31 December 2009,

available from: <http://scm.oas.org/pdfs/2010/CP25032E.pdf>.

See also, UNCT submission to UPR, 21 November, 2011, available from:

http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf

⁶³ Response by the State to the Special Rapporteur, 14 February 2013.

⁶⁴ Ibid.

corruption. The lack of transparency regarding the prosecutor's work was a subject of concern, especially in Sucumbíos where interlocutors stated that it was difficult to convince prosecutors even to register complaints in some circumstances, such as when the alleged perpetrators were members of the military.⁶⁵

65. The previous mandate holder made a recommendation to tackle this situation and prevent further denials of care. He recommended that independent investigations should be undertaken into allegations of military or police collusion with illegal armed groups in the north, especially in border towns experiencing very high levels of trafficking and illegal armed actor violence. The Special Rapporteur was not provided with sufficient information to assess progress. He encourages the Government to pursue its efforts to implement the recommendations in the mission report.

66. The Government mentioned that article 160 of the Constitution establishes jurisdictional unity. The competent bodies established by law determine sanctions for disciplinary faults and offences by the armed forces or National Police. In addition, the Special Rapporteur notes that in March 2012 the State General Public Prosecutor's Office created the Office of the Commission of Truth and Human Rights with the purpose of monitoring relevant causes including presumed violations by the armed forces and National Police.

67. The Government response also referred to the evaluation of the performance of the judiciary officials including the State General Public Prosecutor's Office. Since December 2011, 2,223 officials from the Prosecutor's Office have been evaluated. Of these, a total of 71 have received negative evaluations, and thus disciplinary measures were taken in order to avoid negative practices. The Special Rapporteur would have appreciated receiving concrete information on the sanctions imposed related to disciplinary causes. Furthermore, the Special Rapporteur recommends that the mechanisms of evaluation should be permanent and independent.

68. The Special Rapporteur notes the information specifying that there is an annual management assessment evaluation of prosecutors and the staff involved in investigations. Furthermore, the response by the State on progress in the implementation of recommendations indicated that there are legal audits of prosecutors' offices to avoid irregularities or complaints and that the Judicial Council has disciplinary authority over the results of the audit report.

C. Courts and the judiciary

69. At the time of the country visit, the judiciary was often criticized for its susceptibility to bribery and other illegitimate influence, particularly in cases involving organized crime and officials. The Special Rapporteur is concerned that the courts are still perceived as politicized and non-independent. In addition, it was reported that a lack of adequate information is a persistent problem in various areas of the system, as well as, to a certain extent, in the courts.

70. The Special Rapporteur notes that, after the national referendum held in May 2011, a structural reform of the judiciary was launched and the National Council of the Judiciary was replaced by a new transitory council comprising representatives of the Executive, Legislative and the Transparency and Social Control branches.⁶⁶ He further notes that the

⁶⁵ A/HRC/17/28/Add.2, para. 73.

⁶⁶ UNCT submission to UPR, 11 November 2011, available from http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf

judicial reform includes, inter alia, comprehensive reforms on infrastructure, human talent, and inter-institutional coordination.⁶⁷

71. The Special Rapporteur recommends that the State promote judicial reform in compliance with human rights standards and strengthen the judiciary as one of the key elements of the national human rights protection system.⁶⁸

D. Witness protection

72. In the visit report, the Special Rapporteur noted that witnesses often saw prosecutors as susceptible to corruption, connected to perpetrators or ineffective.⁶⁹ Furthermore, the Special Rapporteur observed that witnesses were also reluctant to trust the Government's witness protection programme because security for it was provided by Government police, and witnesses assumed that there was collaboration between witness protection police and the rest of the services.⁷⁰

73. According to information received, over the last two years, the General Public Prosecutor's Office has tripled the amount previously assigned to the Protection Programme for Victims and Witnesses. The Special Rapporteur also welcomes information indicating that several State institutions coordinate with public prosecutors' offices specializing in protection of victims, witnesses, operators of justice, complainants, expert witnesses, and investigators, to contribute to the institutional transformation and strengthening of the policy on crime.⁷¹ While these developments are very positive, concerns remain with respect to the community outreach of the programme. The Special Rapporteur encourages efforts to raise public awareness of the programme.

74. Furthermore, the response by the State indicated that the Legislative Strengthening Project aims for civil and military, and not only police support, to be provided in the protection system.⁷² The Special Rapporteur reiterates that the witness protection programme should be administered independently of the police and prosecution services.

75. The Special Rapporteur welcomes information indicating that the National System for Protection and Assistance to Victims, Witnesses and Other Participants in the Criminal Process also protects human rights defenders. However, he notes that a special programme or guidelines for the protection of human rights defenders have not been established.

E. Truth Commission

76. The previous Special Rapporteur noted that the Truth Commission has been an important Government initiative to address endemic impunity. It began work in January 2008, and published its final report on 7 June 2010.

77. The Special Rapporteur welcomes information provided by the State indicating that the 118 cases reported in the final report were transmitted to the State General Public

⁶⁷ Ibid.

⁶⁸ UNCT submission to UPR, 11 November 2011, available from http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/UNCT_UPR_ECU_S13_2012_UNCT_E.pdf. See also, Informe final de la Veeduría Internacional, December 2012. Veeduría Internacional para la reforma de la función Judicial del Ecuador.

⁶⁹ A/HRC/17/28/Add.2, para. 80.

⁷⁰ A/HRC/17/28/Add.2, para. 81.

⁷¹ Response by the State to the Special Rapporteur, 8 November 2012.

⁷² Ibid.

Prosecutor's Office. The Government also indicated that the Truth Commission supported the Office of the Prosecutor which set up a special unit to carry out Commission-related investigations.⁷³ The Special Rapporteur was also informed that in mid-2011, the structural organization within the special unit changed, enabling the creation of a permanent National Head Office with greater institutional presence.⁷⁴

78. The Special Rapporteur notes that the Truth Commission provided an additional six months for submission of new claims, which were filed for 25 new cases; 18 of them were classified by the Commission as serious violations and transmitted to the State General Public Prosecutor's Office in two supplementary reports submitted on 19 April 2011 and on 15 November 2011.⁷⁵

79. The Special Rapporteur regrets that no information was received concerning the outcome of any criminal trial that may result from the information submitted by the Truth Commission to the Office of the Public Prosecutor. As of September 2011, the prosecutors were reported to have renewed investigations into several key cases, but no suspects had been charged.⁷⁶ The Special Rapporteur also notes information indicating that the National Human Rights Unit of the General Public Prosecutor's Office is working with scholars on the development of a strategy that successfully presents the indictments in at least seven of the most notorious cases documented in the Truth Commission Report. However, the Special Rapporteur regrets that adequate information about this new strategy has not been provided to the victims.

80. In relation to legal assistance, the recommendation of the previous mandate holder focused on the need to ensure ease of access for victims and families to information on the progress of investigations and provision of legal assistance where needed. The Special Rapporteur notes that efforts are being made to ensure that victims and their families have access to information collected and processed by the prosecution office.⁷⁷ The Special Rapporteur also notes the fact that the Government has considered providing further legal assistance to victims and their families. However, he is concerned about various reports indicating that the vast majority of victims do not have access to a lawyer.

81. Compensation for victims and families is reportedly regulated through the draft law for the reparation of victims, and the prosecution of serious human rights violations and crimes against humanity that occurred in Ecuador between 4 October 1983 and 31 December 2008. The Special Rapporteur notes that the National Assembly's Permanent Commission on Justice and State Structure works on the preparation of reports to be presented at the Parliament for the second debate. The Special Rapporteur calls on the National Assembly's Commission on Justice and Structure of the State to present the outcome of the examination in order to accelerate the adoption of the bill for reparation of victims proposed by the Truth Commission.⁷⁸ The Special Rapporteur is also concerned at reports arguing that the victims and relatives of the victims were not actively involved in the legal drafting process.

82. Regarding the creation of an archive of the Commission's documentation, the Special Rapporteur notes that the Truth Commission, in coordination with the Ministry of Culture, has transmitted a complete copy of all documents to the National Archives and the

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Response by the State to the Special Rapporteur, 8 November 2012 and 14 February 2013.

⁷⁶ UPR submission Ecuador – Human Rights Watch: November 2011, available from: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/EC/HRW_UPR_ECU_S13_2012_HumanRightsWatch_E.pdf

⁷⁷ Response by the State to the Special Rapporteur, 8 November 2012.

⁷⁸ CAT/C/ECU/CO/4-6, para. 17.

Ministry of Justice, Human Rights and Religion to be kept in full without any restriction as a guarantee of the right to truth and memory. The Special Rapporteur encourages the State to inform the victims as to how they can access the National Archives.

83. The Government has indicated that the protection programme for victims and witnesses of the Prosecutor General's Office has made significant changes in recent months and it is able to provide adequate protection. The Special Rapporteur would have welcomed detailed information to enable assessment of the assurance that witnesses have access to witness protection.

84. An essential recommendation from the visit report requested the Truth Commission to publish and widely disseminate a short version of its report for a general audience and translated into appropriate languages. The Special Rapporteur was informed that this recommendation has gained momentum in 2012. A considerable number of events were held to present the final report. The Special Rapporteur also notes that efforts were made to disseminate the report.⁷⁹

X. International Community

85. The Special Rapporteur in his visit report indicated that Ecuador suffers from a lack of humanitarian assistance and of monitoring and promotion activities and that the international community should continue to monitor human rights issues in Ecuador, to provide appropriate advice and assistance and to cooperate with local groups. The Special Rapporteur was not provided with sufficient information to assess progress on this specific recommendation.

XI. Conclusions

86. **The Government of Ecuador deserves credit for taking measures to implement some of the recommendations formulated by the previous mandate holder in the report following his visit to the country in July 2010. Progress has been made in providing human rights training to the police and the armed forces. The Special Rapporteur welcomes the technical cooperation project initiated between the Ministry of Defence and the German Technical Cooperation Agency (GIZ). The Special Rapporteur also welcomes the drawing up of mandatory guidelines on use of force, firearms and detention procedures for the police with the technical support, inter alia, of OHCHR.**

87. **Regarding the right to truth and memory, some measures have been taken to create an archive of the Truth Commission's documentation. However, persistent impunity and lack of accountability are principal concerns. The Special Rapporteur notes that, despite information indicating that 136 cases documented in the final report and two supplementary reports by the Truth Commission were transmitted to the State General Public Prosecutor's Office, the State has not provided information on the outcome of any investigations or criminal trials.**

88. **Indeed, much remains to be done to undertake investigations in an independent manner, especially when there are allegations of police abuse. Many families and witnesses are afraid of being killed if they make a complaint because they often see prosecutors connected to perpetrators. The Special Rapporteur is also**

⁷⁹ Response by the State to the Special Rapporteur, 8 November 2012.

concerned about information indicating that citizens continue to pay all expenses for forensic services, while the Government has indicated that these services are free. Therefore, the Special Rapporteur stresses the importance of cessation of the practice of charging civilians for forensic services.

89. The Special Rapporteur noted that threats against human rights defenders, as well as against humanitarian actors, union activists and social movement and indigenous leaders still occur. The lack of accountability for violations committed against these vulnerable groups places them at further grave risk. Therefore, the State should adopt effective measures to ensure protection of civilians.

90. Continuous impunity remains a concern. The Special Rapporteur urges the State to significantly strengthen efforts to address killings perpetrated by hired killers, rural juntas and illegal armed groups.

Appendix

Summary of follow-up to each recommendation⁸⁰

A. National police

1. **The Government should establish a high-level expert commission to evaluate the performance of the police force. The commission should:**
 - (a) **Study the effectiveness of police investigations, the causes of inadequacies and the role of the police force in sustaining high impunity rates;**
This recommendation has not been implemented.
 - (b) **Propose structural and operational reforms to enhance the police force's capacity to respond effectively to rising rates of serious crime, including extrajudicial executions;**
This recommendation has been partially implemented.
 - (c) **Study whether there is a need for an independent forensics unit;**
This recommendation has not been implemented.
 - (d) **Study ways to ensure stronger civilian oversight of the police, including the possibility of creating a separate police ministry.**
This recommendation has not been implemented.
2. **The Government should create a new entity to receive and investigate allegations of police abuse. This entity should have sufficient resources, power and independence to investigate allegations of police abuse in a credible, objective and effective manner.**
This recommendation has been partially implemented.
3. **Police recordkeeping, particularly in relation to allegations of police abuse, should be substantially improved. The Inspector-General should ensure that full records are kept of all complaints made, and that investigations, disciplinary actions, prosecutions and results are tracked. Statistics should be publicly reported on a regular basis.**
This recommendation has been partially implemented.
4. **The practice of charging civilians for needed forensic services should cease immediately.**
This recommendation has been partially implemented.

⁸⁰ See A/HRC/17/28/Add.2, paras. 91-111.

B. Hired killers

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

(a) Study the causes of the growth of hired killings, with an analysis of how and why they occur;

This recommendation has not been implemented.

(b) Expand “geo-referencing” of killings, and tailor policing accordingly;

This recommendation has been partially implemented.

(c) Promote greater cooperation between police and prosecutors;

This recommendation has been implemented.

(d) Promote investigation and prosecution strategies that target not only the hired killer but also the intellectual author, middleman and others involved;

This recommendation has been partially implemented.

(e) Address the problem of loan sharks and their role in hired killings, and to consider reforms to the formal loan sector to enable more citizens to take out legal loans;

This recommendation has been partially implemented.

(f) Require police to investigate all cases of hired killings thoroughly, regardless of whether families formally complain or the deceased had a police record;

This recommendation has been partially implemented.

(g) End the use of the vague “settlement of accounts” classification by police and prosecutors.

Sufficient information has not been provided to enable assessment of progress.

C. Witness protection

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

This recommendation has been partially implemented.

- 7. The programme should be administered independently of the police and prosecution services.**

This recommendation has not been implemented.

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

This recommendation has not been implemented.

D. Northern border abuses

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

(a) **Training in how to work constructively with the civilian population and civil society;**

This recommendation has been partially implemented.

(b) **How to apply and distinguish between human rights and international humanitarian law standards;**

This recommendation has been partially implemented.

(c) **How to deal humanely with displaced persons and refugees;**

This recommendation has been partially implemented.

(d) **Improved training in countering illegal armed groups and trafficking.**

This recommendation has not been implemented.

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

Insufficient information was provided to the Special Rapporteur to assess the implementation of this recommendation.

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

This recommendation has been partially implemented.

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

The Special Rapporteur was not provided with sufficient information to assess progress.

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

This recommendation has been implemented.

E. Truth Commission

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

(a) Ensuring that relevant cases are re-opened and that criminal investigations are undertaken;

This recommendation is currently being implemented.

(b) Ensuring that victims and families can easily obtain information on the progress of investigations and are provided legal assistance where needed;

This recommendation has been partially implemented.

(c) Providing appropriate compensation to victims and families;

This recommendation has not been implemented.

(d) Creating an archive of the Commission's documentation;

This recommendation has been implemented.

(e) Ensuring that witnesses have access to witness protection.

This recommendation has been partially implemented.

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

This recommendation has been implemented.

F. Lynching and indigenous justice

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

Insufficient information was provided to the Special Rapporteur to assess the implementation of this recommendation.

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

This recommendation has been partially implemented.

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

This recommendation has not been implemented.

G. Rural juntas

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

This recommendation has not been implemented.

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

This recommendation is being implemented.

H. International community

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

Insufficient information was provided to the Special Rapporteur to assess the implementation of this recommendation.
