

ALTERNATIVE REPORT

-ECUADOR-

COMMITTEE ON ENFORCED DISAPPEARANCES (CED)

**SESSION 12°
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This report¹ is presented by:

Réseau International des Droits Humains (RIDH)²: It is a non-governmental organisation based in Geneva. It aims to strengthen the capacities of the actors working in the field of the promotion and the protection of human rights through providing the necessary information, analysis and technical support. Further, it intervenes in the process of dialogue in order to ensure and implement human rights within a given context.

¹ *English translation from Spanish: Sahar Ammar (RIDH team).

² www.ridh.org

CONTEXT. -

1. The concept of enforced disappearances has been incorporated in the criminal and constitutional law of Ecuador. Even though enforced disappearances are linked to a particular period of the Ecuadorian history, there is a serious concern about the lack of concrete information regarding the current and past cases.
2. The Truth Commission, established in 2007 by the President of the Republic, aims to provide the necessary documentation on the cases of human rights violations and crimes against humanity that occurred in Ecuador between 1984 and the 2008. The Commission had succeeded to identify the perpetrators in 94 cases out of 118 cases (80% of the total) that have been subject of investigation. When the evidences are available, the higher-ranking agents or authorities that had the effective control on the direct perpetrators are also held responsible of the violations³.
3. As soon as the report is issued, the state of Ecuador is under the obligation to provide citizens and civil society members with the clear statistics on the enforced disappeared persons, and therefore to make accessible all the necessary data that could support the work in this field. Some of the data that could be collected stresses:

LA DESAPARICIÓN FORZADA EN ECUADOR

Los ataques perpetrados desde 1980 y que se indagan actualmente



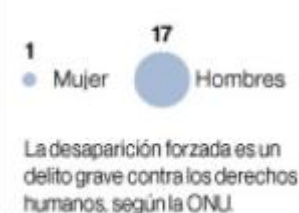
Situación de las víctimas



Desaparecidos según ideología



Según el sexo de las víctimas



FUENTE: COMISIÓN DE LA VERDAD / EL COMERCIO

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From 2004 until 2016 there are no enforced dissapearances in Ecuador.

³ Conclusions of the Comission of Truth extracted from http://www.alfonsozambrano.com/comision_Truth/cdv10-conclusions.Pdf in 3-02-2017.

⁴ Diario "Andl Comercio", *Fiscalía investiga 18 desapariciones forzadas en the and Ecuador*. Available in: <Http://www.elcomercio.com/Actualidad/fiscalia-investigations-desaparicionesforzadas-equator-comisiondelaverdad.html> In 08-02-2017

4. This scenario seems ideal. Nevertheless, in real terms, human rights violations are still taking place even United Nations Treaty Bodies and Special Procedural and the Regional Human Rights System have recognised the violations.
5. The Ombudsman's Office (Defensoría del Pueblo) of Ecuador acknowledged in 2013 that:
 - ✓ · There is no available databases or information system;
 - ✓ · There is no DNA bank;
 - ✓ · There is a lack of current statistics on the qualified institutions;
 - ✓ · There is a delay in the assignment of agents;
 - ✓ · There is a lack of statistics and information quantified; and,
 - ✓ · There is a limited diligences.

Besides, the Ombudsman's Office emphasized " the way in which people are treated, its role in generating stereotypes about the victim and the consequent irrelevance that is given to the investigation according to which there is an assumption that the concerned person has disappeared by her/ his own will".

6. On the other hand, it is also worth highlighting that out of the total cases on enforced disappearances that have been registered since 1985, the investigations have been carried out only against eighteen persons because according to the recent regulatory reform the process cannot be finished if the **body** of the disappeared person is not found.
7. Furthermore, there state of Ecuador is not fully complying with its obligation to investigate, punish and give remedy to the victimis. For instance, the Inter-American Commission of Human Rights (CIDH) has referred in July 2015 the case of Mr. Vásquez Durand (Case 11.458, Jorge Vásquez Durand), a handicraft merchant, who was disappeared in 1995 in the Huaquillas area (border city of Peru) and was seen (for the last time), according to his family, in the military barracks of "Teniente Ortiz"⁶.

⁵ Ombudsman of Ecuador: *Personas desaparecidas en el Ecuador* por la Dirección Nacional de Investigación e Incidencia en Políticas Públicas -DNIIPP-. Available at: <http://www.dpe.gob.ec/rc2014/CUMPLIMIENTO%20DE%20LA%20EJECUCION%20PROGRAM%C3%81TICA%20Y%20PRESUPUESTARIA/14%20N%C3%BAmero%20de%20diagn%C3%B3sticos%20sociales%20realizados/Producto%20Final%20Informe%20Desaparecidos.pdf>

⁶ CIDH:

Video

<https://vimeo.com/channels/1120235/179827104>

<http://www.oas.org/es/cidh/prensa/comunicados/2015/079.asp>;

Ecuavisa: <http://www.ecuavisa.com/articulo/noticias/actualidad/187256-esposa-victima-desaparicion-forzada-ecuador-exige-justicia>

LEGAL FRAME. -

8. The current Constitution of 2008 states that the right to the personal integrity includes the prohibition of torture, enforced disappearance and other cruel, inhuman or degrading treatment or punishment (Article 66. C). Further, the article 80 states that the actions and penalties for crimes of genocide, crimes against humanity, war crimes, **enforced disappearance of persons** or crimes of aggression against a State should not be subject to limitation. In addition, it emphasizes that none of these cases could be susceptible to amnesty and that the fact that one of these violations has been committed by a subordinate will not exempt the superior ordering them from criminal liability.⁷
9. However, in this same context, the Organic Integral Criminal Code (known as COIP) defines as well the crime of enforced disappearance under certain limited circumstances, but it imposes a penalty of imprisonment ranged from twenty-two to twenty-six years⁸.
10. Although the existing normative framework defines the crime of enforced disappearance, and determines particular sanction for those who are found culpable of the violations in

⁷ Constitution of Ecuador 2008, article 80: Art. 80.- Proceedings and punishment for the crimes of genocide, crimes to humanity, war crimes, forced disappearance of persons or crimes of aggression to a State shall not be subject to statutes of limitations. None of the above-mentioned cases shall be liable to benefit from amnesty. The fact that one of these crimes might have been perpetrated by a subordinate shall not exempt the superior who ordered said crime or the subordinate who carried out the order from criminal liability.

⁸ See: Código Orgánico Integral Penal, Article 84 ("disappearance forced"). Article 16.- All persons, individually or collectively, have the right to:

1. Free, intercultural, inclusive, diverse and participatory communication in all spheres of social interaction, by any means or form, in their own language and with their own symbols.
2. Universal access to information and communication technologies.
3. The creation of media and access, under equal conditions, to use of radio spectrum frequencies for the management of public, private and community radio and television stations and to free bands for the use of wireless networks.
4. Access and use of all forms of visual, auditory, sensory and other communication that make it possible to include persons with disabilities.

Article 76.- In all processes where rights and obligations of any kind are set forth, the right to due process of law shall be ensured, including the following basic guarantees:

[...]

3. No one shall be judged or punished for a deed or omission which, at the time of its perpetration, is not legally classified by law as a criminal, administrative or other offense; nor shall a punishment not provided for by the Constitution or law be applied. A person can only be judged by a competent judge or authority and in keeping with the procedures corresponding to each proceeding.

Article 84.- The National Assembly and all bodies with legal and regulatory authority shall be obligated to adjust, formally and materially, the laws and other legal standards related to the rights provided for in the Constitution and international treaties and those that are needed to guarantee the dignity of human beings or communities, peoples and nations. In no case shall amending the Constitution, laws, other legal and regulatory frameworks or actions by the government endanger the rights recognized by the Constitution.

Article 80.- Crimes against humanity.- Crimes against humanity are committed as part of a widespread or systematic attack against a civilian population: extrajudicial execution, slavery, forced displacement of the population that is not intended to protect their rights, illegal or arbitrary deprivation of liberty, torture, rape and forced prostitution, non-consensual insemination, forced sterilization and enforced disappearance shall be punishable by imprisonment for twenty-six to thirty years.

question, there is no protocol which sets up the duties of the Public Ministry during the process of investigation on the disappeared persons.

RECOMMENDATIONS. -

11. It is necessary that the relevant authorities such as the Ministry of Justice and Human Rights and the National Assembly define a set of rules which does not only regulate the research but also investigation on the cases of enforced disappearances.
12. We consider that the state of Ecuador is under the obligation to provide the statistical data which demonstrates the number of disappeared persons and clearly places it into distinct categories such as nationality, gender, race, age, etc.
13. The Ombudsman's Office of Ecuador has already stated that "the issue of enforced disappearances has been raised through the pressure of the victims' families" and the existing "gaps in the investigation process". In addition, they insisted that "faced with the problem of enforced disappearance, state institutions must strengthen their actions in order to fight against impunity in the context of enforced disappearances" and that "it is necessary to work in close collaboration and institutional coordination in order to put in place effective policies to prevent human rights violations and to ensure access to justice". It highlighted that this should be done in full cooperation with the families and the close relatives of victims.

REFERENCES:

- Conclusions of the Commission of Truth, extracted from http://www.alfonsozambrano.com/comision_verdad/cdv10-conclusiones.pdf.
- Constitution of the Republic of the Ecuador 2008.
- Newspaper El Comercio: Fiscalía investigates 18 disappearances forced in the Ecuador, extracted from
- <http://www.elcomercio.com/actualidad/fiscalia-investigaciones-desaparicionesforzadas-ecuador-comisiondelaverdad.html>.
- Organic Integral Criminal Code.