

BRIEFING NOTE
ON THE SPECIAL REVIEW OF THE
OF THE DEFENSORIA DEL PUEBLO DE ECUADOR
BY THE INTERNATIONAL COORDINATING COMMITTEE OF NHRIs
- March 2009 -

For more exhaustive information on the DEFENSORÍA DEL PUEBLO DE ECUADOR please refer to the Summary that was prepared by the ICC Secretariat in April 2008.

I. BACKGROUND

The *Defensoría del Pueblo de Ecuador* (hereinafter *Defensoría*) was established by the Constitutional Reform in 1996. Subsequently, the organic law *Ley Organica de la Defensoría del Pueblo* was passed in 1997. The *Defensoría* first submitted its application for accreditation to the International Coordinating Committee of National Human Rights Institutions (ICC) in 1999 receiving, at that time, the A(R) status. In 2002, the *Defensoría* was accredited as an 'A status' National Institution. However, in April 2008, and in virtue of the process of re-accreditation of all NHRIs, the Sub-Committee on Accreditation informed the institution about its intention to recommend it for the 'B status' and gave the *Defensoría* the opportunity within one year of such notice, to provide the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles.

At this session, the ICC Sub-Committee on Accreditation (hereinafter SCA) issued the following recommendation regarding the *Defensoría*:

"The Sub-Committee notes the following:

- 1) It refers to General Observation "Cooperation with other human rights institutions" and stresses the need for the NHRI to cooperate with other institutions, such as NGOs, established for the purpose of promoting or protecting human rights.
- 2) It also refers to General Observation "Interaction with the International Human Rights System" and stresses that the *Defensoría* should generally make an input to and participate in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system.

The Constitution of Ecuador is currently being reviewed. This revision should in no way negatively affect the independence and effectiveness of the *Defensoría del Pueblo de Ecuador*."

II. DOCUMENTATION PROVIDED FOR THE SPECIAL REVIEW

To permit the SCA to make a determination on the continuous compliance of the *Defensoría* with the Paris Principles following the ICC deliberations of April 2008, on 30 January 2009, the *Defensoría* submitted the following documents to the ICC Secretariat:

- Reformed Constitution of Ecuador which entered into force in July 2008
- Organic Law of the *Defensoría del Pueblo de Ecuador*
- Regulations regarding complaint procedures
- Consumer Defense Organic Law of Ecuador (regarding its articles 81 – 88)
- Transparency and Access to Public Information Organic Law of Ecuador (regarding its articles 11-13)
- Regulations regarding the law on transparency and access to public information
- Budget of the *Defensoría* for the year 2009
- Budget and settlement of the *Defensoría* for the year 2008
- Distribution of staff remuneration of the *Defensoría* for June 2008
- Organizational chart of the *Defensoría*
- Statement of Compliance with the Paris Principles
- Complementary Document to the Statement of Compliance
- Annual Report of the *Defensoría* for the year 2007

- Transitory Plan and Management Model for October 2008 – January 2009

In addition, the Defensoría sent the following information:

- Resolution No.059-D-DP-2007 regarding the international training for staff within the Defensoría
- Agreement with the Chancellery and the Supreme Electoral Court in the year 2005
- Agreement with the Permanent Commission on Approval, Evaluation, Follow-up and Adjustments on the Operative Plans for Human Rights in Ecuador (duration of two years)
- Agreement with the Defensoría del Pueblo de Bolivia in March 2008
- Grant Agreement with OHCHR regarding Prison and Prisoner's Rights Initiatives in October 2008
- Agreement with the Supreme Electoral Court in September 2008
- Internship Agreement with the Santiago de Guayaquil's Catholic University in October 2008
- Agreement with the National Council on Disabilities in July 2005
- Institutional Agreement with the Defensoría Pública Penal of Ecuador concerning the realization of the "Seminar/Workshop on Oral Litigation" for the days 4, 5 and 6 November 2008
- Agreement with the Organization Terre des Hommes Italia in August 2008 in view of the project "Strengthening of the Indigenous Identity and Expansion of the Access to Fundamental Rights in eight Ecuatorial provinces"
- Institutional Agreement with the Working Table on Labor Migration in November 2008
- Agreement with the Alcala University in October 2007
- Letters stating agreements with NGOs and Civil Society Institutions in January 2009 and previous years
- Internship Agreements with Americas University in October 2007
- Document stating the "Testimonial Café: Rompiendo Barreras" in November 2008 regarding Women's Discrimination
- Document stating the Campaign conducted by the Defensoría against Torture in Ecuador in November 2008
- Document stating the Campaign conducted by the Defensoría regarding the 60th Anniversary of the Human Rights Declaration in December 2008
- Chart and Report stating the activities done by the Defensoría regarding the 60th Anniversary of the Human Rights Declaration
- Audio files regarding the Publicity Campaign conducted in virtue of the 60th Anniversary of the Human Rights Declaration
- Document stating the Internet Course conducted by the Defensoría regarding the Protection of Personal Integrity
- Document stating the Defensoría's participation in the National Council for Social Rehabilitation in November 2007
- Document stating the Defensoría's membership in the Permanent Commission for the National Plan for Human Rights in Ecuador
- Documents stating the activities mentioned within the chart and report regarding the 60th Anniversary of the Human Rights Declaration
- Document stating the Defensoría's participation in the Regional Conference regarding the Durban Review
- Diploma in Human Rights and Fair Trial from the Americas School (COLAM) granted to Ms. Ximena Alejandra Cardenas, member of the Defensoría
- Report on the Electoral Observations on the 2008 Referendum in Ecuador
- Training Manual for Indigenous Defenders
- Masters Programme in Human Rights for the January/February 2008 and the December 2008 – January 2009 periods done in partnership with the Alcala University
- December 2008 edition of "El Avizor de Derechos Humanos" digital magazine

The following Sections provide information with regard to the three issues as formulated by the SCA at its April 2008 review.

III. CLARIFICATIONS PROVIDED BY THE DEFENSORÍA ON THE ISSUES RAISED BY THE ICC

A. Constitutional and legal developments of relevance since April 2008

At the time that the SCA issued the April 2008 recommendations, the Political Constitution of Ecuador was being reviewed. Since then, the constitution was reformed in two sections:

- Articles 204 – 210 have now established the Transparency and Monitoring Branch, which the Defensoría forms part of
- Articles 214, 215 and 216 relative to the Defensoría as Ecuador's NHRI

Both provisions, along with other reforms, entered into force in July 2008.

Transparency and Monitoring Branch

The Transparency and Monitoring branch is the fifth branch of Ecuador's state along with the Executive, Legislative, Judicial and Electoral branches. This branch has the mandate of carrying out activities that promote transparency in handling public affairs, control measures against corruption and permitting social control through active participation. The Defensoría, as one of its members, needs to follow this mandate jointly with what is stated in articles 214, 215 and 216. The articles that are of relevance to the Defensoría are arts. 204, 205, 206 and 208 apt. 11. Art. 204 establishes that all members of this fifth branch will be legal entities and have administrative, financial and organizational autonomy. In addition, art. 205 establishes that the mandate of the heads of the member institutions is of five years. The renewal of the term is not mentioned in this article, nor in further ones in the Constitutional text; contrary to the previous art. 96. However, this issue is contemplated in the Organic Law of the Defensoría del Pueblo de Ecuador (hereinafter Organic Law) in its article 3. Still, the term of the Defensor del Pueblo's mandate is of four years according to the Organic Law. Moreover, art. 206 states the obligations of the Defensoría as a member of the branch. Finally, and in accordance with art. 208 apt. 11, the Defensor is now appointed by the Consejo de Participación Ciudadana y Control Social, which forms part of the Transparency and Citizen Monitoring Branch.

Defensoría's reformed constitutional norms

In line with the mentioned art. 204, the new article 214 of Ecuador's Political Constitution keeps much of the essence of the first and third paragraphs belonging to the former art. 96. It establishes the nature of the institution as an organ of public law, its national jurisdiction; and its financial and administrative autonomy. Besides the maintenance of the mentioned characteristics, art. 214 introduces a new element, stating that the institution will have a de-centralized organization and that; therefore, it will have delegates in each of Ecuador's provinces as well as in foreign territory. The de/centralization at a local level implies national, regional and provincial duties that the Defensoría must fulfill.

Former article 96, in its first paragraph, determined the Defensoría's competence regarding the promotion of legal remedies such as the *habeas corpus* and the *accion de amparo* of the people that request them; promote and protect the rights foreseen in Ecuador's Political Constitution; control the quality of the public services provided to the ecuatorian people; and to carry out further functions that are assigned by the law. Article 215 broadens the Defensoría's competence in the promotion of further legal remedies such as those which provide protection, access to public information, *habeas data*; and remedies against breaches and those that protect citizenship. The Defensoría will also take on cases that entail bad quality and deliverance of private services. In addition to public services, it will conduct investigations and solve, within its competence, actions and omissions within this subject. Moreover, the Defensoría will issue compliance measures of immediate application regarding the protection of people's rights and will be able to demand judgment and sanctions to the competent authority in view of possible breaches. Furthermore, the Defensoría will exercise and promote the respect for the right of due process and will prevent torture; and inhumane and denigrating treatment. All of the new duties that are to be fulfilled by the Defensoría shall be carried out in view of the protection and promotion of Ecuador's inhabitant's rights and those belonging to ecuatorians living abroad.

The new article 216 incorporates part of the content of the previous article 96 within its second and third paragraph. The appointment requirements to be the Defensor/a del Pueblo have the same basis in both articles: the candidate shall comply with the requirements to become a judge in the National

Court of Justice of Ecuador in order to become the Defensor/a. In addition, article 216 includes the requirement of giving proof of his/her career in the protection and promotion of human rights, which was not part of the former art. 96. Also, both articles preserve the characteristics relative to the Defensor's jurisdiction and immunity. However, there have been additional changes regarding the appointment process. In the previous article 96, it was mandatory that, before appointing a person as the Defensor del Pueblo, legally recognized human rights organizations' opinion on the postulating candidate should be taken into account. This procedural requirement has been omitted in the new article 216 and does not form part of the current art. 208 apt. 11. The Consejo de Participación Ciudadana y Control Social is the only body that participates in the appointment process. Moreover, the obligation of presenting an annual report by the Defensoría has also been omitted from the Constitution. However, this subject is still contemplated in the Organic Law in its article 8 apt. p.

In its Statement of Compliance, page 9, the Defensoría contemplates the first omission previously mentioned within the reform regarding the appointment process in the "Relations with Civil Society and human rights institutions" section. According to the Defensoría, the fact that legally recognized human rights organizations are no longer part of the appointment process does not affect the Defensoría's relationships with NGOs and other human rights institutions when working with them in the promotion and protection of human rights. According to the Defensoría, the institution has worked in order to strengthen and maintain those bonds throughout 2008. The Defensoría also states its work done as a member of the Transparency and Monitoring branch in January 2009, specifically in drafting a law and participating in debates that discuss the passing of the branch's Organic Law.

Furthermore, the Transitory Plan and Management Model for October 2008 – January 2009 (hereinafter Transitory Plan) provided by the Defensoría, contributes to the reforming tendency in the Defensoría's structure. The Transitory Plan, among other objectives, mainly aims at a reorganization of the Defensoría at an institutional and internal level. On the one hand, at an internal level, the Defensoría intends to engage in the harmonization of the internal regulations of the institution and the draft reform proposal for the Organic Law with the norms in the Political Constitution of Ecuador. On the other hand, and at an institutional level, the Defensoría intends to build a Management Model that will lead the institution to developing policies, strategic plans, procedure statutes, activities, follow-up measures and divisions of labor that will improve the Defensoría's efficiency in the protection and promotion of human rights. In this sense, the Defensoría also intends to communicate the upcoming changes at a national level.

B. Cooperation with other human rights institutions

In the Complementary Document to the Statement of Compliance (hereinafter Complementary Document), which is supported by the documentation provided, the Defensoría responds to this issue. During the period 2007 – 2008, the Defensoría has been engaged in several agreements with educational institutions, government institutions, foreign national human rights institutions and NGOs. In this sense, the agreements to which the Defensoría makes reference to, and provides documentation for, are:

- Agreement with the Alcala University regarding a Regional Support Programme to the Latin-American National Human Rights Institutions (October 2007)
- Cooperation Agreement with the Defensoría del Pueblo from Bolivia (March 2008)
- Agreement with "Terre des Hommes Italia" Organization in view of the project "Strengthening of the Indigenous Identity and Expansion of the Access to Fundamental Rights in eight Ecuatorial provinces" (August 2008)
- Agreement with Guayaquil's Catholic University regarding internships for students from the Jurisprudence and Political and Social Sciences Faculty (October 2008)
- Agreement with the Americas University (October 2007)
- Agreement with the Supreme Electoral Court (September 2008)
- Institutional Agreement with the Working Table on Labor Migration in November 2008
- Cooperation Agreement with the Organization "Participacion Ciudadana"
- Cooperation Agreement with Afro-ecuatorian Organization "Carlos Conchas"
- Cooperation Agreement with the "Fundación para la Rehabilitación Integral de Víctimas de Violencia"

- Document stating the Defensoría's participation in the National Council for Social Rehabilitation in November 2007
- Document stating the Defensoría's membership in the Permanent Commission for the National Plan for Human Rights in Ecuador
- The Defensoría's Transitory Plan reflects the intention to develop further definite relationships with civil society institutions and NGOs at an international and national level

C. Interaction with the International Human Rights System

Regarding this issue, the Defensoría has also provided information to support its position. According to the Complementary Document, the Defensoría has revived its contact with the United Nations System, regional networks and Human Rights Organizations within the country since July 2008. The Defensoría has also engaged in the conduct of a large number of activities regarding the 60th Anniversary of the Universal Declaration of Human Rights. More specifically, it mentions

- The reception of technical and financial support from UNFPA in order to carry out relevant investigations so as to define the situation on women's, children's and adolescent's rights and to draft a report. UNFPA has also assisted the Defensoría with the organization and realization of the First Meeting of Women's Defenders in the Andes Area;
- There has also been joint work between the Defensoría and UNIFEM since 2007 and specifically regarding the "International Day against Violence against Women" campaign and a publication of the Defensoría's;
- UNICEF participated in the Defensoría's campaign "Si a la Niñez" (Yes to Childhood);
- There has also been cooperation with UNDP in elaborating the Operative Manual of the Defensoría, in strengthening the concerned institution, in the project that entailed the application of the TIC to Human Rights, in the elaboration of a Training Manual for Indigenous Defenders on Collective and Individual Human Rights;
- Grant Agreement with OHCHR regarding Prison and Prisoner's Rights Initiatives in October 2008;
- The Defensoría is an original member of the Federación Iberoamericana del Ombudsman (hereinafter FIO) and actively participated in 2004 and 2005;
- The Defensoría is an original member of the Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano (hereinafter Red). In the 7th General Assembly of November 2008, the President of the CNDH of Mexico proposed the integration of the Defensoría as a member of the Coordinating Committee of the Red, gaining the unanimous approval of the present members;
- The Defensoría is currently in charge of the Vice-presidency of the Consejo Andino de Defensores del Pueblo until March 2009;
- Participation in the Preparatory Latin-American and Caribbean Conference on the Durban Review Conference in June 2008;
- The Defensoría has also participated in various International human Rights events such as:
 - Interamerican Meeting and Forum in Queretaro, Mexico (April 2008)
 - Iberoamerican Convention in San Jose, Costa Rica (May 2008)
 - International Workshop in Cartagena de Indias, Colombia (June 2008)
 - International Course in Santa Cruz, Bolivia (August 2008)
 - International Seminar in Bogota, Colombia (August 2008)
 - Mission of the FIO to La Habana, Cuba (May 2008)
 - Regional Seminar in Lima, Peru (October 2008)
 - International Meeting in San Jose, Costa Rica (November 2008)
 - Sub-regional Workshop in Bogota, Colombia (November 2008)
 - International Workshop in Lima, Peru (December 2008)
- The Defensoría has also engaged in training activities for its staff in international cooperation. Courses have been delivered in Torture Prevention, International Criminal Court and international penal law. Staff members have also undertaken master degree courses in various universities.
