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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP
ON THE STANDARD MINIMUM RULES FOR THE
TREATMENT OF PRISONERS
VIENNA, AUSTRIA, 25 – 28 March 2014**

**RESPONSE OF THE GOVERNMENT OF ECUADOR¹
TO NOTE VERBALE CU 2013/129/DO/JS**

¹ This document was received in Spanish and has been officially translated.

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Communication No. MJDHC-SAPCL-2013-0139-O

Metropolitan District of Quito, 29 October 2013

Subject: Standard Minimum Rules for the Treatment of Prisoners

To: Ms. Maria Carola Iñiguez Zambrano
**Adviser, Analysis Team for Transnational Corporations and Arbitration Tribunals
Ministry of Foreign Affairs and Migration**

Madam,

In reference to Communication No. MREMH-DDHAS-2013-0457-O of 26 July 2013, allow me to draw your attention to the following information.

The amendments proposed by the United Nations Office on Drugs and Crime (UNODC) concern the following provisions of the Constitution of the Republic of Ecuador and current legislation relating to the Standard Minimum Rules for the Treatment of Prisoners:

(1) Area (a): Respect for prisoners' inherent dignity and value as human beings

Article 11, paragraph 7, of the Constitution states that "recognition of the rights and guarantees established in the Constitution and in international human rights instruments shall not be to the exclusion of such other rights related to the dignity of persons, communities, peoples and nationalities as may be necessary for their full development".

Article 84 of the Constitution states that "the National Assembly and any body with regulatory authority shall be required to ensure, by formal means, that laws and other legal provisions effectively reflect the rights necessary to guarantee the dignity of human beings, communities, peoples and nationalities as provided for in the Constitution and in international treaties. In no event shall the rights recognized by the Constitution be infringed by amendments to the Constitution, laws or other legal provisions or actions of the public authorities".

(2) Area (b): Medical and health services

Article 51, paragraph 6, of the Constitution (under Section Eight ("Persons Deprived of their Liberty") of Part II, Chapter Three) states that "appropriate and special treatment shall be given to pregnant women, breastfeeding mothers, adolescents and elderly, ill or disabled persons".

(3) Area (c): Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet

Article 51, paragraph 1, of the Constitution states that persons deprived of their liberty "shall not be subjected to solitary confinement as a disciplinary punishment".

(4) Area (d): Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

Article 66, paragraph 3 (c), of the Constitution provides for “the prohibition of torture, enforced disappearance and cruel, inhuman or degrading treatment or punishment”.

Article 54 of the Sentences and Social Rehabilitation Code (in Part VI: General Provisions) states that “the death of an inmate shall be recorded, together with the cause of death, in the appropriate registers and shall be dealt with in accordance with the relevant regulations”.

(5) Area (e): Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances

Part II, Chapter Three, of the Constitution: Rights of vulnerable persons and groups
Section One: Elderly persons

Article 38, paragraph 7, provides for “the creation of special systems for the enforcement of custodial measures”, stating that “provided that alternative measures are not applied, [elderly] persons sentenced to deprivation of liberty shall serve their sentences in facilities adapted for that purpose and, in the case of pretrial detention, shall be placed under house arrest.

Article 203, paragraph 4, states that “in places of detention, proactive steps shall be taken to protect the rights of persons belonging to vulnerable groups.”

(6) Area (f): The right of access to legal representation

Article 77 of the Constitution, under “Rights of Protection” (Part II, Chapter Eight), states that in any criminal proceeding which involves the deprivation of an individual’s liberty, the following basic guarantees shall be observed:

[...]

“(4): When an individual is detained, the officer shall inform that individual of their right to remain silent, to request the assistance of a lawyer or public defender in the event that the individual is unable to designate one him- or herself, and to communicate with a relative or with any other person.”

(7) Area (g): Complaints and independent inspection

The Constitution states the following in Part IV, Chapter Four, Section Nine on the Public Defender Service:

“The Public Defender Service is an independent body of the judiciary whose purpose is to guarantee full and equal access to justice for persons whose vulnerability or economic, social or cultural situation prevents them from securing legal defence services to protect their rights.

“The Public Defender Service shall offer legal and technical services in a timely, efficient and effective manner without charge by providing financial support and legal advice on individuals’ rights on any subject and in any circumstances.

“The Public Defender Service shall be indivisible and shall operate autonomously, with administrative, economic and financial independence; it shall be represented by the General Public Defender and shall have human and material resources and working conditions equivalent to those of the Attorney-General’s Office.”

(8) Area (h): The replacement of outdated terminology

The Act on reform of the Ecuadorian prison system, enacted by the National Constituent Assembly, in article 1 on objectives and beneficiaries states that “The present regulations establish a system for sentence reduction based on merit. The regulations shall apply to all detained persons, hereinafter referred to as ‘persons deprived of their liberty’, as soon as they are deprived of liberty, and shall take effect when those persons have been sentenced and meet the requirements of these regulations.”

(9) Area (i): Training of relevant staff to implement the Standard Minimum Rules

Article 228 of the Constitution states that “entry into public service and ascent and promotion within the public administration shall be based on merit and competitive examination as determined by law, with the exception of public officials who are publicly elected or freely appointed and dismissed. In the event of non-compliance with this provision, the appointing authority shall be dismissed”.

Article 202, paragraph 4, of the Constitution states that “the security, technical and administrative personnel of the social rehabilitation system shall be appointed by the social rehabilitation agency subject to an assessment of their professional eligibility and cognitive and psychological testing.”

Accept, Madam, the assurances of my highest consideration.

[Signed]

Document signed electronically

Jorge Ernesto Serrano Vallejo

Under-Secretary for the Coordination of Support for Vulnerable Adult and Adolescent Persons in Conflict with the Law