



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

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Ecuador under article 29, paragraph 1, of the Convention\*

#### I. General information

- Where possible, please provide examples of case law in which the provisions of the Convention have been invoked and/or applied.

#### II. Definition and criminalization of enforced disappearance (arts. 1-7)

- Please indicate whether the phrase “thereby preventing the exercise of constitutional or legal guarantees” that is included in the definition of enforced disappearance set out in article 84 of the Comprehensive Organic Criminal Code should be understood as a consequence of the commission of the crime, rather than an intentional element (*animus*) that would have to be present in order for the act to constitute criminal conduct. In addition, please indicate whether, given the continuous nature of enforced disappearance, the crime of enforced disappearance defined in article 84 of the Code could be applied to enforced disappearances that may have commenced prior to the entry into force of this article but continued thereafter (arts. 2, 6).

#### III. Judicial proceedings and cooperation in criminal matters (arts. 8-15)

- Please provide more detailed information on current legislation regarding jurisdiction to try alleged perpetrators of the crime of enforced disappearance. In doing so, please specify whether this legislation covers all cases envisaged in article 9 of the Convention. Taking into account paragraph 62 of the State party report and article 401 of the Code, please indicate whether, under article 400 (4) of the Code, it would be possible to exercise universal jurisdiction if the offences with which a person was charged were not defined as crimes against humanity. Is that is the case, please specify the offences to which

\* Adopted by the Committee at its eleventh session (3-14 October 2016).



universal jurisdiction may be applied and whether these include enforced disappearance (arts. 9, 11).

4. Please indicate whether national legislation provides for suspension from duties or removal from office pending investigation, of State officials suspected of involvement in the commission of an enforced disappearance. Please also indicate whether there are any mechanisms in place to exclude a law-enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of having been involved in the commission of the offence in question. With reference to paragraph 167 of the State party report, please indicate what measures have been taken to ensure that, as stated in that paragraph, “the Judicial Police, at least in the investigation of alleged enforced disappearances, no longer answers to the National Police and therefore to the Ministry of the Interior” and the outcome of those measures (art. 12).

5. Please provide more detailed information on the national protection and support scheme for victims, witnesses and other participants in criminal proceedings, in particular on: (a) its structure; (b) measures taken to ensure that it possesses sufficient financial, human and technical resources to enable it to discharge its mandate effectively; (c) the procedure for admission to the scheme; (d) the protection and assistance measures it can order; (e) ways of ensuring that persons in need of protection and assistance are involved in the process of determining what protection measures should be taken; and (f) mechanisms to ensure that the law enforcement or security forces suspected of having committed an enforced disappearance do not take part in the protection measures. Please also indicate whether any persons connected with cases of enforced disappearance currently benefit from measures of protection or assistance (art. 12).

6. Please give the total number of victims of enforced disappearance recognized by the Truth Commission, indicating the date of their disappearance. Please also provide updated, detailed information on progress in and the outcome of judicial investigations into these enforced disappearances, including the number of completed and ongoing investigations, the number of alleged perpetrators accused and/or convicted, and the criminal charges applied. Please also provide detailed updated information on progress in and the outcome of the investigation into the crimes against humanity referred to in footnote 73 of the State party report. Please also provide information about the measures taken to guarantee and facilitate the participation of victims of enforced disappearance in the proceedings. With regard to paragraph 10 and footnote 33 of the State party report, please explain why no data has been released in accordance with the requirement for the Truth Commission and Human Rights Directorate of the Attorney General’s Office to issue reports on enforced disappearance, and indicate measures adopted to remedy the shortcoming (arts. 1, 12 and 14).

7. Please indicate whether any complaints have been received regarding alleged enforced disappearance that might have been committed after the entry into force of the Convention and, if so, please provide information on them and the measures taken in that regard. In connection with paragraph 167 of the State party report, please provide updated information on the measures taken to refer to the Attorney General’s Office cases of alleged enforced disappearance that the Ministry of Justice, Human Rights and Religion learned about during the process of collecting information from civil society for the report (art. 1, 12 and 24).

8. Please provide additional information on the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement mentioned in paragraph 66 of the State party report. In particular, as regards its work with disappearances, please provide information on its structure, the resources at its disposal, and the effectiveness of its actions, and say whether its officials receive any kind of special

training in locating disappeared persons. With reference to paragraph 83 of the State party report, please indicate what sanctions are applicable to individuals who commit acts described in article 10 of the Code of Ethics for Employees of the Attorney General's Office, and whether there are similar legal provisions applicable to officials of other government departments who obstruct investigations (art. 12).

9. Please indicate whether any extradition agreements with other States parties have been concluded since the entry into force of the Convention and, if so, whether enforced disappearance has been included in such agreements, as provided in article 13 (3) of the Convention (art. 13).

10. Please provide information about any progress made with regard to the requests for international assistance in criminal investigations concerning the three cases of alleged enforced disappearance referred to in paragraph 94 of the State party report. Please also indicate whether the State party has made or received further requests for international cooperation in respect of cases of enforced disappearance since submission of the report (arts. 14 and 15).

#### **IV. Measures to prevent enforced disappearances (arts. 16-23)**

11. Please provide information on the mechanisms and criteria applied as part of expulsion, deportation or extradition procedures in order to assess the risk of a person being subjected to enforced disappearance. Please also describe the procedure for applying for refugee status in the State party, indicating whether decisions refusing the application may be appealed, and state whether the procedure provides the necessary guarantees to ensure strict compliance with the principle of non-refoulement. In addition, please provide information on the measures taken to ensure, in practice, strict compliance with the principle of non-refoulement under article 16 (1) of the Convention (art. 16).

12. In connection with paragraphs 114 and 115 of the State party report, please specify whether the prison management information system contains all the information listed in article 17 (3) of the Convention and whether it contains information on all persons deprived of liberty, irrespective of the type of place of deprivation of liberty, such as psychiatric institutions, migrant holding centres and military premises. If that is not the case, please provide information about the content of the registers kept in other places where there might be persons deprived of liberty (art. 17).

13. Please provide information on measures taken to ensure in practice that all registers of persons deprived of liberty include all the elements listed in article 17 (3) of the Convention and are updated immediately, including information about monitoring measures. In addition, please indicate whether there have been any complaints of failure by the responsible officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if applicable, the sanctions imposed and the measures taken to ensure that such omissions are not repeated, including training. Regarding paragraph 133 of the State party report, please tell the Committee whether, at the time of release of any person deprived of liberty, including anyone in pretrial detention, the necessary measures are taken to ascertain beyond doubt that the person has been released and to guarantee his or her safety and integrity and the full enjoyment of his or her rights (arts. 17, 21 and 22).

14. Please provide information on the measures taken to ensure in practice that all persons deprived of liberty have access to a lawyer and can communicate with their family or any other person of their choice from the moment the deprivation of liberty commenced. In that regard, please state whether there have been complaints or allegations relating to the failure to observe those rights and, if so, please provide information on action taken and its outcome, including any sanctions imposed (art. 17).

15. In connection with paragraph 111 of the State party report, please: (a) indicate whether the national mechanism for the prevention of torture can visit any location where there are persons deprived of liberty, such as psychiatric institutions, migrant centres, military premises and centres for children and adolescents; (b) provide information on the measures about the guarantees in place to ensure that the national preventive mechanism has immediate and unrestricted access to all places where there are persons deprived of liberty; (c) indicate whether the national preventive mechanism has sufficient financial, human and technical resources to enable it to carry out its functions effectively and independently; and (d) provide updated information on the measures taken to amend the organic law on the national preventive mechanism (art. 17).

16. In the light of the information provided in paragraphs 141 and 142 of the State party report, the Committee wishes to know whether the State party provides, or plans to provide, specific training in the Convention, in accordance with article 23, to all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

## **V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)**

17. Please provide information on the reparation granted to date, in implementation of the Act to provide redress for victims and ensure the prosecution of serious human rights violations and crimes against humanity committed in Ecuador between 4 October 1983 and 31 December 2008, to persons who have suffered direct harm as a result of an enforced disappearance. Please include information on: (a) the number of persons who have suffered direct harm as a result of an enforced disappearance and have received reparation and/or compensation; (b) the type of reparation and/or compensation received; and (c) whether there are still persons who have suffered direct harm as a result of an enforced disappearance who have not received reparation and/or compensation and, if so, the measures taken to remedy this situation (art. 24).

18. Please provide detailed information on the measures taken to locate any persons subjected to enforced disappearance during the period 1983-2008 and on the outcome of those measures. Please also specify whether the bodies responsible for searching for and locating persons who disappeared during this period or, where the person has died, for tracing, identifying and returning their remains, have the financial, technical and human resources they need to carry out their work promptly and effectively. Please also provide information on the measures taken to ensure and facilitate the participation of relatives in the search for the disappeared persons (art. 24).

19. Please provide information on current legislation pertaining to the legal situation of disappeared persons whose fate has not been clarified and their relatives, in matters such as social welfare, financial matters, family law and property rights (art. 24).

20. With regard to paragraph 163 of the State party report, please indicate whether national legislation establishes any legal procedures to review and, if necessary, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether any action has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).

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