



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Additional information submitted by Ecuador  
under article 29 (4) of the Convention\*\* \***

[Date received: 20 March 2023]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present document may be accessed from the web page of the Committee.



## I. Introduction

1. On 19 April 2017, the Committee on Enforced Disappearances adopted concluding observations on the initial report of Ecuador (CED/C/ECU/CO/1). In paragraph 27 of the concluding observations, the Committee requested the State party to submit, under paragraph 29 (4) of the Convention, by 17 March 2023 at the latest, concrete, up-to-date information regarding the implementation of all its recommendations, as well as any additional information concerning the implementation of the obligations contained in the Convention. The Government of Ecuador hereby submits the requested information to the Committee.

## II. Information concerning follow-up to the concluding observations of the Committee

### A. Recommendation contained in paragraph 9

2. The Truth Commission was established by Executive Decree No. 305, published in Official Gazette No. 87 of 18 May 2007. Article 1 states that its purpose “to investigate and elucidate, and prevent impunity for, acts of violence and human rights violations committed between 1984 and 1988 or during other periods of time”.

3. The Truth Commission delivered its final report, entitled *Sin Verdad No Hay Justicia* (“Without truth there can be no justice”),<sup>1</sup> in which it recorded 119 cases of grave human rights violations and crimes against humanity, including cases of false imprisonment, torture, extrajudicial execution, enforced disappearance, violations of the right to life, and sexual violence, involving a total of 464 direct victims between 1984 and 2008.

4. On 13 December 2013, the Act for Reparations to Victims and the Prosecution of Grave Human Rights Violations and Crimes against Humanity That Occurred in Ecuador between 4 October 1983 and 31 December 2008 (hereinafter, the Victim Reparations Act) was published in the supplement to Official Gazette No. 143. Its purpose is defined in article 1:

“The purpose of the present Act is to regulate the provision of comprehensive reparations for the victims of grave human rights violations and crimes against humanity that were committed in Ecuador between 4 October 1983 and 31 December 2008 and documented by the Truth Commission and to ensure the prosecution of such cases.”

5. Article 5 of the Act states that:

“Direct victims of human rights violations documented by the Truth Commission and their spouses or common-law partners and relatives up to the second degree of consanguinity shall be the beneficiaries of individual measures provided for under the Reparations Programme in the cases and under the conditions determined by this Act.”

6. Under the material reparations procedure created pursuant to the Victim Reparations Act and administered by the Ministry of Women and Human Rights, compensation has been awarded to 140 direct and indirect victims of crimes against humanity and grave human rights violations, including extrajudicial execution, homicide, death in custody, torture, sexual violence and arbitrary detention. This has entailed the payment by the State of compensation in the amount of US\$ 4,535,433.07. The report of the Truth Commission documents 17 victims of enforced disappearance, who have yet to receive material reparations from the State.

7. The Ministry of Women and Human Rights provides material reparations where the victims have been documented by the Truth Commission, once it receives the relevant files

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<sup>1</sup> Report of the Truth Commission, Ecuador, 2010. Executive summary, p. 53.

from the Ombudsman's Office. These files include, among other documents, the agreement on non-material reparations.

8. Information on each case is provided below.

(a) **González et al. case (Fybeca case) (No. C-103)**

Date: 19 November 2003

Gómez Balda, Johnny Elías. It is thought that, on the day of the police operation, he was with César Mata in a mechanic's workshop, where they were both arrested by the police. Seydi Vélez claims that she saw two men matching their description in the same vehicle as the one in which she was taken. César Mata called his brother and told him that he was being held at the Guayas criminal investigation police station. Johnny Gómez and César Mata are still missing.

Current status: file not forwarded by the Ombudsman's Office.

Mata Valenzuela, César Augusto. On the day of the police operation, he was thought to have been with Johnny Gómez in a mechanic's workshop, where they were both arrested by the police. Seydi Vélez claims that she saw two men matching their description in the same vehicle as the one in which she was taken. César Mata called his brother and told him that he was being held at the Guayas criminal investigation police station. Johnny Gómez and César Mata are still missing.

Current status: file received on 24 February 2016.

Vivar Palma, Erwin Daniel. According to Seydi Vélez, on the day of the police operation at the Fybeca pharmacy in La Alborda, she and her uncle Edwin Vivar were abducted by unknown persons and taken to the pharmacy. Her uncle was taken from there by a man who did not identify himself as a police officer and she never saw him again. To this day her family has no knowledge of his whereabouts.

Current status: a negotiations meeting held on 30 June 2016 was suspended when it came to light that Mr. Vivar Palma was alive and in Venezuela. In this regard, the National Director for Reparations for Victims and Protection from Impunity stated, in official letter No. DPE-DNRVPI-2016-0060-O dated 28 June 2016 that, on 27 June 2016, at an indictment hearing before the National Court of Justice, the Attorney General's Office had announced that Mr. Vivar Palma had been located in Venezuela. The indirect victim, Mr. Vivar Palma's wife, Vera Falcones Mireya, agreed to the suspension of the negotiations pending clarification of the situation.

In respect of this case, on 30 November 2017, the Inter-American Commission on Human Rights issued an Admissibility Report on alleged violations of articles 3–5, 7 and 8 of the American Convention on Human Rights; article 25, in relation to articles 1 (1) and 2 of the same Convention; articles I and IX of the Inter-American Convention on Forced Disappearance of Persons; and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

The Commission is currently considering the Fybeca case on the merits. The State submitted its observations on the merits on 28 October 2022, clarifying that two grave human rights violations have been alleged, namely extrajudicial execution and enforced disappearance.

Regarding the alleged enforced disappearance, in its observations on the merits, the State informed the Commission that a public announcement had been made on 26 October 2022 indicating that the trial court of the National Court of Justice had convened a hearing for 27 October 2022, at which 11 defendants were due to appear on charges of abduction in the form of enforced disappearance. The hearing was deferred due to the complexity of the case and procedural matters pertaining to the National Court of Justice, but it is expected to be reconvened in May 2023.

The prosecution intends to call 45 witnesses and experts to testify during the trial; among them are relatives of the people who were allegedly abducted. Two representatives of the media who reported on the events at the pharmacy will also give evidence, and 29 pieces of documentary evidence will be presented.

(b) **María Rosa Cajas case (No. C-48)**

Date: 21 October 1986

Cajas Lara, María Rosa. A member of the Alfaro Vive, Carajo group, she was arbitrarily detained, tortured and sexually assaulted by police officers at the Criminal Investigation Service station in Pichincha. She is still missing.

Current status: file not forwarded by the Ombudsman's Office.

(c) **Susana Cajas case (No. C-23)**

Date: 10 November 1985

Jarrín Sánchez, Francisco Javier. A militant of the Alfaro Vive, Carajo group, he was arrested in Esmeraldas and taken to the facility of the Military Intelligence Battalion, where he was tortured. He is still missing.

Current status: file not forwarded by the Ombudsman's Office.

(d) **Luis Vaca case (No. C-22)**

Date: 10 November 1985

Vaca Jácome, Luis Alberto. A militant of the Alfaro Vive, Carajo group, he was arrested in Esmeraldas and taken to the facility of the Military Intelligence Battalion, where he was held incommunicado for two years and tortured. He is still missing.

Current status: file not forwarded by the Ombudsman's Office.

Other cases of enforced disappearance.

(e) **Cotocollao case (No. C-35)**

Date: 26 March 1986

Troya Castro, David Alberto. An active militant of the Alfaro Vive, Carajo group, he was performing compulsory military service at the time of his disappearance. He was identified when he helped his mother take a bed to García Moreno Prison for his brother. Days later he was arrested and held incommunicado for three months, during which time he was tortured in several military facilities. He is still missing.

Current status: file received on 7 November 2019.

(f) **Stalin Bolaños and Elito Véliz case (No. C-18)**

Date: 12 October 1985

Bolaños Quiñonez, Manuel Stalin. He was arrested along with a member of the navy and tortured at the Balao Naval Base. He has been missing since then.

Current status: file not forwarded by the Ombudsman's Office.

(g) **Duchicela case (No. C-66)**

Date: 27 May 1988

Duchicela Hernández, Enrique Roberto. An assistant to the air attaché at the Ecuadorian Embassy in Lima, he was in charge of handling an informant. The Peruvian army detected a leak of information and planned his abduction and disappearance.

Current status: file not forwarded by the Ombudsman's Office.

(h) **López Pita case (No. C-95)**

Date: 6 November 2000

López Pita, Elías Elint. He was arrested by the police and taken to Tungurahua Province police headquarters, where, according to the statement of a fellow detainee, Luis Alberto Shinín, he was tortured. According to his relatives, his body and that of Shinín – who was abducted after his release from prison – were dumped on the outskirts of the town of Baños. The whereabouts of both men remain unknown.

Current status: file not forwarded by the Ombudsman's Office.

Shinín Lazo, Luis Alberto. He claimed that he had seen Elías López in a place known as El Aula (the classroom) while in detention at Tungurahua police headquarters. After serving his sentence, he was abducted and shot with a pellet gun, causing him serious injuries. He was admitted to hospital but was again abducted and disappeared. His whereabouts remain unknown.

Current status: file not forwarded by the Ombudsman's Office.

(i) **Jaime Otavalo case (No. C-15)**

Date: 15 August 1985

Otavalo Infante, Jaime Alberto. Jaime Otavalo and Pedro Insuasti were involved in a vehicle theft and a burglary in the north of Quito. During the police hunt, Insuasti was killed, while Jaime Otavalo disappeared.

Current status: file not forwarded by the Ombudsman's Office.

The following cases were resolved by the inter-American human rights system and therefore the Ombudsman's Office did not forward the files:

(j) **Restrepo case (No. C-64)**

Date: 8 January 1988

Restrepo Arismendy, Pedro Andrés. He was 14 years old when he and his older brother were arrested, apparently for driving without a licence. They were taken to a facility of the Criminal Investigation Service of Pichincha, where his brother died as a result of being tortured. The two brothers were subsequently disappeared, and no trace of them has ever been found.

Restrepo Arismendy, Carlos Santiago. A 17-year-old university student, he was apparently arrested for driving without a licence. He and his younger brother were taken to a facility of the Criminal Investigation Service of Pichincha, where he died as a result of being tortured. The two brothers were subsequently disappeared, and no trace of them has ever been found.

Current status: in 1997, the family brought the case before the Inter-American Commission on Human Rights. On 20 May 1998, an amicable settlement agreement was signed under the auspices of the Commission, in which the Ecuadorian State accepted its responsibility for what had happened. The actions carried out by State officials violated constitutional norms, including articles 19, 20, 22 (1) and (19) (h) and 25 of the Constitution, the laws of Ecuador, and the American Convention on Human Rights. Compensation was paid in the amount of US\$ 2,000,000.

(k) **Sabando Véliz case (No. C-104)**

Date: 29 September 2004

Sabando Véliz, Luis Alberto. Luis Sabando and Lenin Cedeño were arrested in the course of an investigation into the death of a person from Quevedo. At the pretrial detention centre, Luis Sabando received a visit from his mother, whom he asked to find him a lawyer. The next morning, she was informed that her son had escaped. No further explanation was given. Luis Sabando has been missing since then.

On 19 October 2004, the Inter-American Commission on Human Rights granted precautionary measures in favour of Luis Alberto Sabando Véliz. Based on available information, he is thought to have disappeared on 29 September 2004 in the city of Quevedo. In view of the situation, the Commission requested the Ecuadorian State to adopt the necessary measures to protect the beneficiary's life, safety, personal freedom and right to due process of law and to report on the action taken to determine his whereabouts.

On 4 January 2021, the Commission decided to lift the precautionary measures granted to Luis Alberto Sabando Véliz and reminded the State of its general protection obligations. In that regard, it called for any corresponding and necessary

investigations to continue (Resolution to Lift Precautionary Measures 2/2021). On 23 January 2019, the case registered under petition No. P-901–07, which was at the admissibility stage, was closed. On 24 February 2022, criminal proceedings were instituted in Ecuador for the enforced disappearance of Luis Alberto Sabando Véliz.

(l) **Gustavo Garzón case (No. C-71)**

Date: 9 November 1990

Garzón Guzmán, César Gustavo. A writer, he disappeared two months after his release from García Moreno Prison. He was part of the Montoneras Patria Libre group. It is presumed that the National Police is responsible for his disappearance. He is still missing.

Current status: on 7 October 2021, the Inter-American Court of Human Rights found that the Ecuadorian State was responsible for the enforced disappearance of the writer César Gustavo Garzón Guzmán in Quito in 1990. In its judgment, the Court found that the State was responsible for the violation of the rights to the recognition of a juridical personality, to life, to personal integrity, to personal freedom, to judicial guarantees and to judicial protection. Compensation was paid in the amount of US\$ 312,000.

(m) **Jorge Vásquez case (No. C-86)**

Date: 30 January 1995

Vásquez Durand, Jorge. A Peruvian citizen, he was arrested in the town of Huaquillas for reasons that are unknown. Another Peruvian national, Ernesto Alcedo Maulen, claims that he saw him while in detention at the “Teniente Hugo Ortiz” military barracks in the city of Portoviejo. Mr. Vásquez’s whereabouts remain unknown.

Current status: on 15 February 2017, the Inter-American Court of Human Rights found that the Ecuadorian State was responsible for the enforced disappearance of Jorge Vásquez Durand, an event which occurred on 30 January 1995 during the Alto Cenepa conflict between Ecuador and Peru. In its judgment the Court indicated that the State was responsible for the violation of the rights to the recognition of a juridical personality, to life, to personal integrity, to personal freedom, to judicial guarantees and to judicial protection. Compensation was paid in the amount of US\$ 190,000 and other reparation measures were taken.

As for non-material reparations, under the Victim Reparations Act the Ombudsman’s Office was authorized to establish, as part of its institutional machinery, a directorate for reparations and the pursuance of legal action, or any other administrative body that it deemed appropriate, to administer the provision of non-material reparations for victims in coordination with State institutions and authorities. These functions are currently performed by the National Directorate of the Mechanism for the Protection of Disappeared Persons and Reparations for Victims Documented by the Truth Commission.

There is therefore a requirement to report on the enforced disappearances documented in the Truth Commission report and the indirect victims, who are also beneficiaries under the Victim Reparations Act, who have submitted a request for access to the victim reparations programme.

Of the 464 documented victims of grave human rights violations and crimes against humanity, 17 are victims of enforced disappearance (3.76 per cent); 1 of these victims is female and 16 are male. Given that the victim reparations programme is underpinned by the principle of confidentiality, information can only be provided on those cases in which the indirect victims have voluntarily submitted a request for access.<sup>2</sup>

The Ombudsman’s Office does not have a file on 10 of the 17 cases, because the indirect victims in those cases have not submitted a request for access to the victim

<sup>2</sup> See table 1.

reparations programme. Three files have been forwarded to the Ministry of Women and Human Rights to continue with the compensation process, while four cases are currently being considered at the working level by the Ombudsman's Office.

## **B. Recommendation contained in paragraph 10 (a)**

9. Information is provided on the status of the following cases:

(a) **Sabando Véliz case (Trial No. 12283-2022-00172)**

Judicial proceedings: the court of first instance issued a decision to stay proceedings against the defendants. However, the Attorney General's Office and the private prosecutor filed an appeal against the decision, which was heard by the Multicompetent Chamber of the Provincial Court of Justice of Los Ríos. An adversarial public oral hearing is scheduled for Thursday, 30 March 2023, at 2.30 p.m. so that the appellant can present the grounds for the appeal, in accordance with the principle that all questions at issue should be decided in a minimum of procedural steps, the adversarial principle and the principle whereby the parties delimit the scope of the case, as enshrined in articles 75, 76 and 168 of the Constitution.

(b) **González et al. case (Trial No. 17721-2016-0003)**

Judicial proceedings: the case is before the National Court of Justice. On 4 March 2021, it was assigned by random selection to the national judges Felipe Córdova Ochoa, Walter Macías Fernández and Luis Antonio Rivera Velasco. On 9 November 2022, the Court requested information from various authorities prior to the convening of the trial.

On 12 December 2022, it was announced that a trial would be scheduled in the hearings calendar of the Criminal Division once the information requested in the decision of 9 November 2022 had been received.

(c) **Vaca, Cajas and Jarrín case (Trial No. 17721-2013-1329)**

Judicial proceedings: the case is before the National Court of Justice. On 4 March 2021, the case was assigned by random selection to the national judges Walter Macías Fernández, Felipe Córdova Ochoa and Mercedes Caicedo Aldaz. An adversarial public oral hearing for the review of precautionary measures, convened for 26 July 2021, was deferred until 18 October 2021 and then 16 December 2022. The Court is expected to announce a new date and time for the hearing.

## **C. Recommendation contained in paragraph 10 (b)**

10. The Attorney General's Office, through the prosecutors' offices attached to its Directorate of Human Rights and Citizen Participation, has investigated the fate and whereabouts of the disappeared persons in each case. In doing so, it has conducted searches to check the content of restricted documents and requested the declassification of certain information to which access was not provided. All activities and formalities have been carried out in accordance with the principle of the presumption of life.

11. In addition, the authorities have raised awareness of the international standards cited in the judgments in the cases of *Guachalá Chimbo et al. v. Ecuador* and *Garzón Guzmán et al. v. Ecuador* in order to ensure that specialized due process is applied in these kinds of investigations. The process of identifying remains for the purpose of returning them to their families in a dignified manner has not borne fruit, since the remains that were found were not those of the disappeared persons.

12. Nevertheless, in one of the investigations conducted in the Fybeca case, the authorities managed to establish the whereabouts of one of the disappeared persons – a victim of torture and enforced disappearance who had been presumed dead but who had actually escaped to another country. In this case, it emerged, after an extensive documentary investigation, that several years after the events, one of his relatives had obtained a birth certificate and that this

document had been used to obtain other official documents in Venezuela. The person in question, on returning to Ecuador, was admitted to the victim and witness protection scheme and his advance testimony was taken in order to ensure his safety.

13. Furthermore, in compliance with the *Guachalá Chimbo et al. v. Ecuador* judgment, the authorities have drawn up an action protocol for cases of disappearances of persons from health centres. The protocol covers aspects such as prevention, appropriate action to be taken by health officials in connection with the requirements of due diligence and their responsibilities, and the investigation of disappearances, irrespective of whether State involvement is presumed. The part of the protocol related to the investigation of disappearances is based on international standards and is particularly useful in cases where health centres are used as temporary places of deprivation of liberty owing to the state of health of persons deprived of their liberty.

14. In accordance with its constitutional mission, the National Police is entrusted with ensuring public safety and public order and protecting the free exercise of rights and the security of persons within the national territory, while the Attorney General's Office is responsible for overseeing criminal pretrial and procedural investigations, including those related to enforced disappearance. It should be noted that, to ensure compliance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and in particular the principles of independence and impartiality enshrined in paragraph 28 thereof, the National Police cannot take part in the investigations. Nevertheless, as a guarantor of human rights and an agency that assists the Attorney General's Office, the National Police has always complied with the requests of the competent authority so that the matters under investigation are elucidated promptly and transparently.

15. The National Police also relies on the Search, Investigation and Location Protocol for Disappeared, Missing or Lost Persons, issued by the plenary Council of the Judiciary in resolution No. 160-2012 and published in Official Gazette No. 875 of 21 January 2013. The purpose of the Protocol is to establish the processes to be followed by the special units of the National Police, as first responders, and the assistance to be provided to the Attorney General's Office and the courts so that persons who have disappeared or are lost or missing in the country are searched for and found and their life, physical integrity and liberty of person are protected.

16. Public policy is governed by the Organic Act on Action in Cases of Disappeared and Missing Persons, passed by the National Assembly on 19 December 2019 and published in Official Gazette No. 130 of 28 January 2020. This law defines the rights and obligations of different parties and victims involved in cases of disappearance and establishes a national system to search for disappeared and missing persons and respond to indirect victims. This system is composed of the Attorney General's Office; the lead agency in the area of public safety and public order; the lead agency in the area of human rights; and a representative of the Sectoral Cabinet for Social Affairs.

17. In this framework, in December 2020, the National Police, through its National Directorate of Crimes against Life, Violent Deaths, Disappearances, Extortion and Kidnappings, launched the "Alerta Desaparecidos" application, which generates missing-persons alerts. The application was developed to solve missing persons cases and other cases in real time; it allows for constant interaction with the community, indirect victims of disappearances and public and private institutions such as hospitals, refuges, shelters, private clinics, medical centres, nursing homes, morgues and cemeteries.

18. In February 2021, the National Police unit for the investigation of disappearances published the third version of its procedural manual for the management of investigations into cases of disappeared and missing persons. In November 2021, an inter-agency action protocol was adopted and promulgated for the registration and location of missing persons and the investigation and closure of their cases. This was the first document created in the framework of the national system to search for disappeared and missing persons and respond to indirect victims. The protocol lays down rules concerning the actions to be taken by the Attorney General's Office, the National Police and the National Service of Legal Medicine and Forensic Sciences in missing-persons investigations.



19. Lastly, the Ministry of the Interior has a web page – [www.desaparecidosecuador.gob.ec](http://www.desaparecidosecuador.gob.ec) – for users to register missing persons, share information about them and monitor the progress of investigations opened by the Attorney General’s Office. The system generates and transmits alerts to the computer system of the immigration authorities, the integrated computer system of the National Police and the “Emilia alert” system for the dissemination of information via INTERPOL about missing persons who could have gone abroad. This page, which can be accessed by any user in the country, is an excellent tool for disseminating and sharing information about missing persons.

#### **D. Recommendation contained in paragraph 10 (c)**

20. Under the Victim Reparations Act, the Ombudsman’s Office can establish, as part of its institutional machinery, a directorate for reparations and the pursuance of legal action, or any other administrative body that it deems appropriate, to administer the provision of non-material reparations for victims in coordination with State institutions and authorities.

21. Accordingly, by decision No. 101-DPE-2014 of 2 July 2014, the Ombudsman’s Office established the National Directorate for Reparations for Victims and Protection against Impunity, which is now the National Directorate for the Protection of Disappeared Persons and Reparations for Victims Documented by the Truth Commission. The Ombudsman’s Office subsequently issued guidelines (under decision No. 198-DPE-CGAJ-2014) and began to work not only with victims documented by the Truth Commission, but also with the relevant State institutions on the provision of non-material reparations.<sup>3</sup>

22. Article 5 of the guidelines stipulates that “the administrative process for the determination of reparation measures in each case, whether individual or collective, shall be confidential”. This offers a guarantee with respect to the principle of non-revictimization.

23. The Attorney General’s Office has carried out activities in the context of comprehensive redress. Examples include the creation, in 2014, of a mural entitled “Grito de la Memoria” (Cry of Memory) and the installation of commemorative plaques in relation to the *González et al.* case. It has also delivered training and awareness programmes for public servants, as part of their development plans, staging plays with human rights themes, among other activities.

24. Measures of comprehensive redress are largely under the direct responsibility of other State institutions; however, measures of satisfaction and guarantees of non-repetition are assured within the framework of judicial proceedings instituted by the Attorney General’s Office. The Attorney General’s Office has made varying degrees of progress, depending on the case under investigation, in applying the following measures of satisfaction as set forth in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law:

“(a) Effective measures aimed at the cessation of continuing violations.” The Attorney General’s Office acts *ex officio* or in response to complaints, in keeping with its constitutional powers.

“(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations.” This measure includes the investigative steps taken during the pretrial stage and during criminal proceedings when the information is made public.

...

“(f) Judicial and administrative sanctions against persons liable for the violations.” This is the responsibility of the court when passing sentence. It is the prosecution that must raise the question of reparations before the court.

<sup>3</sup> See annex 1.

“(g) Commemorations and tributes to the victims.” As mentioned above, the Attorney General’s Office has requested and carried out a number of commemorative activities.

“(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.” This has been achieved through academic publications and training and awareness programmes.

25. The Attorney General’s Office has taken action on the following guarantees of non-repetition, following the examples given in the relevant United Nations principles:

“(a) Ensuring effective civilian control of military and security forces.” Efforts are being made to provide this guarantee through a shift from military to civilian jurisdiction and with support drawn from expert opinions on “fraudulent res judicata”.

“(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality.” This is achieved in the manner described in the previous point and through the application of international standards in investigations, the main ones being the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

“(c) Strengthening the independence of the judiciary.” This is done by assigning civilian personnel to support investigations and through the respect shown for due process of law by the judiciary.

“(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders.” This protection is being strengthened through the preparation of guidelines, with the participation of civil society, to identify critical issues and possible violations.

“(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces.” This has been achieved with the active participation of the School for Prosecutors of the Attorney General’s Office.

...

“(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.” Since the entry into force in 2014 of the current Comprehensive Organic Criminal Code, international crimes and grave human rights violations have been classified as offences, in keeping with the requirement of international treaty compliance established in the Constitution, which provides for the direct and immediate application of international treaties that are more favourable for the protection of human rights.

## **E. Recommendation contained in paragraphs 11 and 12**

26. The main measure adopted to ensure that the offence of enforced disappearance is prosecuted under article 84 of the Criminal Code is that of conducting investigations in line with the standards set out in international instruments. Since 22 November 1969, the applicable instrument has been the American Convention of Human Rights, to which Ecuador acceded in the same month and year and which it ratified in October 1977. Article 1 of the Convention is entitled “Obligation to Respect Rights”.

27. The first obligation of the States parties under article 1.1 of the Convention is to “respect the rights and freedoms” recognized therein (a negative obligation, meaning rights cannot be violated), bearing in mind that the exercise of public authority has certain limits which derive from the fact that ensuring respect for human dignity is of a superior order to

the power of the State. These limits were ignored by the accused in the cases under investigation.

28. The second obligation of the States parties is to ensure the free exercise of the rights recognized in the Convention (a positive obligation to act). This means that the States parties must organize structures that allow for the prevention and investigation of violations of the Convention and for the provision of compensation (punishment being part of compensation). This is an obligation which the Office of the Prosecutor General of Ecuador is objectively discharging in a reasoned manner.

29. In paragraph 166 of the second sentence in the case of *Velasquez Rodriguez vs. Honduras* (binding legal precedent), it is stated that the second obligation of the States parties is to “ensure” the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

30. The offence of enforced disappearance is defined in article 84 of the Comprehensive Organic Criminal Code, which has been in force since 10 August 2014. In line with the Inter-American Convention on Forced Disappearance of Persons, the offence must be considered to be continuous or permanent as long as the fate or whereabouts of the victim have not been determined. Although the offence was formally defined in 2014, Ecuador had signed the Convention before then. This means that, in keeping with international law, it is lawful to prosecute such cases using the definition set out in the Comprehensive Organic Criminal Code.

31. The provisions of the Comprehensive Organic Criminal Code also apply: “Article 16. Temporal scope of application. Parties and judges in criminal proceedings shall observe the following rules: ... 4. The offences of aggression against a State, genocide, crimes against humanity, war crimes, enforced disappearance, embezzlement, bribery, extortion and illicit enrichment, environmental litigation and offences against sexual and reproductive integrity committed against children and adolescents are not subject to statutory limitation in respect of either prosecution or penalties.”

32. Thus, the question of compliance with the obligation to investigate and, should evidence be found, to bring charges is determined pursuant to both the provisions of article 84 of the Comprehensive Organic Criminal Code and the reply of the National Court of Justice to the request for an opinion on the application of the Comprehensive Organic Criminal Code to proceedings begun prior to the entry into force of the aforementioned provision. In its reply, the Court stated that: “If, as a result of such pretrial proceedings: 1. An inquiry must be initiated, or 2. A decision to prosecute is taken, as from 10 August 2014, such inquiry or prosecution must be initiated, conducted and concluded in accordance with the Comprehensive Organic Criminal Code”.

33. In addition, in the judgment of the National Court of Justice on the establishment of precedents by means of three consistent rulings, issued in decision No. 01-2017, published in the Supplement to Official Gazette No. 950 of 22 February 2017, permanent offences are defined as those in which “the perpetrator not only creates the unlawful situation but also maintains it for as long as he or she voluntarily continues to carry out the action; in other words, when the perpetration continues over a more or less prolonged period of time and the injury to the protected legal right is also thereby prolonged”. In the instant case, the rights to liberty, personal integrity and life of Luis Alberto Sabando Veliz continue to be violated.

34. Lastly, it should be noted that the Constitution, which has been in force since 2008 and predates the Comprehensive Organic Criminal Code, already provides in its article 66 (3) (c) and article 80 for the prohibition of offences such as enforced disappearance and states that such offences are not subject to statutory limitation or amnesty.

35. In line with these constitutional provisions, the previous Ecuadorian Criminal Code was amended and an article was included on common rules for the application of penalties for offences committed by military or police officers in their official capacity, including enforced disappearance, in order to establish that their prosecution cannot be time-barred and thus ensure that these serious human rights violations do not go unpunished.

## **F. Recommendation contained in paragraphs 13 and 14**

### **Measures to prevent and sanction acts that hinder the conduct of an investigation**

36. In accordance with the current constitutional framework, the Attorney General's Office, either ex officio or at the request of a party, institutes criminal proceedings on behalf of the State when there is reason to believe that criminal offences have been committed. This power, which is intended as a way of establishing individual criminal responsibility, is different from the administrative accountability that is ensured by the police administration itself as part of the executive branch, by means of which an officer may be suspended from his or her duties.

37. The Organic Code on Public Safety and Public Order Institutions, which entered into force on 21 June 2017, regulates public safety and public order institutions, specifically the National Police. Accordingly, among the disciplinary sanctions applicable to the forms of administrative misconduct provided for in the Code, article 42 (5) concerns suspension from duty, which consists of the temporary separation of the officer from the institution for a period of up to 30 days, without pay, for the repeated commission of two instances of serious misconduct within a 365-day period starting from the date of the first such instance; during the period of suspension, the officer may not engage in activities pertaining to his or her position and functions and may not make use of institutional property (article 47 of the Code).

38. This type of administrative disciplinary sanction is applied after a procedure called an administrative inquiry has been carried out. This procedure is aimed at inquiring or investigating to corroborate or rule out, in accordance with the law, the existence of serious or very serious administrative disciplinary misconduct and the responsibility of the person who engaged in it, pursuant to the rules of due process under article 76 (7) of the Constitution. Additionally, within the administrative inquiry into the alleged commission of very serious misconduct, the Code provides for the possibility of temporary suspension from duty, known as a "special administrative measure", whereby the administrative disciplinary authority conducting the inquiry can order the immediate temporary suspension from ordinary functions of the police officer or officers alleged to have engaged in very serious misconduct. Such suspension, which is mandatory, may last for up to 90 days, during which the officer will exercise his or her right to a legitimate defence (article 129 of the Code and article 85 of the Regulations for the Application of the Disciplinary Regime under Book I of the Code). It should be noted that, under article 135 of the Code and article 16 of the Regulations for the Application of the Disciplinary Regime under Book I of the Code, if at any stage of the administrative procedure it is determined that there is evidence that an offence has been committed, the body with sanctioning authority must immediately so inform the Attorney General's Office so that the latter may act in accordance with its powers, without prejudice to the initiation of the administrative disciplinary procedure.

## **G. Recommendation contained in paragraphs 15 and 16**

### **Measures to prevent enforced disappearances (arts. 16–23). Non-refoulement**

39. The Constitution recognizes the rights of persons in situations of human mobility and, in its article 40, provides that no one may be regarded as illegal on account of his or her migration status. In relation to persons in need of international protection, article 41 states that: "The rights to asylum and refuge are recognized in accordance with the law and international human rights instruments." On this basis, persons in need of international protection, asylum-seekers and refugees enjoy special protection that guarantees the full exercise of their rights. The State respects and guarantees the principle of non-refoulement, in addition to emergency humanitarian and legal assistance. No criminal or administrative

sanctions are applied to asylum-seekers or refugees on account of irregular entry into or presence in the country, and the State, exceptionally and when the circumstances so warrant, will grant collective refugee status in accordance with the law.

40. It should be noted that the Ecuadorian Government applies specific regulations in this area under the Organic Act on Human Mobility and its implementing regulations. In articles 90 et seq., the Organic Act on Human Mobility recognizes international protection as a subsidiary mechanism for ensuring that asylum-seekers have equal access to rights and the ability to exercise them.

41. Regarding applications for refugee status, although article 100 of the Organic Act on Human Mobility and article 158 of its implementing regulations provide that “exceptionally, for duly substantiated reasons involving unforeseen circumstances or force majeure, an application for refugee status not submitted in a timely manner may be accepted for processing”, secondary rules elaborate on the implementation of these provisions, taking into consideration the *pro persona* and pro-applicant principles. As a result, any application that presents elements related to the definitions of a refugee that are recognized by Ecuador can be analysed in depth by the Commission on Refugees and Stateless Persons, thus safeguarding the rights of persons in need of international protection, including the right to non-refoulement.

42. The Ecuadorian Government has adjusted its regulations in accordance with international human rights conventions and treaties; for example, the Organic Act on Human Mobility<sup>4</sup> assigns to the Office of the Undersecretary for Migration, within the Ministry of the Interior, the responsibility for immigration control under the legal provisions on which the established immigration procedures are based. In this regard, article 226 of the Constitution provides that: “State institutions, agencies, units and public servants and persons acting with State authority shall exercise only such competencies and powers as are attributed to them by the Constitution and the law.” Article 261 (3) of the Constitution then lists “the registration of persons, naturalization of foreigners and immigration control”. This is consistent with the provisions of articles 123–131 and article 164 (1) of the Organic Act on Human Mobility, as well as article 200 of its implementing regulations.

43. The first paragraph of article 90 of the Organic Act on Human Mobility defines international protection as a subsidiary mechanism for ensuring that persons entering Ecuadorian territory have equal access to rights and the ability to exercise them in cases where the person’s State of origin is unable to provide protection for various reasons. This safeguards such persons’ right not to be returned to their country of origin or to another State in which their safety and integrity cannot be guaranteed.

44. The second paragraph of article 100 of the Organic Act on Human Mobility provides that: “Any public servant who has knowledge of the entry into the national territory of a person who could be in circumstances that would warrant the granting of international protection shall be duty-bound to refer such person immediately to the human mobility authority for purposes of submitting the appropriate application.” The Office of the Undersecretary for Migration accordingly provides ongoing training to officials of the immigration control units at ports, airports and land border crossings to ensure that they take prompt action in compliance with the regulations by informing the highest human mobility authority of cases in which foreign nationals apply for international protection from the Ecuadorian Government.

45. In addition, it should be noted that, in the Ecuadorian legal system, the Organic Act on Human Mobility provides as follows:

“Article 2. The principles of the present Act are: ... Non-refoulement: A person may not be deported or returned to another country, regardless of whether it is his or her country of origin, if in that country his or her rights to life, freedom or integrity and those of his or her family members are in danger of being violated on account of his or her ethnicity, religion, nationality, ideology, gender, sexual orientation, membership of a particular social group or political opinion, or when there are

<sup>4</sup> *Registro Oficial* (Official Gazette) No. 938 of 6 February 2017.

substantial grounds for believing that he or she would be in danger of being subjected to serious violations of human rights, as provided in the present Act and international human rights instruments. Deportation proceedings or any other proceedings affecting immigration status are of an individual nature. The collective expulsion of aliens is prohibited.”

46. Furthermore, the Extradition Act, published in Official Gazette No. 152 of 20 August 2000, provides as follows:

“Article 5. Extradition shall not be granted in the following circumstances: ... (7) If the requesting State does not guarantee that the person whose extradition is requested will not be executed and will not be subjected to punishment that violates his or her bodily integrity or to inhuman or degrading treatment ... (9) If the person sought has been granted asylum, provided that he or she is not wanted in connection with another offence that warrants extradition. The non-recognition of refugee status, for any reason, shall not prevent the refusal of extradition for any of the reasons established herein.

Article 6. Extradition may be refused: 1. If there are substantial grounds for believing that the request for extradition, based on an ordinary offence, has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, political opinions or sexual orientation, or that the person’s position may be prejudiced for any of those reasons; 2. If the person sought is under 18 years of age at the time of the request for extradition and, because he or she is habitually resident in Ecuador, it is believed that extradition could hinder his or her social reintegration, without prejudice to the adoption, in agreement with the authorities of the requesting State, of the most appropriate measures.”

47. On 31 January 2023, the authorities issued Ministerial Decision No. 00006, which updated the status determination procedure for refugees and stateless persons in Ecuador. In that instruction, article 24 provides that “in the case of applications that have not been submitted in a timely manner but that duly substantiate the existence of unforeseen circumstances or force majeure, the area directorate shall also analyse the other grounds of inadmissibility”. It goes on to specify that “any application that shows evidence of a need for international protection shall be admitted for processing”. It should be emphasized that the acceptance of an application for international protection guarantees non-refoulement, as well as the exercise of rights on equal terms with Ecuadorian nationals, in accordance with article 9 of the Constitution of Ecuador.

48. Ecuadorian law also includes the concept of refugees “*sur place*”, which means that the Commission on Refugees and Stateless Persons can consider applications for international protection submitted after the applicant has entered Ecuador. Lastly, the new instruction expands the procedures for the protection of unaccompanied or separated children and adolescents in need of international protection, in accordance with the principles of the best interests of the child, non-discrimination, family unity and participation. With regard to guarantees of non-refoulement, article 63 of the aforementioned instruction states that, in the case of children and adolescents, the submission of an application later than 90 days after their entry into the country does not affect the admissibility of the application and does not entail any obligation to justify the submission on grounds of unforeseen circumstances or force majeure.

## **H. Recommendation contained in paragraphs 17 and 18**

### **National preventive mechanism**

49. The Organic Act on the Ombudsman’s Office was passed on 23 April 2019 and published in Official Gazette supplement No. 481 of 6 May 2019. In Ecuador, there is no specific regulation on the operation of the national mechanism for the prevention of torture. However, pursuant to the Organic Act on the Ombudsman’s Office, several protection mechanisms are recognized and have been established within the national human rights institution. Article 22 of the Act states that, in order to comply with national and international

obligations relating to human rights and nature, the Ombudsman's Office must progressively deploy protection mechanisms, including the national mechanism for the prevention of torture. Article 6 of the Act grants the Office powers to prevent torture.

50. Pursuant to the Act organizing the Ombudsman's Office, the national preventive mechanism is given the status of a national directorate and its powers are recognized in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The mechanism has also been granted additional protective powers that go beyond the preventive remit normally attributed to such mechanisms.

51. In this connection, the Ecuadorian State has received observations from the Subcommittee on Prevention of Torture regarding the mechanism's lack of administrative and functional independence and visibility and the need for more multidisciplinary teams. Work still needs to be done to address these observations.

## I. Recommendation contained in paragraphs 19 and 20

### Training on the Convention

52. The National Police of Ecuador mainstreams topics related to respect for and the safeguarding of human rights in its basic, specialized and advanced training programmes. The goal of the comprehensive ongoing training programme is to raise police officers' awareness of human rights issues, including the use of force, enforced disappearance, violations of human rights and treatment of victims.

53. The following topics have been included in the curricula: introduction to human rights; international human rights standards; analysis of international judgments, legislation and case law related to human rights; deprivation of liberty, cases of *flagrante delicto* and due process guarantees for detainees; victims of abuse of power and crime; use of force, knowledge of the service weapon and physical control in regard to the use of a non-lethal techniques and technologies; procedures for the use of force; national and international standards on the use of force; the Code of Conduct for Law Enforcement Officials; the Code of Police Ethics; crimes against integrity of the person; and the search, investigation and location protocol for disappeared, missing or lost persons (involuntary disappearances under art. 168 (1) of the Comprehensive Criminal Code).

54. The armed forces do not have powers related to the custody or treatment of persons deprived of liberty, in accordance with the Convention. However, military personnel do carry out security operations when supporting the National Police. In line with its constitutional mandates, it is a key policy of the Ministry of Defence to guarantee human rights training to all uniformed personnel in the defence sector. Accordingly, specific human rights topics have been incorporated into the curricula of basic and advanced training courses with the aim of developing broad conceptual knowledge of the national and international normative framework that relates to human rights. Special emphasis is placed on the principles of equality and non-discrimination in order to raise awareness among military personnel and ensure a life free of violence and a culture of peace.

55. The basic training, advanced training and in-service education programmes promote the mainstreaming of human rights principles in all military personnel's activities. To this end, ongoing programmes have been developed with the inclusion of related core content. The human rights training curricula for officers provide a historical overview of human rights and related principles and conventions and of the national and international legal framework. With respect to the law on military operations, training covers the constitutional State; the rule of law and legitimate use of force; military operations for the defence of sovereignty and territorial integrity within the framework of international humanitarian law; the prohibition of torture; declaration of a state of emergency; action by the armed forces to control strategic sectors; the responsibility of the armed forces; self-defence; cases of *flagrante delicto*; the legitimate use of force from a human rights perspective; progressive and differentiated use of force; and the constitutional basis for the use of force.

56. Training for troop personnel covers international humanitarian law, including general definitions, international and non-international armed conflict, and other forms of unrest. In the field of human rights and the law on military operations, training includes background information and basic definitions, typology of human rights, international and national instruments, human rights and the Constitution of Ecuador, standards of behaviour, legal and conceptual frameworks of the law on military operations, rules of engagement, basic concepts of self-defence and the progressive, proportionate and rational use of force, offences attributable to military public servants, states of emergency and declarations of emergency, and national constitutional principles.

57. Advanced training provides a form of education that allows military personnel to acquire, over the course of their career, the military knowledge and skills needed to perform essential professional activities in the grade immediately above their current grade. Through this training, military personnel learn about human rights, international humanitarian law, international human rights standards, the prohibition of torture, human rights and the use of force, the legitimate use of force from a human rights perspective, the Code of Conduct for Law Enforcement Officials, levels of resistance and levels of the use of force, human rights offences under the Comprehensive Criminal Code and the human rights protection system.

58. Troop personnel also receive essential training on human rights protection systems; human rights and the military profession (including the role of the armed forces in a democratic State and the culture of peace); the importance of human rights training in the armed forces; the classification of human rights in relation to Ecuadorian military functions; legislation on the protection of human rights; serious human rights violations; international responsibility; the international concept of a state of emergency; declaration of a state of emergency; basic principles for the progressive use of force; standards of behaviour, including in operations to support the National Police in maintaining public order and controlling foreign citizens in border areas; operational procedures for supporting the National Police in ensuring security at social rehabilitation centres; apprehension of persons caught in *flagrante delicto*; the chain of custody; permitted, prohibited and restricted combat methods and human rights violations; and principles of, behaviour under and transition to rules of engagement.

59. The Ministry of Defence has an inter-institutional cooperation agreement with the Ecuadorian Red Cross and the International Committee of the Red Cross (ICRC) to strengthen the mainstreaming of international humanitarian law in the doctrine, education and training of the Armed Forces of Ecuador and to reflect the norms and principles of international humanitarian law in compliance mechanisms and methods so as to encourage military personnel to behave in a manner that upholds those norms and principles. Further objectives are to promote respect for international humanitarian law in military laws and regulations; foster technical cooperation, in accordance with national law, in other situations of violence not covered by international humanitarian law; mainstream a gender and intercultural approach in the doctrine of the armed forces, pursuant to international humanitarian law; and organize academic exchanges through events and with experts in the field.

60. In order to comply with the constitutional mandates of the armed forces, the defence sector:

(a) Began establishing human rights sections in the Ministry of Defence and the command headquarters of the armed forces in 1999. Specifically, by a ministerial order issued in 2009, the Directorate of Human Rights, Gender and International Humanitarian Law was set up as part of the organizational structure of the Ministry. In this way, a human rights system was established that coordinates efforts with different head offices and directorates to promote and raise awareness of respect for human dignity. The Directorate's main function is to manage policy on human rights, gender and international humanitarian law and ensure its implementation in the national defence sector;

(b) In early 2011, the Directorate of Human Rights and International Humanitarian Law of the Joint Command of the Armed Forces was established to embed a system of human rights and international humanitarian law in the Armed Forces and design a programme to



set up departments in each of the forces with a view to promoting and raising awareness of respect for human dignity among personnel:

- Army: in accordance with Joint Command directive No. 2003-01-A on the mainstreaming of human rights and international humanitarian law in the Armed Forces, the Army General Command issued a human rights plan in 2004, instructing the Army General Inspectorate to create a humanitarian rights section
- Navy: by official letter No. ESMAAR-PEM-224-O-2011, the Navy General Staff issued instructions for the establishment of a department for human rights, international humanitarian law and gender. The objective was to establish and mainstream a human rights system in the Navy and carry out activities related to training and education on, and the dissemination, promotion and mainstreaming of, human rights, international humanitarian law and gender principles and standards, in line with a proposal for reorganization and the guidelines and regulations applicable to the Armed Forces
- Air Force: by order of the Ministry of Defence, a human rights department was established in 2011 to guarantee and uphold norms and principles pertaining to individual rights, freedoms and safeguards through technical assistance, regulations, evaluations, and organizational support and coordination activities designed to raise awareness of respect for human rights and international humanitarian law among armed forces personnel

61. With regard to the regulation on the progressive use of force for the optimal fulfilment of the armed forces' mission, 40,200 copies of a booklet on human rights and international humanitarian law were distributed among the members of the armed forces in 2020. The booklet contains explanations of human rights, the relationship between human rights and security, human rights standards, the most serious human rights violations, international humanitarian law and other international guidelines.

62. Similarly, 43,950 copies of a booklet on standards relating to the progressive use of force were distributed in 2021, outlining the most relevant aspects of international human rights law and progressive use of force principles, which apply to all actions by law enforcement.

63. The armed forces currently follow the 2021 education model, which has a gender focus and is used for basic and advanced training of military personnel. Since September 2022, following the promulgation of the organic law regulating the legitimate use of force, the Army has chosen, by general order No. 168 of 1 September 2022, 16 students specializing in justice from the three branches of the armed forces to take a course for operational legal advisors in order to train personnel on human rights and international humanitarian law and offer advice during internal and external military operations. Training will be ongoing and progressive.<sup>5</sup>

64. The Public Defender Service is required, as part of its functions, to provide legal advice and financial support for victims of crimes of disappearance of persons in the pretrial and trial stages, from the initiation of criminal proceedings until their conclusion. The delivery of a technical defence, free of charge, ensures access to justice, which is a fundamental right of citizens and a primary obligation of the State. In the case of persons deprived of their liberty, the Public Defender Service provides advisory and financial support services for persons who have no one to defend them – that is, persons serving a prison sentence who do not have a private defence lawyer – in order to guarantee the right to a defence and full access to justice for the benefit of prisoners.

65. It should be noted that, in pursuance of its functions, the Public Defender Service provides specialized support mechanisms free of charge for persons deprived of liberty, in line with the principles of interculturality, transparency, respect for fundamental rights,

<sup>5</sup> See table 2.

specialized justice, confidentiality, expediency and timeliness. The Service offers training courses to police officers through the Directorate of the School for Public Defenders.<sup>6</sup>

66. On 14 May 2021, the Organic Act on the Public Defender Service of Ecuador<sup>7</sup> was published in Official Gazette No. 452. The three main objectives of the Act are to regulate aspects of how the institution is organized and functions when providing legal advice and financial support services; enable the most defenceless and vulnerable citizens to exercise their right of access justice through free legal assistance from the State; and identify tools for the delivery of specialized and in-service training of public defenders and administrative personnel.

67. The National Service for Adults Deprived of Liberty and Adolescent Offenders has developed several courses<sup>8</sup> for State officials on the National Social Rehabilitation System and human rights. The courses have been given to members of the Prison Security and Surveillance Corps, which specializes in preserving, maintaining, ensuring and restoring order, providing security inside prisons, transferring persons deprived of their liberty to court proceedings and temporary holding units, and managing the security, custody and surveillance of persons deprived of their liberty.

68. In 2014, the National Social Rehabilitation System introduced professional training on human rights for members of the Prison Security and Surveillance Corps. The curriculum for the technical course in prison security includes a module on human rights in the context of deprivation of liberty, which is taught at the Azuay, Cotopaxi and Juan Bautista Aguirre higher technological institutes.

69. The Prison Education Directorate, in conjunction with the National Education Directorate of the National Police, also developed the initial training curriculum for applicants to the Prison Security and Surveillance Corps for 2022. The curriculum included human rights in the context of deprivation of liberty, seminar workshops on international human rights standards and the national preventive mechanism and case studies on the inter-American human rights system.

70. With respect to judges and prosecutors, the human rights directorate of the Attorney General's Office has conducted several training courses in the past two years for civilian officials and law enforcement officers of the National Police and the armed forces. The purpose of these courses was to prevent inappropriate behaviour from occurring and harmonize the procedures to be followed by State officials when conducting investigations, bearing in mind that the involvement of law enforcement officers in these kinds of cases is limited and that the training was geared towards prevention. The training courses covered standards under international law and the case law of the Inter-American Court of Human Rights in such cases.

71. With regard to civilian officials, three courses have been held on dealing with enforced disappearance. The first course covered the subject of comprehensive action in cases of enforced disappearance and included international standards of conduct when dealing with enforced disappearance and "common" disappearance, where the State is not involved. This course was designed for officials of the Attorney General's Office. The second course concerned the Minnesota Protocol on the Investigation of Potentially Unlawful Death, which can be applied in cases of enforced disappearance, as stated in the Protocol itself. The course was organized by the Council of the Judiciary for all justice officials in the country. The third course dealt with the subject of the use of force by law enforcement officials and the distinction between unlawful and lawful (justified) actions, bearing in mind that enforced

<sup>6</sup> See annex 2.

<sup>7</sup> (<https://biblioteca.defensoria.gob.ec/bitstream/37000/3381/1/Ley%20Org%C3%A9nica%20de%20la%20Defensor%C3%ADa%20P%C3%BAblica%20%2814-05-2021%29.pdf>).

<sup>8</sup> Training was provided to 1,239 officials on handling prison crises; 1,226 officials on the legitimate use of force; 1,323 officials on the fundamental rights of persons deprived of liberty; 1,354 officials on the comprehensive care of persons deprived of liberty; and 1,232 officials on Inter-American Commission on Human Rights case studies (the universal human rights system and the inter-American human rights system), the Universal Declaration of Human Rights and American Convention on Human Rights.

disappearances can result from the illegitimate use of force at the time of arrest and may be followed by torture and/or extrajudicial executions.

72. A total of seven training sessions have been held for the National Police and one for the armed forces on the appropriate use of force and firearms, with a focus on the fact that enforced disappearance is a serious violation of human rights and that it results from the illegitimate use of force at the time of arrest, which may be followed by torture and/or extrajudicial executions.

73. It is important to note that the training of justice officials is led by the Judicial Training College and is based on participatory processes that include proposals from other internal departments of the Council of the Judiciary, the National Court of Justice, the Attorney General's Office, the Public Defender Service, professional associations and universities. This is designed to ensure a comprehensive approach to the development of knowledge on human rights. The content of the training courses is developed on the basis of the constitutional body of law and international human rights standards.<sup>9</sup>

74. Lastly, with respect to the training of health personnel, a basic online course on the protection and promotion of human rights and the prevention of violations in the prison context, with case studies, was given in 2021 through the Moodle platform of the National Service for Adults Deprived of Liberty and Adolescent Offenders. A total of 158 health professionals who provide care in prisons took part. Every year, six-month training courses are provided before health professionals are rotated into places of deprivation of liberty. These courses cover topics such as the provision of health services in the context of deprivation of liberty, the rights of patients deprived of liberty, care pathways to ensure continuity of health care, and inter-institutional relations for the management of patients and their human rights and health-care needs.

75. In 2021, training was given to 476 health professionals who provide care in places of deprivation of liberty and then 242 were trained in 2022. Such training will continue.

## **J. Recommendation contained in paragraphs 21 and 22**

### **Legal situation of disappeared persons whose fate has not been clarified and that of their relatives**

76. Article 84 of the Constitution states that the National Assembly and all other organs with regulatory powers have an obligation to bring laws and other legal norms formally and substantively into line with the rights recognized in the Constitution and international treaties and with such other rights as are necessary for ensuring the dignity of individuals or of communities, peoples and nationalities.

77. Similarly, article 393 of the Constitution provides that the State "shall guarantee human security" through comprehensive policies and actions to ensure peaceful coexistence in society, promote a culture of peace and prevent all forms of violence and discrimination and the commission of violations and offences. Specialized bodies at different levels of government are responsible for planning and implementing these policies.

78. In this context, and with reference to the international instruments signed and ratified by Ecuador, article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that each State party must take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

79. Against this general backdrop, in applying in full the set of guarantees and guiding principles established in the Constitution, and as part of the process of developing provisions for putting such guarantees into practice specifically in relation to the problem of disappeared persons, the Government of Ecuador drafted, adopted and promulgated the Organic Act on

<sup>9</sup> See annex 3.

Action in Cases of Missing and Disappeared Persons, which was published in the Official Gazette on 28 January 2020.

80. The Act has several provisions that relate generally, if not specifically, to this particular recommendation, namely:

(a) Article 1, which provides that the “Purpose” [of the Act] is to establish “State coordination of humanitarian efforts to search for and locate missing or disappeared persons in the national territory, determine the circumstances of the disappearance, protect the rights of missing or disappeared persons until their whereabouts are determined, prevent disappearance, provide support, assistance and protection to indirect victims during the investigation and participate in international cooperation processes in cases where Ecuadorian nationals are missing or have disappeared abroad, to ensure proper attention and an effective response”;

(b) Article 3 (3), which provides that the rationale behind ensuring the “Effectiveness and exhaustiveness” of “operations to search for a missing or disappeared person” is to “investigate all possible scenarios, using all human, technical, technological and material resources for locating and identifying a missing or disappeared person, determining the truth and, if applicable, punishing those responsible”.

81. A further analysis of the Act in relation to this recommendation shows that:

Article 3, which sets out the “Guiding principles” [of the Act], provides in paragraph 10, “Presumption of life”, that in “actions, mechanisms and procedures for search, location and investigation operations, the authorities should presume that the missing or disappeared person is alive”.

82. A close analysis would show that the effect of this provision would be the opposite of that implied in the recommendation, as it would make no sense to produce a compatible legislative text after the discovery that the search for a missing person had not led to a positive result.

83. Bearing in mind the purpose of the Act (which is undoubtedly focused on procedural matters), the legislature has not enacted a provision along the lines of this recommendation, given that the legal effects entailed by disappearance in relation to the lapse of time since the disappearance for purposes of a declaration of presumed death are governed by a substantive provision found in the Civil Code, which cannot be amended owing to a doctrinal impediment: in principle, a substantive rule cannot be amended by a procedural rule.

84. The Act does, however, address issues concerning persons described as “indirect victims”:

(a) Article 4 defines an indirect victim as a “member of the missing or disappeared person’s family, including a spouse, common-law partner or relative up to the fourth degree of consanguinity and second degree of affinity, recognizing the diversity of family types”;

(b) Article 6 enumerates and establishes the “Rights of indirect victims”: “Article 6. Rights of indirect victims. Indirect victims have the right: 1. To know the truth and to enjoy effective judicial protection and related rights; 2. To apply to the competent authority for the necessary psychological support and care during and after the search”;

(c) Article 7 refers to the “Obligations” of indirect victims, which include: “3. To maintain the presumption of life during the investigation and procedures to search for and locate the victim; ... 4. Strictly comply with the psychological, legal and social support programmes provided by the State”;

(d) Article 8: “State coordination. For the purposes of the present Act, State coordination in the investigation of cases of missing or disappeared persons shall have the following aims: 1. To carry out a specialized, immediate, diligent, timely and continuous search from the time of receipt of the report, notice or complaint that a person is missing or disappeared until the person is located; 2. To safeguard the physical and psychological integrity of indirect victims who collaborate in the investigation, for the duration of the investigation; ... 8. To coordinate actions among all the institutions that are part of the

National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims”. [Bolding and underlining removed.]

85. Regarding the time period established in the Act, article 22 specifies the “Duration of the search for a missing or disappeared person. The search for a missing or disappeared person cannot be concluded until the person is found or his or her mortal remains have been found and duly identified. Investigation, search and location measures cannot be concluded until the person’s whereabouts have been ascertained or his or her remains have been found and fully identified and the competent authority has certified that these conditions have been met. If, during the search, evidence suggesting that a crime has been committed is found, it shall immediately be brought to the attention of the Attorney General’s Office for the purpose of opening the corresponding investigations to determine the existence of the crime and to formulate an indictment, in accordance with the time frames laid down in the Comprehensive Organic Criminal Code. The search for a missing or disappeared person shall not be suspended or terminated even if the person is declared to be presumed dead.”

86. Although article 22 refers to a declaration that a person is “presumed dead”, this does not impinge on the legal effect established in the Civil Code, which, it should be noted, refers exclusively to the civil-law effects of such a declaration; that is, with respect to the inheritance of the deceased person’s property and, obviously, other collateral effects such as the marital status of the spouse.

87. Lastly, under title II, “Search, investigation and location of missing and disappeared persons”, of chapter I, “National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims”, reference is also made to indirect victims in the context indicated in its title.

88. The Act, as stated above, does not relate directly to the recommendation, except in the provisions reproduced above.

## **K. Recommendation contained in paragraph 23**

89. The Ecuadorian Government, as represented by all the units in the entities involved in dealing with the enforced disappearance of persons, has amended legislation with a view to realizing the human rights principles and guarantees enshrined in the Constitution. It has performed conventionality control to ensure that such legislation is consistent with the obligations arising from the international instruments that have been signed and ratified by the country, in accordance with the rule of law and justice and in observance of the principles of neoconstitutionalism, which are fully compatible with the aforementioned international instruments and conventions. Moreover, it respects and implements the provisions of these protocols and conventions by incorporating them into its legislation. The enactment of the Organic Act on Action in Cases of Missing and Disappeared Persons, published in the Official Gazette, attests to this important fact.

90. The Act includes a number of relevant provisions, including the following:

(a) Article 1, which provides that the “Purpose” [of the Act] is to establish “State coordination of humanitarian efforts to search for and locate missing or disappeared persons in the national territory, determine the circumstances of the disappearance, protect the rights of missing or disappeared persons until their whereabouts are determined, prevent disappearance, provide support, assistance and protection to indirect victims during the investigation, and participate in international cooperation processes in cases where Ecuadorian nationals are missing or have disappeared abroad, to ensure proper attention and an effective response”;

(b) Article 3 (3), regarding “Effectiveness and exhaustiveness”: “... Those responsible for operations to search for a missing or disappeared person shall investigate all possible scenarios, using all human, technical, technological and material resources for locating and identifying a missing or disappeared person, determining the truth and, if applicable, punishing those responsible”;

(c) Article 6, which refers to the “Rights of indirect victims” and enumerates such rights;

(d) Title II, “Search, investigation and location of missing and disappeared persons”, chapter I, “National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims”, which concerns the entire institutional structure to be established pursuant to the Act to enable the authorities to take action in these types of cases, to which the Convention refers in its article 2;

(e) Chapter II, “Committee on Investigation, Search and Location Operations in respect of Missing and Disappeared Persons”, which establishes which authorities are to take action simultaneously when dealing with cases of disappearance; article 14 enumerates the “Powers of the Executive Body of the National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims”;

(f) Chapter II, “Operational entities of the System”, which provides as follows: “Article 15. Operational entities, training and oversight. The operational entities of the National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims shall consist of the specialized unit of the National Police, a specialized unit of the Attorney General’s Office and the Forensic Medicine and Forensic Sciences Service”;

(g) Article 25, “Activation of protocols”, which provides that “When a report is submitted, the police officer or prosecutor who receives it shall immediately apply the relevant protocol and transmit the information to the competent specialized unit for the investigation of cases involving missing or disappeared persons, which shall begin the search immediately, including by cross-checking against the information entered in the National Register of Missing, Disappeared, Located, Identified, Unidentified and Undocumented Persons and the databases and registers provided for in the present Act”;

(h) Chapter V, which contains a specific section on “missing and disappeared children, adolescents, older persons and persons with disabilities”;

(i) Article 32, which, significantly, establishes the protocol for the so-called “Emilia alert”, named after an emblematic case involving the investigation of the disappearance of a girl, Emilia Benavides, in the city of Loja in December 2017. The article provides that “the Specialized Units for the Investigation of Cases Involving Missing or Disappeared Persons or the National Police, as appropriate, shall activate the alert in accordance with the established protocol and international parameters and standards”;

(j) Article 33, which establishes an “Obligation of specialization”, states that “The institutions with competence in investigation, search and location operations in cases involving children or adolescents, persons with disabilities or older persons must have specialized personnel who are trained to protect and respect the integrity and best interests of persons in these priority groups. They shall refrain from and avoid any action or expression”;

(k) Title III, concerning the management of “registers, databases and protocols”, chapter I of which refers to the “National Register of Missing, Disappeared, Located, Identified, Unidentified and Undocumented Persons” and chapter II to the obligation to maintain “information on deceased, unidentified, undocumented and unclaimed persons”;

(l) Article 48, which refers to the “database” and a “national forensic register”, and article 53, which provides for the establishment of the “National Forensic Register” in the following terms: “The National Forensic Register shall be established as a technological, computerized, standardized platform for ensuring the interoperability, organization and concentration of technical and scientific information of relevance to investigation, search and identification procedures in cases involving missing and disappeared persons, and shall consist of forensic information from each province, including information held by public and private entities. In coordination with the National Forensic Medicine and Forensic Sciences Service, a database of deceased, unidentified, undocumented and unclaimed persons shall be maintained, which shall be incorporated into the National Forensic Register”;

(m) Lastly, chapter V, “Protocols and technological tools”, and the last title (Title IV), “Components of the National System for the Search for Missing and Disappeared

Persons and Response to Indirect Victims”, of which the components are (i) prevention, (ii) support and (iii) investigation.

91. As can be seen, the issues covered by the Convention have been painstakingly studied in terms of procedural aspects and the commitment to develop a tool with the status of law that ensures respect for protocols and the establishment of an integrated institutional structure for addressing such issues.

92. In addition, the Act itself contains transitional provisions that define the responsibilities of each authority and the obligation of the Executive Body of the National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims to submit an annual accountability report containing a specific chapter “on the activities of the aforementioned National System”. It also states that “for the proper implementation of the Act, all the institutions that are part of the National System for the Search for Missing and Disappeared Persons and Response to Indirect Victims, as well as other entities that play a complementary role in relation to it, shall include in their annual workplans the activities they will perform in the framework of State coordination of prevention, investigation, search and location procedures in respect of missing or disappeared persons and response to indirect victims”.

93. In addition, the seven transitional provisions set deadlines for the implementation of the system and action by the various entities and agencies that form part of the system pursuant to the Act.

94. Lastly, it should be noted that in 2019, the National Assembly duly fulfilled its obligations in this regard, by establishing the Ad Hoc Committee to Address Cases of Missing or Disappeared Persons. This, in turn, led to the creation of the Specialized Standing Committee on Constitutional Guarantees, Human Rights, Collective Rights and Interculturalism, which handles bills that deal with this matter, among other things.

95. Article 132 (2) of the Constitution states, in relation to the requirement of law in criminal matters, that “a law shall be required in the following cases: ... 2. To define offences and establish the corresponding sanctions”. In this connection, the Ecuadorian Government has aligned legal provisions with the provisions of international instruments in which the enforced disappearance of persons is addressed. Ecuadorian legislation defines this offence in the Criminal Code in accordance with the obligations arising from international instruments ratified by Ecuador and with constitutional principles and rules. The fulfilment of this obligation has strengthened the full exercise of the human rights provided for in the Constitution and in the international instruments to which Ecuador is a party, while providing for the prevention, punishment and eradication of offences of enforced disappearance and full reparation for the consequences of this offence.

## **L. Recommendation contained in paragraph 24**

96. The Ombudsman’s Office, as part of its human rights work, guarantees substantive equality in the promotion and protection of human rights and the rights of nature, guided by the human rights approach, including the gender, intergenerational and intercultural perspectives. Through the Organic Act on the Ombudsman’s Office and in compliance with national and international obligations in respect of human rights and the rights of nature, the State has set up various mechanisms to take practical measures and provide a response that incorporates diverse perspectives.

97. Likewise, the Ministry of the Interior, through the Directorate for the Prevention of Trafficking in Persons and Smuggling of Migrants, coordinates with the institutions that are members of the Inter-Institutional Coordinating Committee for the Prevention of Trafficking in Persons and Smuggling of Migrants on cases involving women, children and adolescents, to ensure that victims are afforded special protection from the time of their rescue and throughout the judicial process.

98. As part of the National Police, the National Child Protection and Investigation Administration is tasked with developing and implementing preventive measures and conducting specialized investigations into offences related to children and adolescents, in

coordination with the competent authority. The National Police, regardless of the origin of the disappearance, initiates an investigation aimed at promptly locating the missing person. For this purpose, it implements the Organic Act on Action in Cases of Missing and Disappeared Persons and the protocol of the “Emilia alert” programme for effectively locating missing children and adolescents in high-risk situations, and the national inter-institutional coordination mechanism.

99. The Ministry of the Interior, through the Directorate for the Prevention of Trafficking in Persons and Smuggling of Migrants, has a mandate to design, implement and manage analytical studies, policies, plans, programmes and projects in line with strategies, indicators and guidance on identifying, preventing and combating offences of trafficking in persons and smuggling of migrants and providing support and protection to victims, in coordination with the National Police and other State and non-State entities. To this end, it continuously coordinates with the institutions that make up the Inter-Institutional Coordinating Committee for the Prevention of Trafficking in Persons and Smuggling of Migrants and for the Protection of Victims, especially in cases involving women, children and adolescents, so that persons in this population group have special protection from the time of their rescue and throughout the judicial process.

100. In addition, the Ministry of the Interior, the National Police and the Attorney General’s Office are responsible for the programme on the activation and broadcasting of “Emilia alerts”, both nationally and internationally. To date, 11 alerts have been activated through this programme. All the cases were promptly resolved and the minors concerned were reunited with their families.

101. The Ministry of the Interior has an Inter-Institutional Action Protocol for the Care of Victims of Trafficking in Persons, published in Official Gazette No. 425 of 10 March 2020. This serves as a tool for coordinating inter-institutional and intersectoral actions to deal with cases of trafficking in persons, with differential support for children and adolescents.

102. Lastly, it should be noted that the Ministry of the Interior, the National Police and other State institutions coordinate with the Ministry of Economic and Social Inclusion in providing shelter for children and adolescents who are victims of trafficking in persons. In the period 2020–2022, the National Police carried out 68 operations related to trafficking in persons, rescued 89 victims, arrested 72 individuals and executed 362 warrants.

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