

Foundation for Integral Rehabilitation of Victims of Violence

PRIVA

ALTERNATIVE REPORT ON TORTURE AND ILL- TREATMENT OF PRISONERS IN SOCIAL REHABILITATION CENTRES OCTOBER, 2010

**ALTERNATIVE REPORT ON TORTURE AND ILL-TREATMENT OF PRISONERS IN SOCIAL
REHABILITATION CENTRES**

Avenida 10 de Agosto N21 281 y J. Carrión - Edificio Casa Baca, Dpto. 102 - TELEFAX: (593 2) 2525146
Casilla de Correos 17-11-6436 - Correo Electrónico: priva@punto.net.ec
QUITO- Ecuador

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SUMMARY

The Foundation for Integral Rehabilitation of Victims of Violence (PRIVA) is a non-governmental organization, which works with prevention, investigation and documentation of torture as well as comprehensive rehabilitation of victims.

This thematic report aims to provide an analysis of the current practices of torture and ill-treatment in Ecuador as they are experienced by PRIVA in our work with rehabilitation of torture victims. From the statistics and cases in this report, it is clear that torture and ill-treatment is still a prevalent practice committed against persons in custody of either the police or the social rehabilitation centres. Further, impunity for such crimes is upheld due to a reluctance with the judicial authorities to conduct prompt, effective, independent and impartial investigations when credible allegations surface. Furthermore, torture is often not reported due to a lack of right awareness, insufficient financial capacity and fear of reprisals on the side of the victims.

In recent years, crime in Ecuador has increased. Due to a lack of effective criminal policy from the government, the State is unable to cope with this growth in organized crime. The lack of administrative and professional specialization in handling high-risk individuals has led to increased use of cruel, inhumane and degrading treatment. This treatment has been implemented as a way of maintaining order and discipline within social rehabilitation centers. This is exemplified in the case of 29 persons considered "highly dangerous" contained within the Social Rehabilitation Center for Men in Guayaquil. These men have been subjected to torture and ill-treatment in violation of the criminal code and the constitutional rule categorising prisoners a "high priority group".¹

The constitutional advances achieved in the past 10 years are undeniable. The Constitution of the Republic of Ecuador from 2008 has a strong human rights focus; however, there is still a long way to go for these good intentions to become reality and for the harmonization of secondary legislation with constitutional provisions. Despite recommendations made by the Committee both in 1992 and 2005, torture has not been criminalised in accordance with the standards established by United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

Lastly, PRIVA would like to correct the information provided in the State report regarding PRIVA's participation in the elaboration of the report. While, PRIVA has been engaged in various capacity building activities in collaboration with Government agencies during the previous years, we have not been included in the elaboration of the report. This is unfortunate since we believe that we would have been able to provide valuable information to this report.

¹ Constitution of the Republic of Ecuador, Articles 35 and 51.

CHAPTER I: INTRODUCTION AND PRESENTATION OF THE FOUNDATION FOR INTEGRAL REHABILITATION OF VICTIMS OF VIOLENCE (PRIVA)

The Foundation for Rehabilitation of Victims of Violence, in short (PRIVA), is a non-governmental, non profit organization with legal status recognized by the Ministry of Social Wellbeing (Ministry of Social Inclusion) by means of the Ministerial agreement No. 165 as of April 4th, 1997. Through research and the wide dissemination of results, PRIVA's objectives are the prevention and eradication of torture and the integral care (medical, psychological and social) of torture victims and their families.

PRIVA, as an institution, has concentrated its actions beyond denunciation, setting goals and working towards the prevention and eradication of torture, a difficult task to accomplish, considering that the torturers are part of the state power.

Initially, PRIVA took steps to gain familiarity with the torture phenomenon in Ecuador. Through negotiations with penitentiary authorities, PRIVA was able to get an agreement signed by the National Direction of Social Rehabilitation, which facilitated the creation of a medical, psychological, and social support consulting center inside the male prison of Quito #2 (currently the Social Rehabilitation Centre for Men of Quito #2) in order to attend to prisoners who are victims of torture and ill-treatment. The first findings were that torture is a “taboo” topic, which is difficult to address with the inmates who have been victimized and even more so with the penitentiary authorities. The inmates did not know their rights and were scared to talk about and express what had happened to them. In order to have a clear vision of its causality, with these findings we pose the question “What is the relationship between the committing of crimes in Ecuador and torture?”

The findings forced a rethinking and continued search for substantial, long-term solutions to the problem of torture, for which it was necessary to include the actual victims, not only as individuals in need of assistance, but as active partners, to work together on a national strategy of prevention and eradication of torture and ill-treatment in the country. Only after listening to and understanding their experiences, can one begin to understand and give evidence to a reality that remains dark and unknown. To this end it was necessary to investigate further the practice and application of torture and ill-treatment, which had been present for long periods of time in the prison. In 1998, PRIVA conducted a study with the participation of 2,400 prisoners from a monthly average of 8,000 people from 14 of the 24 rehabilitation facilities in the country. The results from the study, titled “Map of the torture in Ecuador,” have given PRIVA a valuable baseline reference for examining how torture practices are developing in the country. This investigation gave clear evidence of the torturers, the methods used, the most vulnerable individuals to its implementation and the crimes associated with it.

The study established various factors that affect the likelihood of torture throughout the country, such as social inequity and a lack of judicial culture, understood as knowledge of laws by the citizens, specifically recognition of their constitutional rights and guarantees. A lack of political motivation has prevented elaboration and implementation of national or international legislation

regarding human rights and has allowed the deterioration of the quality of life, persistence of internal conflicts, and little or no enforceability of constitutional provisions for safety for prisoners. The lack of action is compounded by the absence of complaints or “silence” of the victims due to humiliation and physical, psychological and sexual aggression experienced. Most prefer to repress their experiences and avoid filing lawsuits or discussing what has happened to them for fear they will be betrayed and subsequently subjected to reprisals. Still others who might have wanted to complain lack the financial resources to do so on a State level.

Further, it was determined that torture was used during police investigations and complemented by impunity due to judicial officers, who failed to clearly observe, ignored and, in many cases, were unaware of the national and international standards of human rights for individuals under any form of detention.

The results of the study helped to formulate PRIVA’s strategy for the prevention of torture and models of care for victims and their families. This strategy consisted of the following main points:

a) Raising awareness and sensitizing the public to build a consensus and work on indicators of torture prevention to achieve its medium-term and long-term decline. Further, eradication of torture as an everyday practice in the processes of police investigation through training processes on prevention of torture.

b) Establishing a critical dialogue with government institutions: National Police, the judiciary, prison system, civil society, church, legal and health practitioners, students, etc. on torture and its harmful effects for those who suffer from it and henceforth promoting legal and prison reform, based on respect for human rights of individuals deprived of freedom and influencing state policy.

c) Influencing the prisoners and their families to exercise their rights, preventing victimization, strengthening democratic life - a necessary condition for the observance of human rights - and working on a proposal to introduce policy changes for the situation of indignity and economic, gender and ethnic inequality that the people in Ecuador experience.

d) Streamline “models” of comprehensive care for victims of torture and their families by PRIVA.

These strategies have been applied for twelve years. PRIVA, aware that the torturers are government employees, believed it was necessary to influence these groups through training processes that enable them to understand the legal implications of the use of torture and the physical, psychological and social effects for people who suffer from it. For these reasons PRIVA started a critical dialogue with relevant State institutions in order to provide training to persons from all levels of the justice system nationwide with the aim of them taking increased responsibility for the eradication of torture. These activities focused on Judges and penal judges, prosecutors, public defenders, custodial and monitoring staff of social rehabilitation centers (prisons), and staff of the Ombudsman. Of equal importance are the civil society players: Universities, practitioners,

doctors, psychologists, social workers, educators, human rights organizers, professional associations, media, and neighbourhood organizations.

PRIVA did a grand reflection on its own work and achievements and found that although the work has contributed to changes in the performance of the justice system, it has not been sufficient given that torture continues to be a frequent practice in Ecuador. Contributing to the practice are the cyclical trends in migration and unemployment. Open borders have caused an increase of crime and contract killings, disrupting public peace, which will require greater protection from the State. However, the government is unable to attend to all social demands instead using repression as a way to stop crime. Disguised as "citizen safety," extrajudicial executions or enforced disappearances carried out by security agents make the public hesitant to acknowledge torture. In some cases, there are relatives that seek justice and impunity, but more often they do not dare to do so for fear of reprisals.

Through research comparing the situation in 1998 with the situation today, PRIVA has found that while torture has declined it is still widely practiced. Furthermore, the assessment of PRIVA is that the practice of torture and ill-treatment inside social rehabilitation centres has actually increased in the period 2007-2010. Because of this, PRIVA puts forth the present alternative report to be considered by the United Nation's Committee Against Torture in hopes of helping to establish, with their contributions, the reality of what happens in the country with respect to torture.

CHAPTER II: INVESTIGATION AND PROSECUTION OF CASES OF TORTURE AND ILL-TREATMENT

PRIVA is a medical based organisation with its main focus on rehabilitation of torture victims. Therefore, we have limited capacity to conduct and present a legal analysis of the current situation in Ecuador. Nevertheless, we will try to provide a short analysis of some of the main legal obstacles to ending torture in Ecuador, which we have encountered in our work.

The Ecuadorian constitution approved by referendum in September 2008, served as a transformative change in the country's institutions. The new Constitution establishes a "state of rights" that is based on the so-called DESCAs (Derechos económicos, sociales, culturales y ambientales). This makes the State the main actor and guarantor of such rights, shifting the focus from the individual guarantees in the Constitution of 1998. According to analysts, the new constitution will disrupt the pattern of rule of law and social market economy within the country and move it from a "constitution of liberty" to a "constitution of wellbeing," an idea that is transversely polished by the ancestral community philosophy of "good living" of the ancients Quechua included explicitly in the text *sumak kawayay*.

The advances in human rights enshrined in the Constitution of 1998 and the present Constitution of the Republic of Ecuador are undeniable, but there is a gap between the constitutional development and the implementation and exercise of human rights. Annex I contains a compilation of relevant domestic legislation translated to English.

a. The definition and criminalisation of torture and ill-treatment

The new constitution explicitly provides for a prohibition of "*torture, enforced disappearance and cruel, inhuman or degrading treatment or punishment*" and the criminal code prohibits physical torture.² However, this criminalisation is not in compliance with the requirements of UNCAT Articles 1 and 4. The criminal code does not prohibit psychological forms of torture, which according to PRIVA's research is very prevalent. Further, the penalties of 3-6 years imprisonment do not seem to be commensurate to the gravity of the crime. In comparison, the act of cattle theft is sanctioned with 1-5 years of imprisonment depending on the gravity of the offence.³

b. Investigations

In 2005, the Committee recommended that the Ecuadorian Government ensure that impunity for torture is decreased through the conduct of prompt, impartial and thorough investigations.⁴ Unfortunately, not much has changed since then. The prosecutor will often delegate both the

² Constitution of the Republic of Ecuador, Article 66(3)(C) and Criminal Code, Articles 187 and 205.

³ Criminal Code, Article 555.

⁴ CAT/C/ECU/CO/3, paragraph 16.

competence to investigate torture allegations and to take custody of evidence to the Judicial Police,⁵ which according to PRIVA's most recent statistics is also the main suspect in 45% of cases.⁶ This presents serious concerns about the independence and impartiality of the investigation. This problem is exemplified in cases of extrajudicial executions in which the members of the National Police have been suspects while being tasked with the investigation of the crime and custody of the evidence.

c. Access to legal safeguards

Between the years 2000 - 2003, PRIVA established a monitoring program of the operators of Criminal Justice in the Central Region of the country (provinces of Cotopaxi, Tungurahua, Chimborazo, Bolívar), in order to verify compliance with due process of law and respect for constitutional guarantees and rights regarding punishments and procedures as well as those contained in international human rights instruments signed and ratified by Ecuador, for prisoners, from the time of arrest and detention until custody and the execution of the sentence.

PRIVA used prisoners who entered into the Centers for Social Rehabilitation of the Central Region, from July 1, 2000 to December 19, 2002, as an analytical sample. Interviews were conducted with prisoners on the day of their investigation. It should be noted that during the period a greater number of individuals entered than were released through bail or for other reasons, such as Jubilee 2000.

Below are some of the findings:

RIGHTS RESPECTED AT THE TIME OF DETENTION (%)

Periods	Jul-Dec 2000	Jan-Jun 2001	Jul-Dec 2001	Jan-Jun 2002	Jul-Dec 2002
Rights					
Detention note (Boleta Detención) (%)	10.11	0.80	9.80	12.79	5.36
Justification of detention (Motivos detención) (%)	30.34	13.60	26.47	26.74	14.29
Authority ordering detention (Autoridad ordenó) (%)	5.62	0.80	16.67	18.60	4.46

⁵ Criminal Procedure Code, Article 216(8)

⁶ See Chapter III, Table #9

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Name of Agent/Official (Nombre Agente) (%)	5.62	2.40	14.71	11.63	3.57
Right to silence (Derecho al silencio) (%)	2.25	4.80	8.82	11.63	12.50
Right to a lawyer (Derecho / Abogado) (%)	1.12	3.20	12.75	11.63	8.04
Right to communicate (Derecho Comunicación) (%)	3.37	3.20	12.75	11.63	3.57

Source: Archivos Fundación PRIVA

**TIME OF DETENTION BEFORE THE PRISONER WAS BROUGHT BEFORE THE COMPETENT
 AUTHORITY (%)**

Periods Time	Jul-Dec 2000	Jan-Jun 2001	Jul-Dec 2001	Jan-Jun 2002	Jul-Dec 2002
24 hours (%)	96.67	96.80	83.33	89.54	80
2 days (%)	3.37		4.90	4.65	6
3 days + (%)		3.20	11.76	4.66	14
No answer (%)				1.15	
Total (%)	100%	100%	100%	100%	100%

Source: Archivos Fundación PRIVA

**PRESENCE OF OTHER AUTHORITIES DURING POLICE INVESTIGATIVE ACTIONS IN
 DETENTIONS (%)**

Periods Authority	Jul-Dec 2000	Jan-Jun 2001	Jul-Dec 2001	Jan-Jun 2002	Jul-Dec 2002
Prosecutor (%)	21	19	54	49	49

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Investigator (%)	76	82	89	78	87.50
Defence lawyer (%)	9	20	22	36	28.60
Others (%)				2.33	
None (%)				11.63	12.50

Source: Archivos Fundación PRIVA

While these statistics are not up to date, the numbers are worrying and the lack of access to fundamental safeguards is frequently observed in the cases received by PRIVA today. Considering the lack of statistical information provided by in the State report, PRIVA recommends that the Committee renew its request for such statistics.

d. Reprisals

Assistance and protection to witnesses and victims of human rights violations is the responsibility of the State Prosecutor's Office, which has specified the support to be provided in a separate regulation (Annex II).

However, these measures are incapable of providing the necessary protection. There is no possibility for identity change and the persons assigned for protection are from the very same police, which is often the primary suspect. Furthermore, fear of reprisals has been identified by PRIVA as one of the key reasons why prisoners do not report abuse. One example of such actions was reported by the UN Special Rapporteur on extrajudicial executions after his visit to Ecuador in July 2010. Here the Special Rapporteur highlighted the following:

“An even more dramatic illustration is the killing of Germán Antonio Ramírez Herrera, a forensic doctor specializing in torture and extrajudicial executions cases. On 6 July 2010, he was kidnapped and then shot and killed. He had received various threats because of his work in documenting and testifying about prisoner injuries following a police raid on the Quevedo prison. A press report on the incident simply notes without comment that the police suspect the case to be a settling of accounts.”⁷

For a more detailed account of the problems related to investigations, legal safeguards and reprisals please see the press statement delivered by the UN Special Rapporteur (Annex III).

⁷ <http://www.diario-extra.com/ediciones/2010/07/07/provincias/ejecutan-a-doctor-de-carcel-de-quevedo/>
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e. Conclusion

The Constitution of the Republic took the lead in protecting and guaranteeing the human rights of Ecuadorians, which are contained in its own provisions and in international human rights instruments. In Ecuador, there is no death penalty and physical torture and ill-treatment is prohibited and penalized. However, in practice, torture and ill-treatment are used as a way to intimidate, coerce and punish victims in police investigation processes in order to achieve self-incriminating confessions and break their will. The use of such tactics, which are mainly attributed to the police, are still prevalent at a worrying rate. Persons in detention, remain permanent victims of torture and ill-treatment that affect their human dignity. This picture is accompanied by a disturbing scenario of impunity for crimes of torture. Although torture is punishable under the Penal Code since 1906, the sanctions imposed on offenders are rare. These affirmations will be verified with the analysis of quantitative data and case studies that will be presented in the following chapters.

CHAPTER III: TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN ECUADOR

The following chapter will provide an overview of statistics collected by PRIVA and partners from 1998 - 2009. The statistics examine the practices of torture and ill-treatment as experienced by prisoners in social rehabilitation centres and especially the socio-economic connections with the phenomenon. With statistics from 1998 as a benchmark, the chapter seeks to illustrate the current situation both in terms of frequency, methods and victims profiles.

The statistics have been collected in connection with PRIVA's rehabilitation activities in social rehabilitation centres. Since the main objective of these activities is to help torture victims improve their lives, the documentation has only been collected to the extent that this did not jeopardize the physical and psychological state of the victim. This might have resulted in incomplete statistical data but this is a sacrifice worthwhile in an effort to ensure the continuous rehabilitation of the victims.

Over the years, allegations of torture that have occurred in the country do not reflect the reality of the problem because the vast majority of victims are either unaware of their rights or out of fear or lack of economic resources do not report the violations. The implementation of the policy "citizen safety," which has contributed to increased human rights violations under the justification of its fight against crime, is also responsible for generating high levels of insecurity among citizens and torture committed by public authorities. The State, unable to meet the demands of society and under public pressure to provide personal safety and property security, has found no solution other than to resort to repression as a way to stop the rise in crime.

In all democratic governments between the year of 2000 and 2009 there have been reports of torture as illustrated in the chart below indicating the number of complaints received by the NGO named Comisión Ecuémica de Derechos Humanos (CEDHU).

<i>Government</i>	<i>Agency receiving the complaint</i>	<i>Number of Complaints</i>
<i>Dr. Gustavo Noboa</i>	<i>CEDHU</i>	<i>89</i>
<i>Crmel. Lucio Gutiérrez</i>	<i>CEDHU</i>	<i>40</i>
<i>Dr. Alfredo Palacios</i>	<i>CEDHU</i>	<i>60</i>
<i>Econ. Rafael Correa</i>	<i>CEDHU</i>	<i>72</i>

Source: Banco de Datos Comisión Ecuémica de Derechos Humanos

There is no accurate data reflecting the exact number of human rights violations and cases of torture in the country as the numbers differ for each of the nongovernmental organizations working in the field. The Ombudsman's Office reported an average of 50 complaints per year from 1998 to 2004. As of 2005, the Ombudsman has not collected statistics on the issue.

As will be illustrated in the following sections, the numbers collected by PRIVA show a very different and much more worrying picture than the table above and the statistics provided in the State report.

a. Torture and ill-treatment in 1998

From the data contained in PRIVA foundation archives, it can be verified that in the 1998 study of 2404 out of 8000 prisoners in social rehabilitation centers in the country, 70% reported having been subjected to physical, psychological or sexual torture during the investigation process. From this group 10% were female. Physical torture was more prevalent than psychological torture but in most cases they occurred simultaneously. Physical torture is most common seen in relation to crimes against property, while psychological torture is more prevalent in crimes related to narcotic drugs and psychotropic substances.

The study showed that 90.3% of arrests were carried out by the police, and 63.8% of these arrests were followed by allegations of torture or ill-treatment. That is to say that for every 3 arrests that the police made, almost 2 people were tortured during the investigation process.

The study revealed that torture is closely related to specific criminal trends with each crime occupying the following percentages of tortured persons: Crimes dealing with narcotics laws 26%, crimes against property 23.9%, crimes against persons and prisoners 13.4%, and sexual offenses 3.9%. 9.5% of the prisoners tortured were foreigners largely from Colombia, Peru and Europe.

Prisoners with low levels of education, in extreme or critical poverty, between the ages 18 to 35 years, and those in the occupational category of unemployed or underemployed were the most vulnerable to being subjected to torture.

The study found that the most commonly used types of physical torture were: beatings with kicks and/or punches, clubs, police batons, and the butts of pistols or rifles. Established techniques for psychological torture are: personal threats, humiliation, food deprivation, isolation, and sleep deprivation for both men and women. Sexual violence (sexual harassment, blackmail and rape) is seen more frequently with women than with men.

b. Torture and ill-treatment from 2000-2007

To follow up on the 1998 study, PRIVA conducted another study on 500 prisoners who had been exposed to torture or ill-treatment between 2000-2007 in the Social Rehabilitation Center for Men in Quito #2. These were taken from a sample of 800 prisoners who received rehabilitation by PRIVA in that period. However, due to the limited treatment capacity of PRIVA, only persons with severe torture symptoms were treated. Therefore, this number is not reflective of the total number of prisoners who have been exposed to torture during that period - not in that detention centre nor in other detention centres in the country. PRIVA estimates that roughly 50% of prisoners had been exposed to torture or ill-treatment from 2000-2007.

Graph #1 shows the percentage of torture victims by nationality, finding that 93% of these victims were Ecuadorians and 7% were of other nationalities mostly from Colombia and Peru.

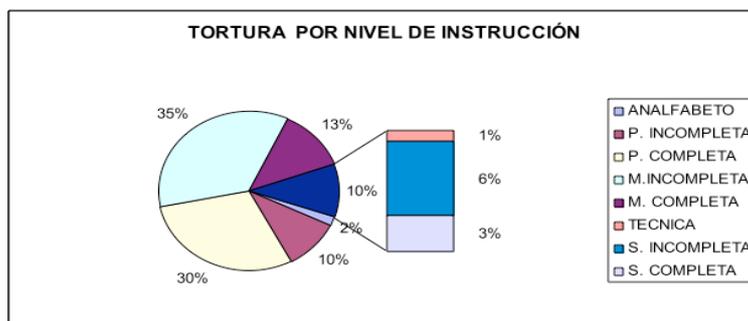
GRAPH #1



Source: Historias Clínicas. PRIVA

Torture was most prevalent among people with incomplete secondary education with the frequency decreasing as the level of education rises. See Graph #2.

GRAPH #2



Source: Historias Clínicas. PRIVA

As indicated by Graph #3, the highest incidence of torture was among individuals between the ages of 18 and 35, with the frequency decreasing as age increases. This same age group contains the highest number of crimes committed within the total prison population.

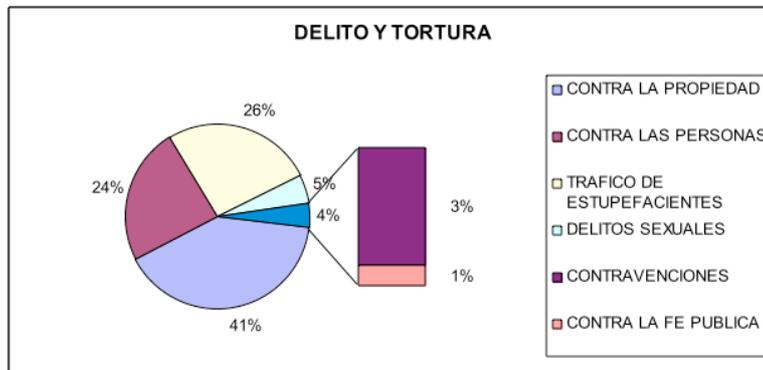
GRAPH #3



Source: Historias Clínicas. PRIVA

The greatest number of tortured people who were attended to by PRIVA were found to have been accused of crimes against property, followed by drug trafficking crimes and crimes against people. See Graph #4.

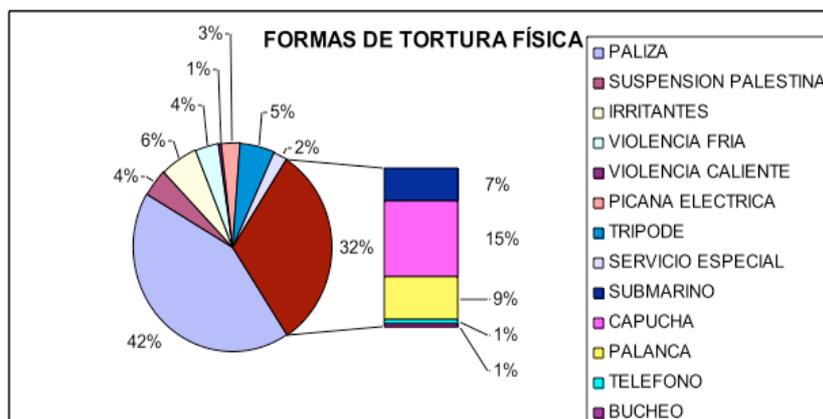
GRAPH #4



Source: Historias Clínicas. PRIVA

From among the different forms of physical torture that victims have been subjected to, it has been established that beating was the most predominant method, followed by hanging techniques similar to Palestinian suspension, and forced positions such as the lever, the tripod and others. See Graph #5

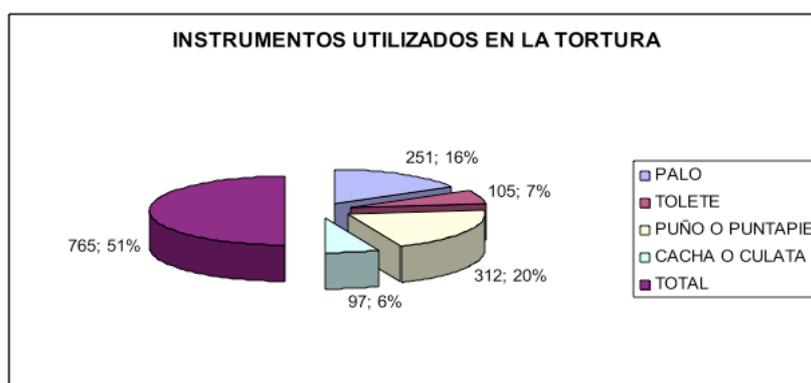
GRAPH #5



Source: Historias Clínicas. PRIVA

Among the instruments used in physical torture, the frequency of usage from greatest to least is: police baton, stick, fist and feet, butt of a gun or rifle. See Graph #6

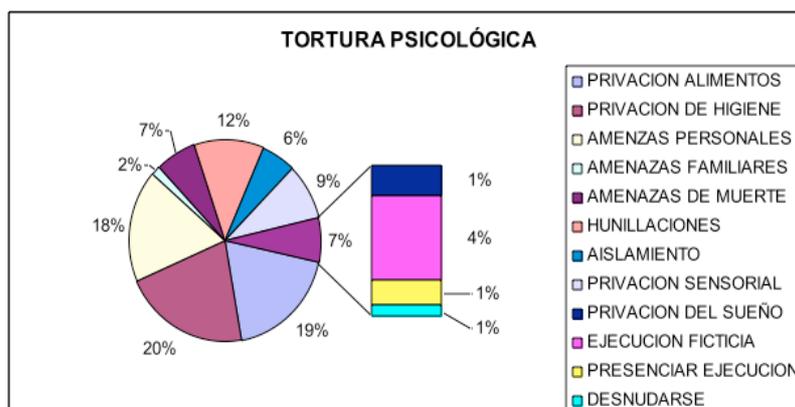
GRAPH #6



Source: Historias Clínicas. PRIVA

As for psychological torture, the methods reported by victims were of the same kinds described in the “Map of Torture in Ecuador”. Death threats either personal or towards family members, deprivation of food or hygiene, and sensory deprivation. In addition to these familiar techniques, mock executions were also reported in a number of instances. See Graph #7.

GRAPH #7



Source: Historias Clínicas. PRIVA

In addition to the 7-year study, PRIVA also conducted a study specifically analysing the period from 1 July 2000 to 19 December 2002. These statistics indicate a steady decline from 66% to 54% but this number is still worryingly high.

PRIVA has identified a number of reasons for this decline, which include increased rights awareness among prisoners; the conduct of medical examinations of prisoners when entering prison; and the preventive effect of non-state actors monitoring the situation in prison facilities.

ALLEGATIONS OF TORTURE OR ILL-TREATMENT BY PRISONERS (%)

Ill-treatment Periods	Yes (%)	No (%)
Jul – Dec 2000	66.00	34.00
Jan – Jun 2001	65.00	35.00
Jul – Dec 2001	60.00	40.00
Jan – Jun 2002	49.00	51.00
Jul – Dec 2002	54.00	46.00

Source: Archivos Fundación PRIVA

METHODS OF TORTURE EXPERIENCED BY PRISONERS (%)

Periods \ Type of torture	Jul –Dec 2000	Jan-Jun 2001	Jul-Dec 2001	Jan-Jun 2002	Jul-Dec 2002
Physical (%)	49	62	49	39.53	38.39
Psychological (%)	38	62	53	48.84	41.96
Sexual (%)	3	2	1		

Source: Archivos Fundación PRIVA

c. Torture and ill-treatment from 2008 - 2009

In the years 2008 and 2009 PRIVA interviewed 166 prisoners in the Social Rehabilitation Center for Men in Quito #2. Of the 166 prisoners interviewed, 58% report that they experienced no torture or ill-treatment, while 41% recorded having been subjected to torture or ill-treatment, 1% chose not to respond. See Table #1. The sample is very small compared to the total national prison population of approximately 10808 prisoners.⁸

Upon analyzing the data obtained from the Map of torture, the statistics collected from 2000-2007 and the most recent results, PRIVA finds that the trends seen in the monitoring data are continuing with small variations.

TABLE #1: ALLEGATIONS OF TORTURE DISAGREGATED BY METHODS

Forms of torture	%
None	57.83
Physical	2.04
Psychological	6.02%
Physical and psychological	31.68
No Response	1.43

⁸ US Department of State - Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2009*, 11 March 2010.

Source: Archivos Fundación PRIVA

From this table it is clear that physical and psychological torture is most frequently applied in combination rather than as individual methods.

TABLE #2: PRISONERS WHO HAVE SUFFERED TORTURE, ACCORDING TO NATIONALITY

Nationality	%
Ecuadorean	76.50
Colombian	8.43
Spanish	3.01
Other nationalities	13.06

Source: Archivos Fundación PRIVA

In this table, there is a small variant. We found that when tortured prisoners are grouped by nationality, 3.01% have Spanish nationality. Previously Peruvians ranked third.

TABLE #3: PRISONERS WHO HAVE SUFFERED TORTURE, ACCORDING TO AGE GROUP

Age group	%
18-25	26,50%
26-35	39,75%
36-45	21,08%
46-65	12,48%
+66	0,06%

Source: Archivos Fundación PRIVA

From Table #3 it is established that the most vulnerable age group with regard to torture is that of 18 to 35 years, containing 66.25% of cases. This trend has remained the same since 1998 when the study, "Map of Torture in Ecuador was completed.

TABLE #4: PRISONERS WHO HAVE SUFFERED TORTURE, ACCORDING TO LEVEL OF EDUCATION

Education level	%
Incomplete primary	17.48
Completed primary	16.86

Incomplete secondary	29.51
Completed secondary	20.48
Incomplete superior education	3.61
Completed superior education	9.03
Technical	0.6
Illiterate	2.40

Source: Archivos Fundación PRIVA

Findings regarding the application of torture to people with low educational levels are consistent from the study done in 1998 until the year 2009.

TABLE #5: OBSERVANCE OF LEGAL SAFEGUARDS IN RELATION TO PRISONERS WHO SUFFERED TORTURE OR ILL-TREATMENT (%)

	Yes	No	No response
Officers identified themselves at moment of detention (%)	67.46	31.32	0.18
The cause of detention was explained to the prisoner (%)	66.26	32.53	1.21
The prisoner was made aware about his/her rights (%)	36.14	62.65	1.21
The prisoner's right to communication was observed (%)	66.68	32.53	0.79

Source: Archivos Fundación PRIVA

The above table indicate that a concerning number of prisoners who alleged torture (approximately 33%) have been denied basic legal safeguards such as the right to communication and the possibility of identifying the arresting officer. Furthermore, only 36% of them have been adequately informed about these rights. Unfortunately, this number suggests that the government initiative of equipping all Judicial Police officers with a card containing the basic rights of prisoners and an obligation to inform about these has not been implemented very effectively.⁹

⁹ CAT/C/ECU/4-6, paragraph 84

TABLE #6: PRISONERS WHO HAVE SUFFERED TORTURE, ACCORDING TO CRIMES COMMITTED OR ATTRIBUTED TO THEM

Crimes	%
Drug trafficking	32,52%
Crimes against property	26,50%
Crimes against individuals	16,88%
Sexual crimes	17,46%
Otros	7,64%

Source: Archivos Fundación PRIVA

Table #6 shows findings in crime trends. People accused of sex crimes that were tortured in previous years was 3%. In 2008 and 2009 that number has increased by 14%. It should be noted that a high percentage of individuals accused of sexual crimes are elderly people.

TABLE #7: AUTHORITIES PRESENT IN THE INVESTIGATION

Authority	%
Prosecutor	36.64%
Agents, officials	16,26%
Police	7,83%
Secretary	1,80%
The persons who were present were unknown	37,48%

Source: Archivos Fundación PRIVA

The above table establishes a significant percentage of prosecutors are not present at the time of investigation, leaving the investigation to be carried out by other officials.

TABLE #8: FORM OF RENDERING THE DECLARATION

Form of rendering the declarations	%
Forced declaration	42.77%
Voluntary declaration	54.81%
No answer	2.42%

Source: Archivos Fundación PRIVA

The above table establishes that there is a high degree of illegally obtained statements from prisoners despite such statements being inadmissible in court.

TABLE #9: INVESTIGATIVE AUTHORITY ACCUSED OF TORTURE OR ILL-TREATMENT

Authorities	%
Judicial Police	45.18
Police	12.65
Prosecutor	5.42
Interpol	1.20
Prosecutor	0,6
No response	34.33

Source: Archivos Fundación PRIVA

It is noteworthy that the Judicial Police appears as the alleged author of the crime in 45% of cases. This raises serious concerns about the independence and impartiality of the investigations carried out by the entity when tasked with investigating torture allegations. Unfortunately, the State Report does not provide much information on initiatives taken to ensure the independence and impartiality of investigations of crimes committed by public authorities such as the Judicial Police.

d. Conclusions

The findings in this chapter provide a very clear illustration of a country where torture and ill-treatment is in decline but still frequently practiced. A rate of 41% of prisoners having been exposed to torture or ill-treatment is very worrying and clearly illustrate a need to follow legislative improvements up with actual improvements of the situation on the ground in order to bridge the existing implementation gap. There is a worrying discrepancy between the reported instances of torture and ill-treatment presented to PRIVA and the official complaint numbers received by CEDHU and those referred in the State Report.¹⁰ In PRIVA's experience, these discrepancies are at least partly caused by fears of reprisals and a lack of rights awareness.

Another cause for concern is the limited access to legal safeguards and that investigations are suffering from structural defects such as lack of independence and impartiality. As noted, recent initiatives to improve information to prisoners about their rights have not been very effective. Further, it is particularly worrying to see that the Judicial Police, which is normally tasked with

¹⁰ CAT/C/ECU/4-6, paragraphs 164-170

investigating crimes including torture allegations, is reported as the author of a violation in 45% of cases.

The torture seem to have remained the same through out the period with beatings and palestinian hangings combined with various forms of psychological ill-treatment accounting for most of the offences. The findings indicate that torture normally committed during the investigation with the remedies at hand and that the most likely persons to be subjected to such treatment are people who are accused of drug trafficking and property crimes.

CHAPTER IV: CASE PRESENTATIONS

The present chapter will introduce a number of case examples with the purpose of providing tangible and current illustrations of torture practices in Ecuador. These cases are taken from PRIVA's case portfolio and from media reports. Due to respect for the right to medical confidentiality of the alleged victims, it has not been possible to include the full medical findings in each case. However, the conclusions are based on thorough analysis by medical professionals trained in medical documentation of torture in accordance with the Istanbul Protocol.

“Torture not yet eradicated” Published in El Comercio. 3/27/2010

"The night of January 6, 2007 a group of police did not respect the fundamental rights of Paul Guañuna. He was arrested, allegedly, for painting graffiti. The next day, the 17-year-old was found dead on the bridge access to Zámbriza. Three policemen were indicted, fired and accused of homicide (the case remains open in the courts).

The excesses are not isolated within the Police, for example:

- 1. Agents of the Operational Support Group (OSG) are accused of torturing detainees as in the disappearance of Georgy Cedeño. The Government eliminated the OSG, in order to create an anti-crime unit, but without debugging: the agents questioned received passage into the new group. It took the Executive 6 months to report the case Cedeño.*
- 2. The arms raid in Chimbo was supported by the regime, but showed a disproportionate use of force. 600 soldiers raided 50 workshops of artisans. If these craftsmen had violated the law, why were they not been arrested? Many were left wounding from pellets. Children and older adults were affected by tear gas, as it was in April 2005 in the streets of Quito.*
- 3. On 27 January, in Machala, officers arrested Carlos Julio Solano, after being chased by the President. The uniformed persons pressed the head of the 'suspect' against the truck bed of a police pickup truck.*

The scene is repeated every day with detainees in the country. That said, there is no need to wait for the already delayed report from the Truth Commission to find that there are agents who have been practicing these dark police practices for over 30 years.

http://www.cnn.gov.ec/upload/elcomercio_ITrimestre2010.pdf

Case 1

Mr. A¹¹: Detained at Social Rehabilitation Center for Men in Quito #2.

Mr. A recounts: "When I got I to my house, 6 Judicial Police officers dressed in civilian clothes approached me, and I was forced to sit on the floor face down. They seized me and found the gun tucked into my waist. I was beaten and kicked in the back a number times while they asked for declaration that I was part of a gang. Finding myself in that position I was handcuffed and when they later picked me up, I continued to be beaten with fists in the face and kicks to my inferior extremities. All of them hit and insulted me. I was taken to the Judicial Police Station in Sangolquí, it must have been one in the morning, they continued abusing me in order that i might admit gang involvement, they took me to the dungeon, from which I was taken out on two different occasions. Both times they continued to beat and insult me for a period of 30 minutes each time. The next day I was very sore and I could not get up, I had bruises on my back and waist, and I was taken to Sangolquí Hospital. The doctor saw that I was beaten and asked me if I been abused. I stayed silent for fear that when the police came back they would hit me again. I was given pain medication and then returned to the dungeon of the Judicial Police, where I stayed with another person for 20 days in a small space. There was no toilet but rather a hole for using the bathroom, I could not bathe, they gave me no food, X, a friend of mine, brought it to me. They never told me my rights. I was transferred to the Provisional Detention Center, where I remained six months, and was then transferred back to the Center for Men's Social Rehabilitation #2 Quito, where I am today. "

He entered PRIVA's program for the Rehabilitation of Victims in 2009 with the following symptoms: back pain radiating from the right leg with moderate intensity, aggravated by movement and improves with rest; Lasegue sign positive, and on the psychological side he displayed distress, anxiety, emotional lability, all of which present sleep problems (insomnia), and nightmares a few days a week. Tests were applied for Zung, HTP, Sacks

Diagnostics: Back pain, severe depression. The symptoms found are compatible with stress described in above summary of clinical history, caused by torture.

Source: PRIVA's Medical History Records

Case 2

Mr B¹²: Detained in the Social Rehabilitation Center for Men in Quito #2.

¹¹ The identity of this person is known to PRIVA but withheld for reasons of medical confidentiality and security of the person.

¹² The identity of this person is known to PRIVA but withheld for reasons of medical confidentiality and security of the person.

Mr B recounts: "Two people dressed as civilians and four soldiers knocked down the door of my apartment and came into my bedroom telling me to be still and not to move. They pointed a gun at my head, laid me face down and handcuffed me. My son began to cry, my wife got scared, and they started to slap me (blows with the open hand). They took me out of my apartment and put me into the back of a van. They took me by way of the trolley route to arrive somewhere near the Machángara river and began kicking me and telling me to confess. They did not tell me why they had detained me. When we arrived at the office of the Judicial Police, I got out of the van, and they took me into a bathroom where I was beaten with fists and oarlocks for half an hour. I was then taken to jail cell #3 to wait with 15 other people. I was given a public defender the day after the arrest and two days later my mom hired a lawyer to defend me. She had learned of my arrest when the neighbors told her that I had been taken, I had not been allowed to call her. After the beating I received my whole body was very sore. I had bruises on the arms and legs. I stayed in the cell for 15 days, I was never told that I had rights. They were two officers dressed in plain clothes, one with a whisper of a mustache and the other a veteran, if I saw them I would recognize them. I was taken to the Provisional Detention Center and remained there for almost six months until I was transferred to the Social Rehabilitation Center for Men #2 Quito where I am today. "

He entered PRIVA's the program for Rehabilitation of Victims in 2009 with the following symptoms: heartburn (experienced in the last three months), and on the psychological side he displayed anxiety, emotional lability, problems sleeping (insomnia), nightmares , and panic attacks a few days a week. Tests were applied for Zung, HTP, Sacks.

Diagnosis: Gastritis, Personality with traces anxiety, Post Traumatic Stress Disorder.

The symptoms found are compatible with stress described in above summary of clinical history, caused by torture.

Source: PRIVA Medical History Records

Case 3

Mr C¹³: Detained in the Social Rehabilitation Center for Men in Quito #2.

Mr C says: "At about 8:00pm I was alone. I was arrested by two officers of the Judicial Police, I did not know they were agents and they stopped me for looking suspicious. I ran because I thought that they were going to kill me. I ran towards the policeman located at the front of the mall. They stopped me, put me into the back of a police van and stripped me of my clothes. I was in my underwear in the back seat and spent an hour like that until we reached the Judicial Police Stating. I got dressed, they had been driving around in the car asking me about a death. They wanted me

¹³ The identity of this person is known to PRIVA but withheld for reasons of medical confidentiality and security of the person.

to tell them who the culprits were. It must have been two hours that they kept pressuring me. We arrived at the office of the Judicial Police at 11:00pm, I saw the clock even though they put my jacket over my head so that no one would see me. At 12:00 pm I was told that I had been identified as a suspect. I was in a room with mirrors, later they forced me to sign papers that I was not allowed to read, and then they took me up to a room, some sort of office. I think it was almost one o'clock in the morning, a sergeant told me to return the drugs, he was the brother of the kidnapped person. In the presence of the agents he threatened me and pointed a gun at me and yelled profanities. That was the saddest moment for me, I felt like I was dying, I wanted to cry, they threatened to kill me, kicked me in the calves and hit me with a baseball bat, then I was taken down to the dungeon. I do not know what time it was there but there were 13 other people sleeping on the floor. I did not eat for a week, I know that my mom brought me food but it never made it down to me. I did not see the sun and was only taken out of the cell three times a day to use a bathroom. We were given a bottle to urinate. I spent 15 days there. I saw the doctor of the Judicial Police the day after they detained me and he gave me a look over and signed a certificate. 15 days after arrest I was transferred to the Provisional Detention Center where I stayed for five months until I was transferred to the Social Rehabilitation Center for Men #2 Quito where I am today. "

He entered PRIVA's program for Rehabilitation of Victims in 2009 with the following symptoms: For the past four months has referred to throbbing frontal headaches accompanied by intense photophobia, tinnitus, nausea 3-4 times a week. He had been examined by the doctor who prescribed migradorixina. On the psychological side he displayed distress, emotional liability, low self esteem, sleep disturbances (insomnia), nightmares, panic attacks and suicidal thoughts Tests were applied for Zung, HTP, Sacks.

Diagnosis: Vascular Headaches, personality with hysterical features, severe depression.

The symptoms found are compatible with stress described in above summary of clinic history, caused by torture.

Source: PRIVA Medical History Records

Case 4

Mr D¹⁴: Detained in the Social Rehabilitation Center for Men in Quito #2.

Mr D: reports "I was arrested by two people that I did not know, but if I saw their faces I could identify them. I now know that they were agents of the Judicial Police dressed in civilian clothes. They had no documents for my arrest. After five minutes a lady appeared who accused me of having molested her. That was at 10:00 am. They hit me in the chest and I was thrown to the

¹⁴ The identity of this person is known to PRIVA but withheld for reasons of medical confidentiality and security of the person.

ground, face down. They continued to beat me and placed me in handcuffs. At first I defended myself because, as i could not identify the men as agents, I thought that I was being assaulted. They continued hitting me and told me that I was being detained and taken in a private taxi to the Judicial Police Station. I continued being beaten and insulted. They told me that they were going to do worse things to me than what I had done, that is if I left the car alive. We arrived at about 10:30 and the head guard did not want to take me in because I did not have a ballot of detention. They took me to the sixth floor and left me alone in the bathroom until 4:00pm. I was then removed, re-investigated and beaten in the head and arms with the butt of the gun for about 45 minutes. The next day I was taken to the Health Center where they took my blood pressure and asked me if I had been beaten. I did not answer for fear of that policemen who were accompanying me would continue to punish me. The physician signed a paper and the policemen took me back to the station. I was taken straight to the dungeon, which was crowded with several people. I slept sitting up because there is no space to lie down. I was disoriented. After three days they took my statements in the presence of a delegate to the prosecution, but I had no public defender. My wife found out that I had been detained through the relative of another person who was arrested along with me. After five days I had a private attorney who requested that I be move to another cell that is in better conditions. That is where people with greater economic possibilities are kept. When the agents found out that my wife was a friend of the official, I no longer received physical or verbal abuse. The officials told me not to tell anyone what had happened or the treatment would be worse the next time. I remained at the Judicial Police station for a month, and ate only what my wife brought me. Then I was moved to the Provisional Detention Center where I stayed 15 days until my transfer to the Social Rehabilitation Center for Men in Quito #2 where I am today. "

He entered PRIVA's program for Rehabilitation of Victims in 2006 with the following symptoms: Refers to having been submitted to physical abuse, bruises and wide spread pain that has persisted into the present. Marked weakness until about a week ago, anorexia. On the psychological side he displayed anxiety, feelings of helplessness, crying easily, suicidal thoughts, sleep problems (insomnia), nightmares, and panic attacks a few days a week. Tests were applied for Zung, HTP, Sacks.

Diagnosis: Myalgia, Personality with traces anxiety, severe depression.

The symptoms found are compatible with stress described in above summary of clinic history, caused by torture.

Source: PRIVA Medical History Records

The cases 2,3,4 and 5 have not been reported to the authorities due to fear of reprisals from the victims and a lack of financial resources.

Case 5

Lastly, PRIVA has received a case involving a larger number of prisoners. Due to fear of reprisals it is not possible to provide much detail of the case. The case presented the following issues and complaints:

1. They were beaten during the transfer and regularly in the detention facility in connection with searches, which were perceived to take place constantly.
2. Forced medication to keep them calm.
3. They were kept in isolation from for 11 days with only 20 minutes per day outside the cell. In addition they were deprived of food, sleeping facilities, and any remedies for pass time.
4. They were all interned as convicted prisoners despite 13 of them still awaiting trial.
5. Detention under a regulation, which is discriminatory and does not live up to constitutional requirements and international rules on prisoners protection.¹⁵
6. The transfer was done without permission from the relevant prison authorities and without any justification.
7. Denial of privacy during interviews and effective access to a medical doctor of ones own choice.

In a similar case, complaints were filed about the management of social rehabilitation centers against the National Director of Social Rehabilitation, and the ongoing police abuse, using as an example what has happened in Hall A of "Maximum Security" Social Rehabilitation Center for Men in Quito #1 on August 13, 2009.¹⁶

PRIVA is also in possession of a number of other cases, which are documented by independent professionals who attended Istanbul Protocol trainings implemented between 2007 and 2008. These cannot be published for reasons of medical confidentiality and security of the alleged victims.

¹⁵ In the resolution for the creation of the Guayaquil Centre #2, it is established that the centre will be operating under the existing laws of maximum security wings. However, in September 2010, the National Council of Social Rehabilitation establish a new protocol for the functioning of that wing. Both regulations can be found in Annex IV

¹⁶ See Annex V

CHAPTER V: CONCLUSIONS AND RECOMMENDATIONS

The 2008 Constitution of the Republic of Ecuador contains significant advances with regards to respect to human rights. It clearly establishes that torture and ill-treatment is not acceptable and sets out a vision of proper treatment of prisoners. However, there is still a long road to travel to ensure that the Ecuadorian population can effectively access the rights envisioned in this document and provided by international human rights law. As illustrated by the statistics and cases in this report, there is a significant discrepancy between the constitutional vision of human rights¹⁷ and the 41 % of prisoners who reported torture or ill-treatment during 2008 and 2009.

On the legislative side, there is a need to harmonise secondary laws with constitutional provisions. This is particularly pertinent with regard to the adoption of an effective domestic criminalisation of torture in on compliance with Articles 1 and 4 of UNCAT. Furthermore, there is a need to improve the protection and support for victims and witnesses, both in relation to protection against reprisals and effective access to have their case heard through legal aid schemes.

As indicated in the statistics and cases and in the conclusions of the recent visit of the Special Rapporteur on extrajudicial executions, investigations of serious human rights abuses including torture and ill-treatment suffer from a distinct lack of promptness, independence and impartiality. If at all initiated, investigations are started with serious delays and they are often delegated to the Judicial Police, which is often also the main suspect. In addition, the country does not have a sufficient number of independent medical experts, psychiatrists, and psychologists that are able to document cases of torture in prisons.

Reprisals and deficient witness and victims protection systems have resulted in very few cases being reported. This problem is further increased by a lack of financial capacity to bring cases and low rights awareness amongst victims. One indicator of this problem is the significant discrepancy between the findings of PRIVA and the number of cases reported to CEDHU in the same period.

In recent years, Ecuador has seen an increase in crimes and the Government has failed to implement adequate criminal policies addressing these problems. Instead, it has responded with repressive measures against those suspected of involvement in such crimes. This is very clearly illustrated in the lack of knowledge and technical training for administrative and professional personnel in management of persons of “high risk” in prisons.

However, there are also positive developments, which can be build on. First of all, there is a greater social conscience about the phenomenon of torture, which facilitates the alternative reporting of cases outside the judicial system through publishing reports and arranging demonstrations. Furthermore, the legal protection against torture and ill-treatment is undergoing positive developments, which provides a improving framework for addressing the many obstacles ahead.

¹⁷ The term “human Rights appears a total of 27 times in the texto f the Constitution.
Avenida 10 de Agosto N21 281 y J. Carrión - Edificio Casa Baca, Dpto. 102 - TELEFAX: (593 2) 2525146
Casilla de Correos 17-11-6436 - Correo Electrónico: priva@pontonet.ec
QUITO- Ecuador

To get started on addressing these obstacles, PRIVA would like to encourage the Committee against Torture to consider making recommendations and requests in relation to the following issue areas:

1. Criminalisation of torture in accordance with the Articles 1 and 4 of UNCAT with a specific focus on criminalising psychological forms of torture and establishing penalties, which are commensurate to the gravity of the crime.
2. Establishment of a special investigative body with the responsibility of investigating all allegations of crimes committed by public officials. This body must have complete legal, structural and practical independence from the entities that it might be called upon to investigate.
3. Creation of an independent national institute of forensic sciences with the necessary capacity and expertise to ensure that the technical aspects of investigations of human rights violations are implemented promptly, effectively, independently and impartially.
4. Promotion of the implementation of basic legal safeguards for prisoners. This should include effective implementation of the “information card” initiative initiated by the Judicial Police but could also be expanded to providing the information publicly in all police stations and providing prisoners with their own card containing their rights.
5. Provision of public and accessible information about prisoners’ rights and complaints mechanisms at all places where persons are detained.
6. Appointment by the National Judicial Council of judges of penitentiary guarantees in order to ensure implementation of the rights and guarantees that protect prisoners.
7. Reform of the Code of Judicial Function to ensure that defence lawyers are also available after the end of criminal proceedings and throughout the duration of detention to provide the prisoner with legal representation in when facing disciplinary sanctions and to ensure external and independent monitoring of the prisoner’s treatment.
8. Establishment of a comprehensive policy of protection of victims, witnesses and human rights defenders to ensure that the no complaints are withheld due to fear of reprisals. Such a policy should provide for a possibility of identity change and a strategy for rigorous investigation and prosecution of any act of reprisal.
9. Definition and implementation of a coherent criminal policy responding the current challenges of crime prevention and repression, treatment of offenders and assistance to victims.
10. Continued and improved human rights training for all relevant public officials with a specific focus on rights and safeguards for prisoners, which are considered a priority group in the Constitution.

11. Specialised training for prison officials who have contact with prison population and particularly those that assigned to guard “high risk” prisoners.
12. Establishment of an independent and effective National Preventive Mechanism under the OPCAT.