



Universidad del Azuay

Faculty of Law

School of International Studies

**Open clause in international conventions and treaties relating to the responsibility of the
Ecuadorian State for the commission
Crime of Forced Disappearance**

Work prior to obtaining the Bachelor degree in International Studies with bilingual mention in
Foreign Trade

Author

María Paz Cardoso Vélez

Director

Dr. Esteban Segarra Coello

Cuenca- Ecuador

2018

"The disappearance of a loved one is like holding a live coal in his hand.

It hurts too much but simply cannot leave"

Sonia Eid testimony about the disappearance of her son Jihad Eid in Lebanon

Dedication

In memory of my mother, who with her infinite love and affection until his last day guided my steps and still does. My father who was the person who knew me forward, for his endless patience and endless support and love. My husband who supported me to complete this last step to become a professional. My son who is the person who beat me and motivates me to be better every day by.

Thanks

I thank God, my parents, brothers, my husband and my son, for his endless support, which have been a mainstay in my life and in the development of this thesis. Thanks to the University of Azuay for their education and for having given me the foundation for my professional development. Finally I have a special thanks to Dr. Esteban Segarra for his leadership in this work, for your valuable time and good advice.

Index

Dedication.....	iii
Thanks.....	iv
Resume.....	v
Abstract.....	vii
Introduction.....	8
CHAPTER 1: BACKGROUND AND OVERVIEW OF THE ENFORCED DISAPPEARANCE.....	12
1.1 Enforced Disappearances in the history of humanity.....	13
1.2 Background, History and Evolution of Human Rights.....	15
1.2.1 Analysis of violated the rights by the practice of enforced disappearances, Based on the Universal Declaration of Human Rights.....	18
1.3 The State Responsibility to Crimes against life and integrity of individual.....	20
1.4 Family victim of forcibly disappeared persons.....	28
1.5 CONCLUSIONS.....	31
CHAPTER 2: HUMAN RIGHTS AND STATE RESPONSIBILITY.....	33
2.1 The Constitutionalization of Human Rights in Ecuador.....	34
2.1.1 Open clauses on Human Rights in Ecuador.....	37
2.2 Recognition of the Human Rights of the Victims of Enforced Disappearance.....	40
2.3 Analysis of the International Convention for the Protection of All People From Enforced Disappearances.....	47
2.4 The Importance of criminalizing and penalizing the offense of Enforced Disappearance as an individual offense.....	64
2.5 State Responsibility in the case of the Disappearance of persons by state Officials or institutions.....	72

2.6 CONCLUSIONS.....	78
-----------------------------	-----------

CHAPTER 3: ANALYSIS OF ENFORCED DISAPPEARANCE IN

COMPARATIVE LAW.....	80
-----------------------------	-----------

3.1 The Situation Worldwide.....	81
---	-----------

3.2 The Regional Situation.....	85
--	-----------

3.2.1 Argentina.....	89
-----------------------------	-----------

3.2.2 Chile.....	92
-------------------------	-----------

3.2.3 México.....	95
--------------------------	-----------

3.3 The National Situation.....	98
--	-----------

FINAL CONCLUSIONS.....	111
-------------------------------	------------

BIBLIOGRAPHY.....	114
--------------------------	------------

Chart Index

Chart 1 Right to live/right of integrity of the people.....	24
Chart 2 State - Rights Relationship.....	36
Chart 3 State Obligations.....	75
Chart 4 Comparison of the León Febres Cordero Administration with other Administrations in regards to Human Rights Violations.....	102
Chart 5 Forced Disappearances in Ecuador by years, victims and locations.....	104

INTRODUCTION

The Ecuador as many other countries of Latin America, throughout its history has been victim of gross violations of human rights by the State, particularly during the government of León Febres Cordero, who, according to data from the report submitted by the Commission on the truth, 68% of investigated human rights violations were caused in his Government. Between the period from 1984 to 1988 Ecuador was victim of repression where insurgent movements as "Alfaro Vive Carajo" which was responsible for the majority of violations against the human rights of this period."

The implementation of the treaties and international conventions on human rights in the internal area of the countries of Latin America, has been developed in recent decades, through the following four techniques:

First, through the progressive incorporation in the constitutions of the open clauses¹ on human rights, on the rights inherent in the human person; Secondly, through the application immediate constitutional forecasts about human rights without the need for legislative regulation, based on regulated in international instruments; Thirdly, through the gradual constitution of international instruments on human rights, with the direct application in the internal order; fourth, by inserting in the rules constitutions of constitutional interpretation of rights, is in agreement with the provisions of international treaties or declared in the international instruments, or in accordance with the principle of progressivity in the application and interpretation of human rights, allowing the application of more accord rules contained in treaties or international conventions (Brewer, 2007,1)

1

The open clause is intended to be not only safeguarded or protected human rights enshrined in the Constitution, but also the universality of human rights existing contemplated.

Throughout the history of Ecuador has been observed as the application of the international treaties and conventions on human rights has gone through four techniques Allan R. Brewer-Carias which I quote above, which will be detailed in the Subsequent chapters of this thesis.

Through the international and comparative review, we will try to verify how achiever was the Ecuadorian state in relation to determining those treaties and conventions it has subscribe and ratified, guaranteeing and making responsible for human rights for all Ecuadorians will be cared in internal legislation.

One of the most important advances made by the Ecuadorian courts in the last year is the inclusion in the Penal Code, major criminal figures, which defines first infringement Enforced Disappearances. The new legislation provides a clear criminal procedure which will allow Ecuadorians to have a more effective administration of criminal justice. This theme throughout many years was an issue that crossed the Ecuador because in our country, the Truth Commission² in its report published in June 2010, identified 17 victims of enforced disappearances between January 1984 and December 2008, and a few months ago there was no legal rules to deal with these cases, not the crime itself, but under the premise of a crime against humanity³, committed as a "widespread and systematic attack against a civil population", without being individualized, as a separate offense within the Crimes against life, not even defined what constitutes enforced disappearance.

Enforced disappearance is a very complex violation of human rights and humanitarian law which involves violations of the right to liberty and security of a person, the right to recognition of legal personality⁴ and the right not to be subjected to an inhuman and

² Report of the Truth Commission , Ecuador 2010. Without truth there is no justice.

³ Crimes against humanity constitute a category of crimes defined by international law after World War II , to generate criminal liability , whose evolution is contained in the description referred to in the Rome Statute (1998). (Parenti,2007,11)

⁴ This violation stems from the fact that acts of enforced disappearance is leaving the victim outside the protection of the law.

degrading treatment⁵, at least a serious threat to the right to life⁶. In addition, the missing person, to be deprived of the protection of the law, it is also deprived of other human rights such as the right to an effective remedy in front of a national authority and the protection of family life. (Nowak, 2002, 41).

Enforced disappearance is a cruel violation of human rights, affecting both the disappeared person, family and friends. Missing persons are often tortured and live in constant fear for their life, away from the protection of the law, deprived of all their rights and at the mercy of their captors. It is a constant violation that often lingers for years after the initial abduction.

The most emblematic atrocities it is found in Chile, verified from September 11, 1973. In late 1975, reports delivered to organizations like the United Nations and the Inter American Commission of Human Rights, the military government claimed that the majority of missing persons was not in that situation and in some cases, the victims had not even has legal existence. Other missing had died naturally or in armed fights in Chile or abroad. However, the falsity of many official statements of the Chile government soon becomes clear. (OAS, 1985, 81:82)

Under Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006), enforced disappearance can be defined as the arrest, detention, abduction or any other form of deprivation of freedom with State agents or by persons or groups acting with the authorization, support of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, which stays out of the protection of the law⁷.

⁵ This violation stems from the fact that every incommunicado detention for a prolonged period, regardless of possible torture or ill-treatment during detention constitutes inhuman or degrading treatment, both the disappeared person and their family.

⁶ Experience, for example in the Working Group shows that the vast majority of reported cases of forced disappearance have led actually to the death of the victim, sometimes immediately and sometimes only after months or years of solitary confinement and torture.

⁷ Fact sheet of the Regional Office for South America on the Convention. Available in : <http://acnudh.org/?p=166>

The Convention considers that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided. In addition, this international treaty requires the states to criminalize enforced disappearance.

CHAPTER 1: BACKGROUND AND OVERVIEW OF THE ENFORCED DISAPPEARANCE

In the current chapter it is important to define the meaning of Enforced Disappearances as throughout history have persisted in many countries. The General Assembly of the United Nations has been the largest regulatory body in the world that has given importance to cases that have been developed throughout the history of forced disappearances. February 29, 1980 the Commission on Human Rights decided to establish a working group composed of five experts to devote themselves exclusively to cases that came to this organization. This working group defines enforced disappearance as follows:

For the purposes of defining an act of enforced disappearance, the Working Group considers that the removal of the victim outside the protection of the law is a result of a crime. The Working Group admits cases of enforced disappearance without requiring that the source of information proved or presumed intention of the perpetrator to place the victim in the protection of the law. In addition, the Working Group considers that an act of enforced disappearance may be initiated by an illegal detention or an initially legal arrest. That is, that the protection of the victim from enforced disappearance must be effective upon the deprivation of liberty, whatever form it takes, and not limited to cases of illegal detention. (OHCHR, 2009.14).

As indicated above, the fact that enforced disappearance is not always start with an illegal arrest, but in many cases with a legal arrest, leading to the bodies responsible for protecting the victims of enforced disappearance are meticulous when considering a case and should not be limited to legal detentions. I believe that most of these unsolved cases occur with legal detentions.

1.1 Enforced Disappearances in the history of humanity

Enforced disappearances occur throughout history in countries experiencing political conflicts, however one of the first cases that can be defined in history, is in Germany in the government of Adolf Hitler, the Nazis were the first to formalize this practice.

Around seven thousand people were taken secretly to Germany under the *Nach und Nebel* (Night and Fog) decree, issued by the Supreme Command of the German army in 1941. Following Hitler orders, the Nazis resorted to the disappearance of opponents to prevent their being turned into martyrs for their people if they were put on trial and sentenced to death. The decree stated that any person could be detained for suspicion to be "faded", should not obtain information on the whereabouts and situation of the victims, which sought to achieve an "effective intimidation" of the population and the family due to paralyzing terror be unleashed. (Velez, 2004.39).

In Latin America, cases of forced disappearance start in the decade of the sixties, most countries involved in political crisis adopted this practice to be used as a repressive method in which the disappearance of people was taken for political confrontations, which as in the case of Germany, many Latin American countries "legalized" detentions of citizens who are under any suspicion against governments that followed by the total isolation of the victims, gradually these "arrests" were becoming disappearances. Victims of enforced disappearances were subjected to brutal torture taking them to death, as it was under the regime of government of Latin American countries, all kinds of "legal support" was used to make the bodies disappear .

For Franz Hinkelammert national security dictators disrupted in civil society, to break these ties, introduced across Latin America and the disappearance torture as a systematic and legitimate means of domination. (Hinkelammert, 1990, 212)

Unidentified people who kidnapped victims, succeeding in imposing silence and impunity, used this method of forced disappearance clandestinely. In most cases enforced

disappearances are part of the military intelligence, which sought social acceptance through psychological manipulation to protect their impunity.

Gabriela Citroni reports that the disappeared are deprived of any form of legal assistance and family are not made aware of where they are or what their position from a legal point of view, because they cannot assert their rights by an attorney.

(Citroni, 2003, 377)

The objectives sought military intelligence of the various Latin American countries, was the information of the victims stopped in most cases the information was politically and by the method of torture, often managed the spontaneous collaboration of breaking his victim's commitment. Using professionals such as psychologists and doctors who were protected not to reveal their identification.

Torture suffering victims of enforced disappearances began the time of his capture, professionals were used as a means of torture and that if there was the presence of a doctor was only to keep alive those detained after suffering serious injury from torture received, including the presence of psychologists was to manipulate subjecting victims to a series of interrogations.

The missing person is a person subjected to sensory deprivation and widespread (hands tied, blindfolded, forbidden to talk, limitation of all movements) in subhuman conditions of supply or hygiene, without contact with the outside world, who knows where it is, even sometimes you can guess, and knows that outside do not know where he is, with absolute uncertainty about their future. Nobody knows you're here. You do not you exist, you're not even with the living or the dead. (Kordon, 1986, 94).

According to studies and reports by International Amnesty, by United Nations and other organizations for protection of human rights present in the area, in twenty years over 90,000 people have been victims of this abhorrent practice in different Latin America countries, 45,000 in Guatemala. (Citroni, 2003. 374).

One of the most important aspects to be highlighted on enforced disappearances is the establishment of a "Group Force" created by the United Nations Commission on Human Rights, responding to the many demands were made for years by relatives trying to ascertain the fate and whereabouts of the victims.

The Commission on Human Rights of the United Nations considered the initiative of France, one of the proposals and decided on 29 February 1980 the establishment of the Working Group on Enforced or Involuntary Disappearances , the first called thematic mechanisms of the Commission and the most important organ of the United Nations that deals since the problem of disappearances in cases that can be attributed to governments, in addition to issuing recommendations to the Commission and the governments on how to improve the protection afforded to individuals missing and their families and to prevent cases of forced disappearance. The different reasons began to develop in various international legal bodies whose decisions served to set a specific law on forced disappearance. (Monroy and Navarro, 2001, 83).

1.2 Backgrounds, History and Evolution of Human Rights

The current subchapter includes an overview of human rights, that is, concepts or definitions by specialized authors on the subject. So you will need to include the historical aspect to get into the main topic of the thesis to be developed in the second and third chapters. It is intended to give a clearer idea about the evolution of human rights, it is necessary to start with the definition in order to analyze how Ecuador has evolved on Human Rights specifically on the issue of Enforced Disappearances.

It is important to define the concept of Human Rights, the United Nations defines it as:

"essential guarantees for us to live as human. Without them we cannot grow or exercise our qualities, our intelligence, talent and spirituality"⁸.

Human Rights have been created from the concept of dignity, recognizing the dignity of human beings is to respect as is. So human rights allow us to be free, to decide where we are, attacking them is a violating of human dignity. (Mestre, 2007, 11:12).

To Hubner, human rights are not any political party right or left, but protecting the dignity of man, of every man. (Hubner, 1994, 17) What the author means is that human rights do not belong to any political party, any social condition or religious class, human rights protect all citizens equally from any injustice that may cause excessive and disproportionate act of power. Human rights are a protection that we created to ensure coexistence and ensure that the State will not use power against our liberty and physical integrity.

To Nazario Gonzalez history of human rights is linked to historical events of significance in world history for example the French Revolution, where the Declaration of Rights of Man and 1789 arises; World War II where the Universal Declaration of Human Rights is given, and the fall of real communism where the World Conference Vienna 1993. (Gonzalez, 1998, 16).

It has been through major historical events that mark the existence of Human Rights, today we enjoy many rights that previously were not even considered. As mentioned Jose Mestre: "Today we have recognized a series of rights, simply because they exist, but that has not always been the case, have the rights that today we have been given is the result of a long struggle" (Mestre, 2007, 9).

⁸ Fact sheet of the Regional Office for South America on the Convention. Available in : <http://acnudh.org/?p=166>

As part of the history and evolution of human rights, Mestre speaks about the goals that have been raised throughout history, one of the aims is to raise awareness of the need to fulfill and create concerned citizens to meet their basic elements. (2007, 42). Speaking of the author concerned, it is important that all people understand and know their rights and it is the only way to meet them.

Human rights in history, we can realize that with the need to regulate the actions, behaviors and privileges of human beings, the United Nations decided to create a Universal Declaration of Human Rights, which seeks a common ideal for all the people and nations. The Universal Declaration of Human Rights is the cornerstone in the history of these rights. It was drafted by representatives of legal and cultural backgrounds around the world and proclaimed by the United Nations General Assembly in its resolution 217 A (III) of December 10, 1948, in Paris, as a common standard by which all peoples and all nations should practice⁹.

The first rights recognized by the Universal Declaration are the fundamental rights on which the thought of liberalism is based on: freedom (with the prohibition of slavery), equal rights (with overcoming any kind of discrimination) and security staff (prohibition of torture or arbitrary detention). (Mestre, 2007, 15).

In developing this thesis it is the first important rights recognized by the Universal Declaration, since the crime of enforced disappearance violates these three rights.

The Universal Declaration of Human Rights has been for over half a century, the main reference as a source of rights. All principles that announce fundamental rights and freedoms are contained in the text of the Declaration. Any reference to the defense and promotion of the rights of individuals and their fundamental freedoms as a prerequisite for peace, understanding and development begins with the reference to the most important non-binding instrument of our time, which has been translated in more than 330 languages¹⁰.

⁹ *Ibíd.*

¹⁰ Sequeira UNESCO. (2008). 5. Available in:
<http://unesdoc.unesco.org/images/0017/001790/179018m.pdf>

1.2.1 Analysis of violated the rights by the practice of enforced disappearances, based on the Universal Declaration of Human Rights.

Being this work on the responsibility assumed by the Ecuadorian State for the commission of the crime of enforced disappearance, based on the open clause in international conventions and treaties, mainly it is based on the Universal Declaration of Human Rights. It is for this reason that I consider necessary to analyze which items would be violating the commission of enforced disappearance in the Universal Declaration of Human Rights, from here and then analyze the international conventions and treaties.

Below I will list the articles of the Universal Declaration of Human Rights violated of enforced disappearance, followed by a brief analysis.

Items Adopted and proclaimed by General Assembly of Universal Declaration of Human Rights resolution 217 A (III) December, 10.1948.¹¹

"Article 3: Everyone has the right to life, liberty and security"

"Article 5: No one shall be subjected to torture, cruel, inhuman or degrading treatment".

"Article 6: Everyone has the right everywhere to recognition of his legal status".

"Article 7: All persons are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination".

Article 8: Everyone has the right to an effective remedy by the competent national

¹¹ UNESCO. (2008) 11:17. Available in:
<http://unesdoc.unesco.org/images/0017/001790/179018m.pdf>

tribunals, for protection against acts that violate his fundamental rights recognized by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality conditions to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him matter.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, individually and collectively, in public or private, in teaching, practicing, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom not to be disturbed because of his opinions, to seek, receive and impart information and ideas through any media and regardless of frontiers, by any means of expression.¹²

Article 3 of the declaration of human rights is the main and most serious law violated by committing the crime of enforced disappearance as a person of liberty and security, many cases are deprived even of the right to the life.

As to Article 5 in the commission of enforced disappearance, one of the main modes of operation is the torture of the victims, dragging cruel, inhuman and degrading treatment. In Article 6 we can see that the victims of enforced disappearance immediately lose the right to juridical personality and you are abducted by state agents and live at the mercy of their captors, losing all their rights, cannot make use of Article 7 because as in most cases of enforced disappearances are no longer equal before the law and cannot use the same protection. Article 8 is directed to the families of the victims as they cannot seek justice in

¹² *Ibíd.*

domestic courts and in most cases have to seek legal assistance to international organizations.

In cases of enforced disappearance is an obvious violation of the Article 9, as state agents arbitrarily detain them. Article 18 and 19 talks about the freedom of thought that every human being should have, most cases of forced disappearance have been given for not agreeing with the rulers and for having exercised the right of free expression were they has been subjected to this crime.

Jose Mestre said that he had come to see that human rights are an obstacle to security, so some states do not hesitate to use torture to obtain information considered vital to its security. (Mestre, 2007, 27).

Disappearances also generally involve a violation of various economic rights, social and cultural. Enforced disappearance can also have particularly effects on the exercise of these rights by relatives of the missing person, as I will discuss later.

1.3 The State Responsibility to Crimes against life and integrity of individuals.

It should be noted that all States are responsible to crimes against life and the integrity of people, this chapter will analyze the responsibility of the Ecuadorian State to these crimes and as has been fulfilled over the last few years such liability. It is noteworthy that for the fulfillment of the responsibility of the Ecuadorian State to crimes against life and integrity of persons, there is a United Nations that oversees these matters.

The role by the United Nations in the promotion and protection of human rights is gaining increasing importance over the years. However, the core mandate remains the same: to ensure full respect for the dignity of the 'peoples', on behalf of the signatories of the

Charter.¹³ It should be noted the international mechanisms with which the United Nations operates in several fronts are:

- As global awareness.
- As a legislator.
- As supervisor.
- As the focal point.
- As an advocate.
- As a gatherer of information.
- As an institution of appeal.
- As a researcher.
- As intercessor.¹⁴

Ecuador has subscribe various international instruments to combat various forms of crime; according to their purposes and under them, is necessary to promote their practical application in the process of harmonization of national legislation and to fulfill the commitments made in international conventions signed and ratified. (FGE, 2013.11).

Upon learning about the international instruments which Ecuador has subscribe over the years, we are guarded not only by the responsibility of the Ecuadorian State to achieve continuous compliance with the main human rights that are the life and integrity of the people who live in Ecuador and abroad, but also by international organizations working for a State to meet that responsibility.

Our country, Ecuador, also benefits from the international conventions and treaties as they find cooperation among States that have signed such instruments, to the limitations they

¹³ United Nations Organization. The UN and Human Rights. Available in : <http://www.un.org/es/rights/overview/action.shtml>

¹⁴ *Ibíd.*

may have regarding the defense of human rights. For these reasons, it is necessary to analyze the situation of the Ecuadorian State in compliance with the promotion and protection of human rights. For which I will be based on the systematization of recommendations made by the United Nations of the Ecuador system and protection of human rights.

The permanent presence of the society as informed participant, creates opportunities for discussion and consensus useful for decision, it is helpful that the recommendations made by the United Nations as the System of Human Rights Protection in Ecuador reaches committees, assemblies and other areas of popular organization, since they generate contributions to further promote and guarantee human rights. (Fernando Gutiérrez, 2011, 1).

Fernando Gutiérrez Vera, ex former country dense of Ecuador is important that the United Nations make recommendations to the system of protection of Human Rights in Ecuador, as this is demanding the State to guarantee the rights of the Ecuadorian people.

It is important to understand the concept of the right to life and personal integrity. The Ombudsman of Ecuador defined as:

The right to life is a human attribute that allows you to exercise other fundamental rights. By its importance is an absolute right that cannot be suspended in any way, not even in exceptional situations and should be protected by law. No one shall be arbitrarily deprived of his life.

The right to life involves not only issues related to ensuring the life cycle (grow, reproduce and die), but also the needs for food, water, work, health, housing, among and others.

One of the main rights, related to the right to life, is the right to personal integrity, physical,

mental, moral and sexual, which represents the guarantee of a life free of violence and also the prohibition of torture, forced disappearance, inhuman or degrading punishment. Therefore it is the duty of the State to take all measures to guarantee the right to humane treatment.¹⁵

The concept of the Ombudsman of the Ecuadorian people on the right to life and personal integrity gives us a clear view of the importance and special place in the list of fundamental rights of the person. To commit the crime of forced disappearance, it is attempting directly against these two major Human Rights. As it indicated by the United Nations: "A violation of the right to life does not occur only when it results in the death of the person and other acts or omissions that threaten or endanger life may also constitute a violation of the obligations of the State in this matter" (UN, 2011.12).

The Human Rights Committee considers that States parties should take measures not only to prevent and punish criminal acts involving the deprivation of life, but also keep their own security forces arbitrarily. The deprivation of life by state authorities is a matter of big importance. Therefore, the law must strictly control and limit the circumstances in which the authorities can take the life of a person (UN 2011.13).

The maximum body controller that human rights are met in Ecuador is the Ombudsman, as constitutionally mandated duties include preventing the violation of the right to life and integrity of the people who are part of the main norms of international law. According to the General Directorate for Education and Research of the Ombudsman of Ecuador, the right to life and personal integrity emphasizing the prevention of torture, forced disappearances and cruel inhuman treatment or punishment was adopted as the main axis or degrading, becoming national mechanism for prevention of torture.¹⁶

One of the main recommendations made by the United Nations system of human rights

¹⁵ Ombudsman Ecuador. (A.s.) . 1. Right to life and personal integrity. Available in: <http://repositorio.dpe.gob.ec/image/DERECHO-VIDA-INTEGRIDAD.pdf>

¹⁶ *Ibíd.*

protection in Ecuador is that it should take specific and effective measures to prevent the disappearance of individuals, something that unfortunately has become too frequent and leads too often to deprivation arbitrary life. Furthermore, States should establish effective services and procedures to investigate thoroughly cases of missing persons in circumstances that may involve a violation of the right to life. (2011, 13).

It is important to know that Ecuador is governed by the rules of hospitalizations that protect the rights of life and personal integrity, as well as the country's constitution show items with the same purpose. Below I will list the articles of international instruments and the Constitution of Ecuador that protect these rights:

Image 1

RIGHT TO LIFE	RIGHT TO THE INTEGRITY OF THE PEOPLE
INTERNATIONAL INSTRUMENTS	
<p>• Universal Declaration of Human Rights Art. 3 Everyone has the right to life, liberty and security of person.</p> <p>• International Covenant on Civil and Political Rights Art. 6 The right to life is inherent in the human person. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>In countries which have not abolished the death penalty can only be imposed the death penalty for the most serious crimes in</p>	<p>• Universal Declaration of Human Rights Art. 3 Everyone has the right to life, liberty and security of person.</p> <p>Art. 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment.</p> <p>• International Covenant on Civil and Political Rights Art. 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment. In</p>

<p>accordance with the law in force at the time of the crime and not contrary to the provisions of the present Covenant or the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment of a competent court.</p> <p>When deprivation of life constitutes the crime of genocide, it will have understood that Nothing in this article in any way excuse the States Parties to fulfill any of its obligations under the provisions of the Genocide Convention so Anyone sentenced to death shall have the right to seek pardon or commutation of the death penalty. The amnesty or commutation of the sentence of death may be granted in all cases.</p> <p>The death penalty for crimes committed by persons below 18 years of age and shall not be applied to women during pregnancy will not be imposed. A State Party to the present Covenant to delay or prevent the abolition of capital punishment shall invoke nothing in this article.</p>	<p>particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>Art. 9</p> <p>Everyone has the right to liberty and personal security. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except for reasons established by law and in accordance with procedures established in this.</p> <p>• Convention Against Torture and Other Cruel , Inhuman or Degrading</p> <p>Art. 1</p> <p>1. For the purposes of this Convention, understand by the term " torture" means any act by which is intentionally inflicted on a person severe pain or suffering, whether physical or mental, in order to obtain from him or a third information or a confession, punishing him for an act he has committed or is suspected of having committed, intimidate coerce that person, others or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity at the instigation with the consent or acquiescence. Do not include pain or</p>
---	--

	<p>suffering only from lawful sanctions, or inherent in or incidental to them.</p> <p>Art. 2</p> <ol style="list-style-type: none"> 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction measures. 2. No exceptional circumstances whether a state of war or threat of war, internal political instability or any other public emergency as a justification of torture may be invoked. 3. An order from a superior officer or a public authority as a justification of torture may not be invoked.
<p>CONTITUCION OF THE REPUBLIC OF ECUADOR</p>	
<p>Art. 66</p> <p>It is recognized and guaranteed to persons:</p> <ol style="list-style-type: none"> 1. The right to the inviolability of life. <p>There will be no death penalty.</p>	<p>Art. 66</p> <p>It is recognized and guaranteed to persons:</p>

<p>(...)</p> <p>14. The right to travel freely throughout the country and to choose their residence and to freely enter and leave the country, whose exercise is regulated in accordance with the law. The exercise on leaving the country can only be ordered by a judge.</p> <p>Foreign persons may not be returned or expelled to a country where his life, liberty, security or integrity or that of their families threatened on account of his race, religion, nationality, ideology, membership of a particular social group or political opinion. Collective expulsion of aliens is prohibited. Migration processes should be singled</p> <p>Art. 89</p> <p>Habeas corpus aims to recover the freedom of who you are deprived of it illegal, arbitrary or illegitimate, in order of public authority or any person as well as protecting the life and physical integrity of persons deprived of freedom. (...)</p> <p>Art. 363</p> <p>The State will be responsible for:</p> <p>(...)</p> <p>6. Ensure actions and sexual health service and reproductive health, and ensure the overall health and life of women, especially during pregnancy, childbirth and postpartum.</p>	<p>(...)</p> <p>3. The right to humane treatment, including: a) The physical, mental, moral and sexual integrity.</p> <p>(...)</p> <p>c) The prohibition of torture, forced disappearances and cruel, inhuman or degrading punishment.</p> <p>d) The prohibition of the use of genetic material and scientific experiments that violate human rights.</p> <p>Art. 215</p> <p>The Ombudsman's functions will protect and safeguard the rights of the inhabitants of Ecuador and defending the rights of Ecuadorians who are abroad. They will be their powers, in addition to those set out in the law, the following :</p> <p>(...)</p> <p>4. To exercise and promote surveillance of due process, and prevent, immediately and prevent torture, cruel, inhuman and degrading treatment in all its forms.</p>
--	---

The prevention of torture helps to ensure and protect both the right to a life free of violence, including the right to personal integrity of each and all the inhabitants of Ecuador and the Ecuadorians abroad. The promotion of these rights helps to prevent violations being committed to them by agents of the state, increases awareness of rights of all people and disclose the social rejection of torture, cruel, inhuman and degrading treatment.¹⁸

1.4 Family victim of forcibly disappeared persons

In this sub chapter I will analyze the reasons why families are also considered victims of crime of enforced disappearance and the consequences suffered by this repressive manner that violates the main human rights. Victims of forced disappearance are in a complete state of helplessness by the fact that they are captured by government agents or private individuals acting on their behalf, it is why the time to demand information about their whereabouts, often families do not find support in the state courts where they belong and that is not a legal resource that can go to seek justice.

Commonly, the forced disappearance of Persons running so that the perpetrators of the fact achieve anonymity, so the state denies involvement. There non authority that certain information on the fate or condition of the disappeared. (Maldonado, 2001, 2). This is one of the main reasons why families become victims of this crime, trying to find the missing person does not have the legal support of the state by the fact that there is no authority that can provide information the whereabouts of the disappeared, creating an atmosphere of total uncertainty in the household.

Gabriella Citroni explains that often the relatives looking for their missing loved ones suffer harassment, threats, and attacks, sometimes even defamation and attempted or

¹⁷ ECUADOR AND PROTECTION SYSTEM UN HUMAN RIGHTS . (2004-2011) .
Systematizing Recommendations.

¹⁸ *Ibíd.*

extortion. As time passes, the chances of finding the missing alive. Families, friends and peers suffer distress, frustration and anger that often have to face in silence. (Citroni, 2009. 5). This is possibly one of the most suffering feeling, being relatives of the missing to suffer from harassment and threats that in many cases become attacks against their security, becoming direct victims of the violation of the right of the consequences personal integrity, in many cases reaching the point of intimidation have no alternative but to suffer in silence the absence of their loved ones on the other relatives also become victims of marginalization by society acting based the fear that something similar things might happen to them.

Julio Maldonado, the disappearance of a family member or loved one also means psychological torture for his family. That loss creates immediate effect, a situation sustained deep anguish that causes disorders in life and in the psyche of those affected. Not knowing if the missing person is dead or alive, unstructured area of each of the members of the family ambiguity is generated, since it is not possible to resolve the contradictory binomial between presence - absence and existence - death. (Maldonado, 2001, 4).

Julio Maldonado talks about the psychological damage that is created for the relatives of a person who has been submitted to the crime of enforced disappearance, the main psychological damage suffered by the relatives is the uncertainty of not knowing what the state of the missing person is. Humans are prepared to face the lack of a loved one, we are accustomed from birth to cope, but in the case of enforced disappearance cannot be overcome, because the family cannot go through the stage of grief is the emotional adjustment process that follows at the loss of a loved one, they suffer and struggle daily to know the whereabouts of their relatives. A phrase that demonstrates the feelings of the family can be seen in the testimony of Sonia Eid on the disappearance of her son Jihad Eid in Lebanon: "The disappearance of my son is like holding a live coal in his hand. It hurts too much but simply I cannot leave"(Citroni, 2009, 13).

Another issue of victims' families' economics, since often the missing person was the support of the home, also speaking of the economic problem can be seen in the different cases that often families spend all its resources to try to find their loved ones.

Gabriella Citroni speaks of the serious problems of children forced disappearance, kidnapped with their parents or born during the captivity of their mothers, is another tragic example of this practice. In some countries, it has delivered babies for appropriators - many of them repressors - through national and international illegal adoptions. (Citroni, 2009, 6: 7). Children become victims of this crime of forced disappearance directly and indirectly, speak Gabriella Citroni; They are abducted with their parents or born in captivity and indirectly children who stay without the protection of parents who are victims of enforced disappearance.

Thanks to international treaties and agreements that have arisen with respect to the forced disappearance of persons, families are also victims of this crime been able to find hope if not to find their loved ones alive, but of legal support to demand justice for their families. Nowak indicated this:

The jurisprudence of all oversight bodies and courts established on enforced disappearances that already discussed above shows that the governments have a certain obligation to provide victims including families, an effective remedy that may include the duty to investigate the act of disappearance, bring the perpetrators to justice, to pay compensation to the victims to release the disappeared persons (if still alive) or locate and identify the remains and deliver them to the immediate family and provide families all information relating to the fate and whereabouts of the disappeared person. (Nowak, 2002.47).

Treaties and conventions created for this reason, many support groups and improvement of the victims of the crime of enforced disappearance, this chapter is dedicated to the families of the victims is necessary to mention.

Relatives of the disappeared assume a leading role at the national and international levels to address this crime. In order to know the fate and whereabouts of their loved ones, relatives organize creating local partnerships to spread their stories and demand responsibilities. (Citroni, 2009, 9).

In 1981 the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) was created, a non-governmental organization made up of associations of families of Latin America and the Caribbean where it was practiced and practiced forced disappearances. FEDEFAM is an independent humanitarian organization of all doctrine, political or religious institution.

FEDEFAM has consultative status Category number II with the United Nations Economic and Social Council. Its management is based on the efforts of each of its member associations and relies on the generous solidarity of people and national, Latin American and international humanitarian agencies.¹⁹

The importance of creating support groups for families of persons forcibly disappeared is not only psychological support, but also arise in an attempt to raise their voices and to join forces to cross borders and get them to start making conscious about this crime against humanity, these groups are becoming stronger and may require legal rules that favor them to have justice measures and prevention of this crime.

1.5 CONCLUSIONS

Throughout the chapter has made a brief review of significance, general and history of the forced disappearance of human rights, in order to clearly understand the extent of the damage of this crime that has occurred over the history mainly in the countries of Latin

¹⁹ Latin American Federation of Associations of Relatives of Disappeared Detainees. Available in: <http://www.desaparecidos.org/fedefam/#pu>

America and the role played international treaties and conventions on human rights, have slowly been raising awareness States so it can incorporate measures to enforce the principal human rights with the commission of enforced disappearance. One of the most important characteristics of human rights in Latin America, is the progressive implementation by national courts and in particular the constitutional courts, international human rights instruments for the purpose of protection.

In this chapter we have analyzed compliance with the obligations undertaken by the Ecuadorian State of the right to life, liberty and human rights, how they would be giving priority to guaranteeing the principle of the open clause, the rights of victims generally creating legal certainty and State responsibility. Something that has excelled in this chapter is the progress made by the Ecuadorian courts on the issue of compliance with human rights, specifically the enforced disappearance, since only a little over one year Ecuador had no typing of the offense of enforced disappearance, which occurred in August 2014, benefiting all Ecuadorians to have a more effective administration of criminal justice.

I considered very important to start with the definitions of different authors to understand what will be discussed in the following chapters. Another point to be rescued in this part of the thesis is that the commission of the crime of forced disappearance not only are violating the rights of the direct victims of crime but also of their families, which is explained in the latter subchapter the impact and consequences that this crime has on their relatives.

CHAPTER 2: HUMAN RIGHTS AND STATE RESPONSIBILITY

This chapter will analyze the responsibility of the Ecuadorian State in regard to complying with citizens' human rights. To do this, it is necessary to understand how Human Rights went from being a simple theory to generating great complexity regarding their legal institutionalization in Ecuador. This occurred thanks to treaties and international mechanisms in which the country participated, which will be analyzed in the first subchapter.

It is necessary to go in depth on the topic of human rights in Ecuador in order to measure their importance when dealing with crimes of enforced disappearances. This chapter is dedicated to analyzing how the Ecuadorian State has managed crimes of enforced disappearances throughout its history and the importance the open clause has had in international agreements and treaties.

International organizations have been fundamental to the compliance of Human Rights in Ecuador, since the State began to consider the existence of criminal activities from the point of view of international rights, and that it is necessary to establish obligations to combat these activities. To do this, legal regulations have been created that control compliance with the country's international obligations respecting certain populations vulnerable to Human Rights violations, as is the case with victims of Enforced Disappearance.

Christian Courtis clarifies the importance of international institutions for compliance with human rights:

The fundamental idea of the creation of international organizations that protect human rights is empirical evidence that the internal guarantees of the State are not sufficient. There are too many historical examples in which the State had a Constitution and, even so, the Constitution was not enough to prevent breaches of power, prevent failures to comply, prevent violations of the limits of state power by its own citizens or territorial inhabitants. (Courtis, 2008, p.146)

A clear example of the aforementioned is the work of the International Convention for the Protection of All People from Enforced Disappearances, which was created to respect the human right of not being forcibly disappeared, which will be analyzed later in this chapter.

2.1 The Constitutionalization of Human Rights in Ecuador

In order to analyze the constitutionalization of Human Rights in Ecuador, it is essential to begin with the definition of the legal system of constitutionalization. According to Riccardo Guastini:

By "legal system of constitutionalization" we can understand a transformative process, at the end of which "turns out to be totally impregnated by constitutional norms", because the Fundamental Law proves to be "extremely invasive, interfering, capable of conditioning legislation as well as jurisprudence and doctrinal style, the shares of political actors and social relations"²⁰

With this concept as a guide, it can be established that the Constitutionalization of Human Rights in Ecuador took place because rights are not only understood in the political sense but also in the legal sense. Before, in the country human rights were just a concept that was not put into practice, but thanks to constitutionalization they are now legal documents that can depend on legal institutions, that became a fundamental system the requires the implementation of certain actions by the State.

The constitutionalization of Human Rights in Ecuador established legal limits of state powers, since, due to it, institutions of constitutional character were created to control the

²⁰ UNAM, (2012) Institute of Legal Investigations, What is the constitutionalization of rights, Miguel Carbonell and Rubén Sánchez Gil. Available at: <http://www.juridicas.unam.mx/publica/librev/rev/qdiuris/cont/15/cnt/cnt3.pdf>

power of the State that has often gone unchecked - this being the primary culprit in cases of human rights violations in Ecuador, among them the crime of enforced disappearance.

The creation of legal norms that ensure compliance with human rights in Ecuador has helped to keep power from concentrating in the hands of a single person and that violations against human rights are not committed against citizens.

According to Ramiro Ávila:

In Ecuador's new Constitution, the State is set up so that the rights enunciated therein are truly enjoyed, actually lived by the inhabitants of its territory and that they, either as individuals or as collectives, have access to mechanisms to demand of authorities, by means of even jurisdictional guarantees, that they fulfill this fundamental obligation. (Ávila, 2008, p.9)

This is without doubt an enormous advancement of the Ecuadorian Constitution, giving all inhabitants a great protection of their human rights, since the existence of mechanisms that can be used for protection against the authorities in the case that they abuse their power and commit violations against basic human rights is a protection of the dignity of all people and putting human rights above and beyond any kind of authority figure.

Ecuador's Constitution is strongly materialized, it emanates from the Constitutional Assembly, it recognizes rights as limits and bonds, and establishes a Constitutional Court that resolves, as a last resort, the conflicts generated due to violations of constitutional precepts. In this sense, the Ecuadorian Constitution is framed within the current paradigm of constitutional rights. (Ávila, 2008, p.23)

In order to better understand what Ramiro Ávila is saying, it is necessary to explain that the current Ecuadorian Constitution is concentrated on people's rights, using the Constitutional Assembly as a source - that is, the Assembly is who ensures that citizens' rights are fulfilled, using the material in the Constitution to establish limits and binds.

It is important to emphasize that every human being has inherent rights, obliging public powers to necessarily guarantee these fundamental rights. By referring to the constitutionalization of human rights, we assert that the State is the institution with the goal of guaranteeing rights, respecting values or goods considered innate to the nature of human beings. Ecuador is a constitutional State of rights according to the 2008 constitution, which guarantees that rights come before the State.

In the State of rights, rights - which are creations and historical demands, above and beyond the State - submit and limit all powers, including those of the constituent. In this last case, we would say that the dogmatic part is relatively more important than the organic, and that it is even of primary importance in legal texts when establishing the aim and upon enabling state bodies to effectively carry them out. (Ávila, 2008, p.29)

It is necessary to keep in mind that Ecuador has evolved in regards to the relationship of the State with Rights, which can be seen in the following table:

Table 2²¹

State - Rights Relationship

	STATE OVER RIGHTS	STATE OF LEGAL RIGHTS	STATE OF CONSTITUTIONAL RIGHTS	STATE OF RIGHTS
State	Rights Submitted	Law submits to the State	State submits to the Constitution	State submits to Rights
Power of Reference	Authority	Parliament	Constituent	Individuals and peoples

²¹ Table authored by Ávila (Ávila, 2008, p. 29)

The notion that human rights are found in great part connected to international order, international instances dictate sentences that are also general and obligatory. It became necessary to establish international obligations in regards to certain populations vulnerable to human rights violations that go beyond State regulation, as for a long time were the victims of enforced disappearance in Ecuador, since internal guarantees of the State were not sufficient. One of the extremely important aspects of international organizations is that Ecuador, being a State that has signed treaties and agreements, is obliged to be accountable to them.

The sentences passed by the Inter-American Human Rights Court (the Court) are imperative to satisfy in Ecuador. The country, by ratifying the Americana Convention on Human Rights, compromised itself not only to fulfilling the norms and rights stated in the Convention, but also to satisfying the sentences emanating from the organization that controls the State's fulfillment of the obligations that come from said agreement. (Ávila, 2008, p. 32)

The same applies in other international legal systems in which Ecuador has compromised itself to fulfilling international obligations. Ecuador, by signing these international treaties, finds itself subject to greater control to satisfy Human Rights, which favors all victims of enforced disappearance since they are protected by not only at a local level but also at the international level.

2.1.1 Open clauses on Human Rights in Ecuador

The most obvious characteristic of Human Rights in Ecuador is the application of tribunals, international documents on human rights for their compliance and protection of the same internally. To fulfill all of the rights that can exist in Ecuador it has been necessary in many cases to apply open clauses, which seek for the State to not only base itself on the rights

declared in its constitution, but to also form part of the State of rights inherent²² to human people as well as those declared in international instruments on human rights.

In the Ecuadorian Constitution it is indicated that: "The rights and guarantees specified in this Constitution and in international instruments do not exclude those that are derived from a person's nature and that are necessary for his or her full material and moral development" (article 19). This provision further compliments Article 18 of the same Constitution, which indicates that the rights and guarantees established in it and in international treaties are directly applicable by and within any court or authority; and that the absence of regulatory laws in the same is not a justification for the violation or ignorance of the rights declared in the Constitution, or to reject their protective actions or to deny the recognition of said rights. (Brewer-Carias, 2008, p.515).

What the open clause in the Ecuadorian Constitution does is allow for the extension of Human Rights, which, in many of the cases of human rights violations in the country, has made it possible to base themselves on the rights established in international treaties, transforming it into a topic no longer exclusive to internal constitutional rights. This seeks to ensure the protection of human rights in any possible eventuality. The open clause in the Constitution seeks to give a preeminent and predominant role to Human Rights over that of the State, which obliges the application of the most favorable regulations for the validity of human rights, even to the extent of excluding other types of legislation.

The open clause is understood by pacts and agreements, that is, those instruments that enjoy the strength of binds, guaranteed by member organizations that regulate compliance and that, for legal reasons, become part of the legislation of each State that ratified the agreement to a pre-established procedure. (Pasará, 2012, p.34)

²² By referring to inherent rights, it says that all people enjoy these rights, beyond any particular factor. It's about rights that do not have anything to do with current law, but rather is linked to the human condition. Furthermore, no one can fire them, or transfer.

In my opinion, States not only should be obliged to respect and obey international instruments, but also to adopt measures to avoid incompliance, since that is also how the correct use of laws can be guaranteed in regards to human rights. It is important that States give priority to a dignified life for all its inhabitants.

In an analysis by Raúl Droguett of the Ecuadorian Constitution we can appreciate that in the second chapter titled "International treaties and instruments" establishes, in article 417, that:

International treaties ratified by Ecuador will be subjected to what is established in the Constitution. In the case of treaties and other international instruments on human rights, principles in favor of human beings will be applied, with no restriction of rights, with direct applicability and from the open clause established in the Constitution.²³

What can be understood from this is that in Ecuador priority is given to human rights in any kind of situation, allowing for the imposition of international treaties in relation to internal legal order. This represents a great advancement for the country, since it is now recognized that the mere national protection of human rights was not sufficient. Ecuador has conferred a supra constitutional rank to the rights declared in international instruments, in particular those treaties ratified by the State.

²³ Droguett, R.F.C. (2012) Summary of lecture on International Rights in the Constitutions of Bolivia and Ecuador. (5)

2.2 Recognition of the Human Rights of the Victims of Enforced Disappearance

Every State has the obligation to recognize the rights of and to make amends to the victims who have suffered the crime of enforced disappearance. The State should implement guarantees for the victims that take into account measures for restitution, compensation, satisfaction, and principally to ensure that this act of violation is not repeated. In order to accomplish this, it is necessary to develop international control mechanisms, because when there are cases of enforced disappearance it is the State that allows and enables these violations. According to international law, the victims have a right to an effective recourse that includes full and effective reparation.

The rights of victims of forced disappearance were established by the International Convention for the protection of all people against enforced disappearance, which can be found in Article 24, imposes seven obligations in regards to victims. Below is the first: "For the implementation of this Convention, "victim" will be understood as the disappeared person and any physical person who has suffered direct prejudice as a consequence of an enforced disappearance". (UN 2006)

It is important to understand that an enforced disappearance profoundly affects both the disappeared person and the families of the disappeared. This is why, when defining a victim, the forcibly disappeared person should not be the only focus, since the violation affects the entire nuclear family. Herein lies the importance that State guarantees of the rights of victims should include both the disappeared person as well as any other person that is directly affected by an enforced disappearance. It is important that the affected family members feel supported and that their suffering can be claimed as a violation of their rights.

It is also essential that States give the right to recognize victims as such; it is the only way to make amends for the violations caused. Enforced disappearance is a problem that causes many people to suffer. The State is directly responsible for people's rights, which is why it should make amends with the victims and ensure that the guilty parties be judged and punished.

According to Article 24.2: "Each victim has the right to know the truth about the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person. Each branch of the State will take adequate measures in this respect." (2006)

This point of the article in the convention speaks about the right to know. All victims of enforced disappearance should find out the truth about the circumstances and fate of the disappeared person. Unfortunately, in many cases the very essence of what is a disappearance makes it impossible to find out the truth and the circumstances of the disappeared person. Enforced disappearance brings victims into a circle of lies, in which the absence of information is the most worrying. The minimum that the State should do is offer victims a sense of justice, to at least try to clarify the cases of the disappeared, employing all possible methods to make this happen.

Another of the rights spoken about in this article is the right of victims to actively participate in the investigation. That is, to be informed of all the procedures being done to find either the disappeared person or those responsible for the crime. It is the State's responsibility to keep the families of the disappeared persons informed of the progress and results of the investigation, and in many cases to provide security to them during this process.

With the passing of the years and thanks to international documents, some States have legal obligations in the case of an enforced disappearance, and one of them is the investigation to be able to offer information on the whereabouts of the disappeared person and why they were disappeared. Only some States have committed themselves to obligations that originate legally binding norms. This is why victims have to turn to international norms that offer complete protection against enforced disappearances. It is completely necessary to be conscious of this crime, and that all States provide regulation of national rights that oblige authorities to participate in the search for disappeared persons, guaranteeing the individual and collective dimension of the right to the truth.

According to Article 24.3: "Each State Party will adopt all of the appropriate measures for the search for, localization and liberation of disappeared persons and, in the case of death, for the search for, the respects to and the restitution of the remains." (2006)

This paragraph of the article speaks about the responsibility of each State Party to investigate and determine the state and location of the disappeared person. In the case that the disappeared person has passed away, States have the obligation to receive the person's body, to give it to the family members. States that have to deal with victims of enforced disappearance often adopt legislation and national mechanisms, but there is a serious problem: when States do not have the means to protect victims of disappearances, families become desperate and pressure States to adopt the measures given in the International Convention for the protection of all people from enforced disappearance.

As previously, mentioned, this crime causes two-fold suffering, both to the disappeared person as well as to his or her family. This is why this article of the Convention speaks about the right those affected have that each State Party give all the necessary effort for the search, localization, and liberation of the victim. To clarify, this is the only way to end the suffering of the allegedly disappeared persons.

The problem that comes up in the majority of countries is that investigations are not done solely to find a person for humanitarian reasons, for which international norms have been created that try to make all States aware of the importance of doing justice for all those people vulnerable to human rights violations. The obligations of the States to investigate are based, in the majority of cases, on the international norms of the family's right to know the truth about the disappeared person.

Article 24.4 indicates the following obligation: "State Parties will ensure that their legal system guarantees the victims of enforced disappearance the right to reparation and a swift, just and adequate compensation." (2006)

This point in the article speaks about the rights that victims have to reparation of the damages caused. This is the only way for the State to carry out justice against violations, since in the cases of enforced disappearance the protagonists have usually been State agents or employees. To analyze victims' right of reparation it is first necessary to understand its meaning:

"Reparation" is understood as the concrete means that should be taken to relieve the suffering of victims and their families, and should help them to rebuild their lives. The measures for reparation have the goal of "extinguishing by whatever means possible that consequences of the illegal act and reestablishing the situation that would have existed if the crime was never committed" (Amnesty International, 2011, p. 53)

It has been progressively confirmed in International Rights, the rights of victims of human rights violations to obtain reparation. This reparation can be given according to the case of the violation, both in regards to economic reparation as well as symbolic aspects that cause in victims the satisfaction of legal, satisfying justice.

States should offer this kind of compensation to families of the disappeared as a way of recognizing the State's responsibility. It is important to clarify that in order to repair the damage done to families, more than financial compensation, I believe it would be fundamental to repair the psychological aspects of the traumas that these kind of violations have caused in their lives, that the goal be to rehabilitate the people who have suffered these consequences. In that sense it is necessary for States to be aware of the damage caused to the victims in regard to the violation of their dignity and human rights when the crime of enforced disappearance is committed. As reparation to the victims, States should appropriate means to guarantee their safety, and physical and psychological wellbeing. Furthermore, the victims should enjoy special attention and consideration from them.

According to Article 24.5: "The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- a) Restitution;
- b) Rehabilitation;
- c) Satisfaction, including restoration of dignity and reputation;
- d) Guarantees of non-repetition. (2006)

Once the States' obligation to provide reparation to the victims of human violations is clearly determined, as in the case of enforced disappearances, this article will analyze the right to the timely reparation in terms of restitution, re-adaptation, satisfaction, and the guarantee of no repetition.

The just thing is for victims of human rights violations receive fair and equal reparation from the State. Throughout the years, it has been possible to observe the fulfillment of reparations to victims by some States, one case being the sentence of Velásquez Rodríguez vs. Honduras (1988) for the crime of enforced disappearance, for which the country's

security forces were responsible. The Inter-American Court of Rights declared the following: "The State has the legal duty to reasonably prevent human rights violations, to seriously investigate the violations to the best of their ability...in order to identify those responsible, sanction them appropriately, and to ensure the victims an adequate reparation."²⁴

It is the State's responsibility to provide reparations to all the victims of human rights violations, even more so in the case of enforced disappearance when carried out by state agents. It is necessary to be aware of all the damages caused by these kinds of violations, such as those psychological, financial, and security, among others. Once States become aware of these damages, they should try to the best of their ability to guarantee that it will not happen again, and for cases that have already happened, guarantee that the measures of reparation will be fulfilled. Unfortunately, to date, no country has legally adopted a plan to offer humanitarian or economic assistance; this only happens thanks to international organizations that have intervened.

Article 24.6 states:

Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights. (2006)

The point of the article clearly speaks about the legal rights of disappeared persons, since there are many administrative situations of the families of disappeared people that are in the air since they do not have a clear answer to what could have happened to the disappeared

²⁴ The Velásquez Rodríguez vs. Honduras case, Sentenced 29 July 1988. Series C, no. 4

person. It is necessary to analyze the situations in which victims find themselves in social, financial, family and property areas; and how the State should have the obligation to provide attention in these spaces.

Determining the legal identity of the disappeared person is essential. A disappeared person cannot be declared dead; if there is no legal identity there are administrative conflicts. To deal with this, some countries have created the option of giving families a certificate of absence due to enforced disappearance, which certifies that the person is disappeared and cannot be declared dead, rather than issuing a death certificate for the disappeared person, which, in my opinion, causes more psychological damage in family members since in some way they are accepting something that cannot be verified.

State Parties should establish procedures to recognize a legal situation for the disappeared person, issuing a certificate of absence that permits the administration of property and assets and look out for the needs of those who depend on such persons. This certificate should give rights to the person's family members and dependents to economic assistance and social benefits. (Amnesty International, 2011, p. 54)

According to Article 24.7: "Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of forced disappearances and the fates of the disappeared persons, and to assist to victims of enforced disappearance."

This point in the article speaks about the obligation of guaranteeing the Right to Association. Unfortunately, there are only a few mechanisms that families can resort to in order to establish the circumstances of disappeared persons. Due to the lack of initiative of

each State in forming support groups, most families of disappeared persons usually turn to other victims with urgent humanitarian needs to create organizations and feel supported.

2.3 Analysis of the International Convention for the Protection of All People from Enforced Disappearances

It is important that States have a guide to combat the offense of enforced disappearance, since it is an obligation to protect people against this crime. It requires a definition of universally consensual laws in order to defend the principal rights of life, for which it is necessary to have a clear definition of enforced disappearance and what mechanisms can be followed to prevent and penalize it. The Convention declared a new human right, the right to not be subject to enforced disappearance.

The International Convention for the Protection of All People from Enforced Disappearances is a legally binding international document that seeks to prevent this phenomenon and to recognize the right of victims and their families to justice, truth, and reparation. The adoption of this document represents an important step for the international community to put an end to this practice, which constitutes the simultaneous violation of several human rights.²⁵

The UN General Assembly adopted the Declaration on the Protection of All People from Enforced Disappearances on December 18, 1992. The General Assembly adopted, on December 20, 2006, the International Convention for the Protection of All People from Enforced Disappearances. On February 6, 2007, this Convention was opened to

²⁵ ACNUDH. International Convention for the Protection of all People from Forced Disappearances. Available at: <http://acnudh.org/wp-content/uploads/2010/10/Carta-Desapariciones-Forzadas-ESPA%C3%91OL-FINAL.pdf>

signatures.²⁶ To date, 94 States have signed and 50 have already ratified it. The Convention took effect on December 23, 2010. In Latin America, it has been ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay.²⁷

Ecuador signed this convention on May 24, 2007 and ratified it on October 20, 2009. According to the original treaty of the Convention, the two following articles indicate Ecuador's participation:

Article 31

In accordance with the provisions of article 31 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance, the Republic of Ecuador recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of violations of provisions of this Convention by this State Party.²⁸

Article 32

In accordance with the provisions of article 32 of the Convention for the Protection of All Persons from Enforced Disappearances, the Republic of Ecuador recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under the Convention.²⁹

²⁶ Ibid.

²⁷ U.N. United Nations Treaty Collection. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

²⁸ Ibid.

²⁹ Ibid

It is very positive that Ecuador has ratified this Convention in order to count on an international organization for support in the cases of enforced disappearances in the country. This is, without a doubt, a great advancement for the country. It is important to name and analyze the points I consider to be the most significant in this Convention in order to get a clearer idea of the measures taken in it as an international framework.

It is important to emphasize that the Convention takes into account the Universal Declaration of Human Rights, as well as the Declaration for All People against Enforced Disappearances approved by the United Nations General Assembly in 1992.

Article 1 expresses that:

1. No one shall be subjected to an enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other kind of public emergency, may be invoked as a justification for enforced disappearance. (UN, 2006)

The Convention alleges that no individual should be subjected to enforced disappearance for any reason. There is absolutely no justification for such an attempt against human rights, even in a State emergency, whatever it may be. With this in mind, States that have ratified this Convention are obligated to fulfill it. However, in some of them there are still many cases of enforced disappearance. It is urgent that the UN go beyond its Convention to create a sub-organization that is in charge of controlling such acts, otherwise the Convention is limited to good intentions without pertinent enforcement. What is important to highlight in this article is that it declares the new human right to not be subjected to enforced disappearance.

According to Article 2

For the purpose of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such person outside the protection of the law. (2006)

There is a clear definition of enforced disappearance, which helps all States to clarify the situation of a disappeared person, but it is important to keep in mind that enforced disappearance refers directly or indirectly to the deprivation of liberty by State agents, recognizing that in many cases these agents can use intermediaries to justify the act. This is why the topic of enforced disappearance is more complicated than imagined, because it implicates third parties that have the State's authorization.

According to Article 4: "Each State Party will take the necessary measures so that enforced disappearance be standardized as a crime in its penal law." (2006) In the case of Ecuador, five years have had to pass since the Convention's ratification for the law to be standardized. Hopefully it will be applied efficiently, with no obstacles and bureaucratic procedures, to be of help to victims and their loved ones.

According to Article 5: "The generalized or systematic practice of enforced disappearance constitutes a crime against humanity just as it is defined in applicable international law and entails consequences foreseen by applicable international law." (2006). Those consequences are indicated in the following article of the Convention.

Article 6:

1. Each State Party shall take the necessary measures to hold criminally responsible at least:
 - a. Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
 - b. A superior who:
 - i. Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her authority and control that were committing or about to commit a crime of enforced disappearance;
 - ii. Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
 - iii. Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;
 - c. The subparagraph b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.
2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offense of enforced disappearance. (2006)

In the previous article, the Convention clearly indicates that state agents or natural personas who keep silent or do not take actions against the crime of enforced disappearance instantly become accomplices. It is of great importance that the country have an organization that takes charge of following up on these cases so that they can be solved, otherwise these cases get stuck in the middle of bureaucratic paperwork by the same State workers, without seeking a solution and help for the families of the victims.

The following is indicated in Article 9:

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:
 - a. When the offense is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - b. When the alleged offender is one of its nationals;
 - c. When the disappeared person is one of its nationals and the State Party considers it appropriate;
2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offense of enforced disappearance when the alleged perpetrator is present in any territory under its jurisdiction, unless it extradites or surrenders him or her over to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.
3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law. (2006)

The previously cited article is extremely important to expressing the fact that if a natural person or state agent, author of or accomplice to enforced disappearance, is found outside of the State in which the crime was committed, it does not impede his or her detention and trial, unless he or she has been extradited to another State.

Article 14 states:

1. State Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject it to conditions. (2006)

This article is one of the most relevant because it points out that States that have vindicated it are compromised to provide all the legal aid and evidence that help solve cases of enforced disappearance. It was high time that Ecuador be among these States, but it is fundamental that first there exist a legal reform on the topic with the now standardized law, otherwise the States of the Convention cannot do much.

It is also important to keep in mind Article 16, which states:

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law. (2006)

If a State Party extradites a person, knowing that he or she could become a victim of enforced disappearance, this State becomes a part of the crime.

According to Article 17:

1. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:
 - a. Establish the conditions under which orders of deprivation of liberty may be given;
 - b. Indicate those authorities authorized to order the deprivation of liberty;
 - c. Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;
 - d. Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;
 - e. Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;
 - f. Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
3. Each State Party shall assure the compilation and maintenance of one or more up-to-date registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. This information will contained therein shall include, as a minimum:
 - a. The identity of the person deprived of liberty;

- b. The date, time, and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- c. The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- d. The authority responsible for supervising the deprivation of liberty;
- e. The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- f. Elements relating to the state of health of the person deprived of liberty;
- g. In the event of death during the deprivation of liberty, the circumstances and causes of death and the destination of the remains;
- h. The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer. (2006)

The previously mentioned points are the key foundations that our Ecuadorian State should follow when controlling enforced disappearances. That is how the legal justifications for deprivation of liberty should be explicitly stated in our legislation. A fundamental point is the selection of the profile of an ideal authority, trained and honorable, who can ensure that deprivations of liberty are legal and do not attempt against human rights. This is truly a challenge, since, unfortunately, some of the authorities in control are not scrupulous or humane, which is why the whereabouts of many people are unknown today. Another relevant aspect is that the State Party regulate that the places of deprivation of liberty are legally recognized. It is definitely urgent that the correct selection of authorities be made in order for the country to grow and to improve compliance with citizens' human rights.

Next, Article 18:

1. Subject to Articles 19³⁰ and 20³¹, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person

³⁰ Article 19

deprived of liberty, their representatives or their counsel, access to at least the following information:

- a. The authority that ordered the deprivation of liberty;
 - b. The date, time, and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
 - c. The authority responsible for supervising the deprivation of liberty;
 - d. The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and authority responsible for the transfer;
 - e. The date, time, and place of release;
 - f. Elements relating to the state of health of the person deprived of liberty;
 - g. In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.
2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty. (2006)

-
1. Personal information, including medical or genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offense of enforced disappearance or the exercise of the right to obtain reparation.
 2. The collection, processing, use and storage of personal information, including medical or genetic data, shall not infringe or have the effect of infringing on the human rights, fundamental freedoms or human dignity of an individual. See: UN. United Nations Treaty Collection. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

³¹ Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or the safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.
2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances. See: UN. United Nations Treaty Collection. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

It is fundamental that families and loved ones of the victims of enforced disappearance know that they have the complete right that the State provide them with all the information concerning the crime. Unfortunately, in the majority of cases there are obstacles, prolonging many cases to years of uncertainty and suffering by family members. This should not happen, it is the obligation of State authorities to provide help to families affected by an enforced disappearance, rather than concealing information that is fundamental when trying to resolve a case of this nature.

Next, Article 23 states:

1. Each State Party shall ensure that the training of law enforcement personnel, 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 includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
 - a. Prevent the involvement of such officials in enforced disappearances;
 - b. Emphasize the importance of prevention and investigations in relation to enforced disappearances;
 - c. Ensure that the urgent need to resolve cases of enforced disappearance is recognized;
2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearances are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.
3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy. (2006)

The awareness of this Convention by the authorities in charge of the law is key to preventing the crime of enforced disappearance, without putting to one side the formation

that they should receive. It is indispensable that these authorities be subjected to psychological and cognitive exams, keeping in mind that compliance with the law is in their hands, and therefore the respect for human rights.

In order for there to be greater control by the State in regards to enforced disappearances, it is necessary to carry out a detailed study on existing cases of enforced disappearance that are connected to authorities and the violation of human rights, since if this aspect is not controlled, it is very probable that enforced disappearance will be encouraged within the circle of authorities.

Article 24 states:

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return the remains.
4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.
5. The right to obtain reparation referred to in paragraph 4 of this article covers all material and moral damages and, where appropriate, other forms of reparation such as:
 - a. Restitution;
 - b. Rehabilitation;
 - c. Satisfaction; including the restoration of dignity and reputation;
 - d. Guarantees of non-repetition.

6. Without prejudice to the obligation to continue with the investigation until establishing the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.
7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance. (2006)

That is how victim is understood, both as the person forcibly disappeared as well as the people directly affected, such as family and loved ones. The State Party is obliged to support the victims and complete all the permitted legal actions to resolve the case. All the victims of enforced disappearance have the right to reparation which, as previously indicated, implies restitution, rehabilitation, restoration of dignity and reputation, as well as the guarantee of non-repetition of the offense.

It is important to seek justice for all the victims of enforced disappearance. The duty of the State is reparation for all the damages caused to the victims of this crime. There are many aspects to be considered when treating a victim of enforced disappearance roughly, the most important of which are mainly trying to get answers and find the guilty parties, find the disappeared person alive and if this is not possible at least find the body, compensate for the psychological and financial damage that a disappearance causes a nuclear family.

In many cases of enforced disappearance, no reparation is enough since the victims who are family members of the disappeared person have lost a relative, thereby losing the most precious human right, life, which is irreplaceable.

The following is indicated in Article 25:

1. State Parties shall take the necessary measures to prevent and punish under its criminal law:
 - a. The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance, or children born during the captivity of a mother subjected to enforced disappearance;
 - b. The falsification, concealment, or destruction of documents attesting to the true identity of the children mentioned in the subparagraph a) above.
 2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and return them to their families of origin, in accordance with legal procedures and applicable international agreements.
 3. State Parties shall assist one another in searching for, identifying, and locating the children referred to in paragraph 1 (a) of this article.
 4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name, and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.
 5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given weight in accordance with the age and maturity of the child.
- (2006)

Children are the most vulnerable victims in cases of enforced disappearance, whether because they are disappeared and are direct victims or because one of their parents is disappeared, being indirect victims. This is why it is incredibly important that States give priority to their defense, since it becomes a complex topic when children are found who are

orphaned due to a crime of enforced disappearance. The duty of the State is to find their families and put these children in safekeeping.

According to Article 30:

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.
2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:
 - a. Is not manifestly unfounded;
 - b. Does not constitute an abuse of the right of submission of such requests;
 - c. Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
 - d. Is not incompatible with the provisions of this Convention; and
 - e. The same matter is not being examined under another procedure of international investigation or settlement of the same nature;
 - f. it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.
3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed. (2006)

According to the previous article, the Committee will provide assistance to the family members of victims of enforced disappearance, as well as their legal representatives and counsel, which will be governed according to the previously stipulated considerations. The intervention of the Committee will depend on the case being presented first to the State authorities responsible for the disappearance.

According to Article 31:

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party, which has not made such a declaration.
2. The Committee shall consider a communication inadmissible where:
 - a. The communication is anonymous;
 - b. The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
 - c. The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where
 - d. All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.
3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party

concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.
5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

As expressed in Article 32:

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party, which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

The following is stated in Article 37:

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- a. The law of a State Party;

b. International law in force for that State.

According to what is stated in Article 39:

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

According to Article 43:

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

2.4 The Importance of Criminalizing and penalizing the offense of Enforced Disappearance as an individual offense.

This subchapter intends to demonstrate through concepts and examples the importance of the criminalization of the offense of enforced disappearance. Throughout history, several countries have been victims of crimes against humanity. The true problem has been the lack of laws that punish those guilty. As mentioned in previous subchapters, enforced disappearance is usually caused by State agents, which makes it even more difficult when searching for those responsible and bringing them to justice. The countries that have not criminalized this crime within their judicial system are exposed to the perpetuation of this kind of offense and victims tend to turn to international organizations for help.

In order to understand the importance of criminalizing of this offense, it is first necessary to clarify the concept of criminality.

Criminality is the first element of an offense. It derives from the principle *nullum crimen sine lege* (a legal principle), that guarantees that only the conducts previously described in penal code as offenses will be punished as a crime (guarantee function). When writing penal code, the legislator selects from a group of illegal conducts, using the criteria of minimal intervention, the most serious conducts that infringe upon the most important legal rights and sanctions them with a penalty. (De la Cuesta, 1996, p. 69)

To De la Cuesta, criminality is the primary method of convicting an offense, which serves as a description of the same. That is, the criminalization describes the offense so that legislators and judges can understand it and they in turn can match offenses to illegal conducts. Without criminality it is not possible to define an offense and therefore is not possible to convict it.

Throughout history, we have observed that the legal description of the offense of enforced disappearance has been non-existent in most countries, despite the high rates of enforced disappearances in the world. The lack of information impedes the use of legal resources and the guarantees of pertinent legal procedures. When there is no criminalization within the legal field of a country, legal mechanisms of protection in favor of victims become non-existent, and this leads to the perpetration and repetition of the offense, placing the victims of enforced disappearance in a situation of extreme defenselessness.

In article 4 of the United Nations Declaration on the protection of all persons from enforced disappearances, it states: "All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". In 1995, the Working Group on Enforced or Involuntary Disappearances approved a general comment on that provision, which pointed out the obligation to criminalize enforced disappearance as a separate offense in national criminal law "applies to all States, independently of whether or not there are cases of enforced disappearance. It is not enough that governments refer to

preexisting criminal definitions related to the enforced deprivation of liberty, torture, intimidation, the excessive use of violence, etc. In order to comply with article 4 of the Declaration, it should be criminalized as a separate offense the act of enforced disappearance itself, in accordance with the provisions of the Declaration" (UN, 2010, 4)

Enforced disappearance is a serious problem in Latin America, which is why it is necessary to analyze the criminal definition of enforced disappearance in the Latin American countries with the most victims of this practice. It is important to emphasize that when this problem of enforced disappearance began, it was not a criminalized criminal law in any of the national legal orders when a trial or investigation initiated, which is why an analysis of events was carried out based on the definition of abduction or illegitimate deprivation of liberty.

Criminalizing enforced disappearance, as an individualized offense is the only way to end impunity. It is important to recognize that the criminalization of enforced disappearance is a very delicate matter because of the ways States can interpret it. It is necessary to try and create a law in all countries that establishes that enforced disappearance is an offense and that its definition be the same as that of the International Convention, or at least, as the Working Group on Enforced Disappearances states: "Any definition should contain at least three of the following accumulative elements: a) deprivation of liberty against the will of the person concerned; b) the participation of governmental agents, at least indirectly by acquiescence; and c) denial to reveal the fate or whereabouts of the person concerned" (2010, 7), otherwise if a State criminalizes enforced disappearance as an individualized offense, but uses a different concept of it, the legal effect sought by the Convention is lost.

It is necessary that criminalization of enforced disappearance specify the established elements of the offense in its contents, so that it can be judged appropriately. Next will be detailed the primary elements of the offense considered necessary by the Working Group on Enforced or Involuntary Disappearances:

- a) Deprivation of liberty

- b) Perpetrators of the offense
- c) Denial to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person
- d) Removal of the disappeared person from the protection of the law and the intention of the perpetrators. (2010, 7:8:9)

States cannot limit the punishment of enforced disappearance to only the cases that constitute crimes against humanity as set forth in the Statutes of the International Court of Justice, but rather must include in the definition of the offense all acts of enforced disappearance. (2010, 6) Enforced disappearance is an act that violates a great many human rights. This is why it is important that States incorporate the offense of enforced disappearance into their national laws, so that it can include all of the violated human rights in a single criminal law and be penalized appropriately.

The criminalization of enforced disappearance varies by country, since different norms exist regarding the offense. That is why it is necessary to do a brief analysis of the legal situation in Latin American countries that have suffered Human Rights violations throughout their history and have been the primary victims of enforced disappearance. An analysis will be done on Chile, Argentina, Mexico and Ecuador, because of the importance the crime of enforced disappearance has had on legal practice and norms in those countries.

Chile has ratified the Inter-American Convention on Enforced Disappearance of Persons (ICEDP) through Law 20.357³² on 18 July 2009 and in article 6 of that law criminalized enforced disappearance of persons as a crime against humanity (art. 1) in the cases in which the following cases are met: "...1st. That the act be committed as part of a generalized or systemic attack on a civilian population; 2nd. That the attack referred to in the previous number be a policy of the State or its officials; organized armed groups that, under the direction of a responsible command, exercise control over a territory that allows them to carry out military

³² Law 20.357: Criminalizes the crimes against humanity and genocide and war crimes and offenses (passed on 26 June 2009, published 18 July 2009).

operations, or of organized groups that illegally hold power that favors impunity of their acts."(1st article). (Ambos; Bohm, 2009, 5)

After suffering a military regime that left thousands of victims of enforced disappearance, with the help of international organizations that fight for Human Rights and primarily with the permanent and systematic work of groups formed by family members of the victims, Chile has been able to carry out justice against enforced disappearance, constantly fighting against impunity of Human Rights violations. It is necessary that the State be directly linked to the community's work to defend people's rights. A very important step was taken in the State of Chile when Enforced Disappearance was criminalized as a crime against humanity.

In Argentina, enforced disappearance as individual criminal conduct against humanity was incorporated into national law in January 2007, through Law 26.200, which provides for the implementation of the Statute of the International Criminal Court (SICC) and states in art. 2 to art. 7, ap. 1 i) and ap. 2 i) of the Statute. The kind of crime is that established in the SICC, while the punishment established in art. 9 of Law 26.200 are from 3 to 25 years. The ICEDP20 and the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED) 21 were incorporated into national law in 1995 and 2007, respectively. (2009, 5)

Argentina, like Chile, was victim to a military regime that left a large number of cases of human rights violations. Incorporating enforced disappearance as individual conduct of crime against humanity was a great step taken by Argentina, but in order for there to be a true fight against this crime the Argentine State is obliged to investigate all the cases of enforced disappearance.

Even though countries like Argentina have decided to criminalize enforced disappearance in their criminal code, there are still several inconveniences, such as the application and interpretation of the law. Despite having signed several international agreements to move ahead within a framework, in order to meet the goal of respecting human rights and try to eradicate the crime of enforced disappearance, each State applies national criminal law in a

different way. In Argentina's case, the lack of clarity of the definition of enforced disappearance could cause an interpretive void, which would endanger justice being done during a trial.

The State of Mexico criminalized the offense of enforced disappearance in the Federal Criminal Code in April 2001, which establishes in article 215-A that the person has committed the offense of enforced disappearance is, "the public servant who, independently of having participated in the legal or illegal detention of one or more persons, promotes or deceitfully keeps him or her concealed by any kind of detention."³³

In Mexico there is also the problem of the interpretation of the criminal definition criminalized as enforced disappearance, since it only refers to "public servant" as the perpetrator of the offense, but cases of enforced disappearance can be done by persons who are not necessarily public servants but rather act secretly under the State's orders. Furthermore, internationally the perpetrators of the offense are known as officials of the State, which includes any person who is under the State's orders. In Mexico's case, using the term public servant reduces it to a limited group, referring only to those employed within the executive branch.

According to a United Nations Working Group on Enforced and Involuntary Disappearances report, those cases in which national criminal law did not sanction the acts committed by persons that acted in the name of the government or directly or indirectly abetted without necessarily receiving orders or instructions from government officials to commit the offense, the Working Group considers the definition incomplete and it should consequently be modified. The Working Group has likewise indicated that "it agrees with the provisions in article 3 of the International Convention in the sense that States shall take appropriate measures to investigate acts similar to enforced disappearance committed by persons or groups that act without the State's authorization, support or consent and prosecute those responsible." (UN, 2010, 8)

³³ Coordination of the National Campaign Against Enforced Disappearance. (2014) Report on enforced disappearance.

In regards to federal bodies, out of 32 there are only 19 federal bodies currently criminalized as an offense of enforced disappearance³⁴ and the states of Chiapas and Guerrero have a special law³⁵.

In the last few years, the rates of enforced disappearance have notoriously increased in Mexico, due to the deficient legislation in that regard, even though the Mexican State forms a part of the primary international organizations related to enforced disappearance. It is unfortunate that federal law and State legislations of States do not uphold the standards of international organizations, and in the parts of the country where there is an absence of laws on enforced disappearance there is a higher rate of offenses of this kind.

In Ecuador, on August 10, 2014, the new Comprehensive Criminal Organic Code was approved, whose purpose is to regulate State power and criminalize legal infractions. It is important to mention that in the new Comprehensive Criminal Organic Code, there is an adaptation of the national regulations of international compromises, which in the case of enforced disappearance is a great advancement in the Ecuadorian justice system.

New, relevant criminal conducts that are criminalized are adapted to international regulations. New chapters are introduced, for example, the one that refers to crimes against humanity and serious violations of human rights. In other cases, when international documents signed by Ecuador establish open and imprecise criminal descriptions, the criminal descriptions have been designed considering

³⁴ The states that have criminalized this offense in their respective Legal Code: Aguascalientes, Baja California, Campeche, Chihuahua, Colima, Distrito Federal, Durango, Guanajuato, Hidalgo, Nayarit, Nuevo León, Michoacán, Oaxaca, Puebla, San Luís Potosí, and Zacatecas.

³⁵ The law to Prevent and Sanction Enforced Disappearance of Persons in the state of Guerrero (10/Oct/2005) and the Law to Prevent and Sanction Enforced Disappearance of Persons in the state of Chiapas (11/Sept/2009).

constitutional guarantees, the effectiveness of combating the offense and the precision in elements of the criminalization. (COIP, 2014, p. 22)

For the first time in Ecuador, on August 10, 2014, the criminalization of the infraction of enforced disappearance was approved. Before the offense was criminalized, the family members of victims in Ecuador experienced difficulties and problems when taking it through a legal process. Criminalizing enforced disappearance as an offense within the Comprehensive Criminal Organic Code is a great step taken by Ecuador on the topic of Justice and Human Rights, since that is how Ecuador's international compromises are met.

Article 84- Enforced disappearance.- The State official or the person acting with their consent, by whatever means, subjecting a person to the deprivation of liberty, followed by the lack of information or refusal to acknowledge the deprivation of liberty or to inform of the whereabouts or destination of a person, which impedes the exercise of constitutional or legal guarantees, will be punished with a sentence of deprivation of liberty for twenty-two to twenty-six years.³⁶

Only an adequate administration of Justice in Ecuador can guarantee that Ecuadorians' Human Rights will be respected. The criminalization of enforced disappearance will allow justice to be carried out and for the people responsible for violating people's basic human rights, as in the case with enforced disappearance, to be identified, declared guilty and sentenced.

Unlike the other countries analyzed, Ecuador has criminalized Enforced Disappearance in very clear terms, being broad enough to include enforced disappearances committed as part of a generalized attack and as isolated events. The definition Ecuador gives to enforced disappearance contains the four primary elements that constitute an offense, which are the

³⁶ Article 84 of the Comprehensive Criminal Organic Code of Ecuador, 2014.

deprivation of liberty, participation of government officials, refusal to reveal the fate and whereabouts of the disappeared person, and removal of the person from the protection of the law.

2.5 State Responsibility in the Case of the Disappearance of Persons by State Officials or Institutions

All States have the responsibility to legally protect human rights, every human has those rights simply by being, which no one can take away or grant. They are inalienable. The way in which States protect the human rights of their inhabitants is assuring that the constitution includes laws that protect citizens, that authorities have to respect human rights and that the State has to ensure that this happens, creating appropriate policies that guarantee the enjoyment of human rights.

Since enforced disappearance is one of the major violations of human rights done by State officials or persons acting in their name, it is necessary that the State be responsible for this crime, trying to find the best solutions and recompense for the victims. This subchapter analyzes the responsibility that the State should assume in cases of enforced disappearance of persons, which are often in the hands of international organizations.

Systems of international protection, such as judicial systems, include three elements: regulations, organic, and procedural. In regards to regulations, international instruments have recognized the values involved (usually in the preamble), the general obligation of States in terms of human rights, guaranteed rights and liberties, certain parameters on regulation interpretation and criteria for the restriction of rights and conflict resolution in the case of a clash of rights. Instruments create organizations for the protection of rights, signal how they integrate and their functions to carry out. (Nash, 2008, p.205)

What Dr. Claudio Nash suggests relates to the analysis of different systems that use international organizations to control the protection of human rights by States. International treaties are meant to oblige States to comply with respecting human rights, creating international organizations for their protection.

In the case of enforced disappearances, international instruments have worked hard to protect victims from this offense, creating organizations and treaties that ensure protection from acts of this nature. The way that they act tries to ensure that States comply with the measures and resolutions they have dictated. What the State must do when there is an enforced disappearance is principally to help find the disappeared person, as in cases of enforced disappearances caused by State officials or persons who act in their name. It is necessary to tell the truth and say whether or not the disappeared person was detained and the reason for the detention. It is the State's responsibility to help victims' family members and to seek justice in order to resolve these cases. According to Ewoud Plate, the duties of the State in cases of enforced disappearance are:

- To help find the disappeared person;
- Say if the person is detained;
- Say why the person is detained;
- Say where the person is;
- Help families;
- Exhume known common burial sites;
- Investigate the case to determine the truth;
- Ensure the body is returned to the family in the case of death;
- Protect family members;
- Protect the people and organizations working the case;
- Help families with administrative paperwork resulting from the disappearance;
- Make it possible to try a crime of enforced disappearance;

- Investigate the evidence to determine those responsible;
- Bring criminals to justice;
- Fight against impunity;
- Offer victims a sense of justice;
- Determine its own responsibility in enforced disappearance;
- Acknowledge its own crimes and openly admit that the disappearance was a crime;
- Offer victims compensation;
- Not cause more disappearances;
- Make it impossible for new disappearances to occur. (Plate, 2009, p. 33)

Ewoud Plate describes in detail how a State should act in a case of enforced disappearance. Unfortunately, the majority of States do not comply with all of the tasks, which include the needs of the families of victims of enforced disappearance, which are considered moral obligations. It is necessary to emphasize that for States to comply with the protection measures for victims of enforced disappearance it is essential that there be laws criminalizing it to create legal obligations for that State. That is why countries' criminalization of enforced disappearance is so important; otherwise the previously mentioned tasks will be merely necessities and not regulations that obligate the State.

In the following table, Ewoud Plate describes where to find the regulations that create State obligations in terms of enforced disappearances, according to the dimensions to which they are directed:

Table 3.³⁷ State Obligations

The dimension...		
Human suffering	Criminal responsibility (of the primary culprits)	State responsibility
correspond to regulations that create State obligations to:		
<ul style="list-style-type: none"> • Investigate (to find the disappeared person) • Prevent disappearances • Help and alleviate the victims. 	<ul style="list-style-type: none"> • Investigate (to determine who is responsible); • Pursue the perpetrators; • Punish those responsible. 	<ul style="list-style-type: none"> • Investigate (to find the disappeared person); • Prevent disappearances; • Help victims; • Investigate (to determine who is responsible); • Pursue the perpetrators;

³⁷ Table authored by Plate on where to find the regulations that create State obligations in terms of enforced disappearances (Plate, 2009, p.35).

		<ul style="list-style-type: none"> • Punish those responsible (including all methods to prevent impunity); • Investigate (to determine if the State is responsible); • Offer effective solutions if no obligations are respected; • Offer compensations to the victims <p>(Compensation, rehabilitation, satisfaction, restitutions, guarantees of no repetition).</p>
... That can be found in		
<ul style="list-style-type: none"> • National laws; • Humanitarian human rights 	<ul style="list-style-type: none"> • National criminal law; • International criminal law (the Rome Statute in 	<ul style="list-style-type: none"> • National laws that guarantee human rights (constitutions or special projects on

<p>(the Geneva Convention and additional protocols);</p> <ul style="list-style-type: none"> • Some aspects of international human rights law. 	<p>particular);</p> <ul style="list-style-type: none"> • Some aspects of international human rights law. 	<p>rights law);</p> <ul style="list-style-type: none"> • International human rights legislation.
--	---	---

All States are obliged to comply with the laws established in each country, but beyond that there are international instruments, agreements that bring countries together to establish international regulations that must be fulfilled by all countries that sign the agreement. The offense of enforced disappearance has advanced legally in States thanks to international instruments, since the countries that have criminalized this offense have done so with their help, and partly due to pressure from them. Even in the countries that have not criminalized the offense of enforced disappearance the victims have benefited from these instruments, since they can count on international assistance in continuing with the search.

In his analysis, Ewoud Plate points out that some instruments contain regulations that create obligations to cope with the humanitarian aspect of enforced disappearances. Some are focused on simply assuring that criminals are brought to justice (criminal dimension). International human rights instruments contain regulations pertinent to State responsibilities (violation of human rights) but to other dimensions as well. (2009, p.37)

Another function of international instruments in the case of enforced disappearance is to seek justice to determine the responsibility of the State in concrete cases. In the majority of countries justice is not carried out in regards to making the State responsible for committing the offense of enforced disappearance. It searches for guilty parties but at trial the State rarely gets involved, even in countries where the offense is criminalized. The State does not admit guilt. That is why international instruments are so important, since on many occasions they examine particular cases of persons who have been victims of human rights violations and have exhausted all possibilities of justice within their country.

Legally binding instruments that define the violation of enforced disappearances are the Inter-American Convention on Enforced Disappearances of Persons and the Convention for the Protection of All Persons from Enforced Disappearances. The latter is the only one that has an organization (the Committee on Enforced Disappearances) to control compliance with the Convention's regulations. There are other organizations that monitor human rights (human rights treaties and tribunals) that have mandates to ensure compliance of instruments that do not specifically refer to enforced disappearances, but protect human rights that are violated by an enforced disappearance. (2009, p.143)

2.6 CONCLUSIONS

Throughout this chapter there has been a deep analysis of the human rights situation around the world and primarily at a national level. This analysis is important because the offense of enforced disappearance is based on a constant violation of human rights, as was seen in the first chapter. It is essential that human rights not only be looked at in the political sense but also in the legal sense, so that they can be defended legally from any threat of violation.

In the first subchapter the constitutionalization of human rights in Ecuador was analyzed. One of the points to emphasize on this topic is that in Ecuador legal limits on state power were established, which is a great advantage in regards to enforced disappearance since if there is any abuse of state power very rarely is there any justice done for the offense of forced disappearance. Ecuador's constitution intends for all constitutional rights to be fully enjoyed by its citizens. The main purpose of the State should be to guarantee the rights of all Ecuadorians and that is why there are international instruments, to ensure that States Parties comply with the duty to protect human rights.

As has been analyzed in this chapter, many times States' internal guarantees are not enough to defend and guarantee human rights, as is the case with enforced disappearance. This is why it is so important that Ecuador recognized the Open Clause on Human Rights, which strives for States to not only base themselves on rights declared in their constitution but also those declared in international agreements and treaties.

This chapter has concentrated on analyzing state responsibility in regard to human rights violations. Based on the offense of enforced disappearance, it analyzes how the State is obliged to guarantee the rights of victims of disappearances, analyzing article 24 of the International Convention for the protection of all persons from enforced disappearances. A brief analysis was also done on the entire Convention, highlighting the main articles.

The criminalization of the offense of enforced disappearance is an important topic to the people who try to seek justice and primarily seek to stop this offense. That is why I decided to analyze the importance of criminalization of enforced disappearance as an individualized offense.

CHAPTER 3: ANALYSIS OF ENFORCED DISAPPEARANCE IN COMPARATIVE LAW

This chapter will analyze Enforced Disappearance at a national, regional, and international level. It will look at how this issue has been dealt with worldwide, the countries affected and how to combat enforced disappearance. At a regional level will be analyzed how, throughout history and governments, enforced disappearances have emerged in Chile, Argentina and Mexico, since throughout their history these three countries have been victims of a high number of disappearances. It is essential to analyze how each State has managed this issue and if they have complied with the international treaties they have signed, which defend this cause.

In regards to the National situation, the primary cases of enforced disappearance in Ecuador will be mentioned, and how the country has advanced in regards to this problem.

It is important to note that a crime against humanity such as Enforced Disappearance is not managed or judged in the same way worldwide. As was seen in the previous chapter, there are countries like Ecuador that have already criminalized enforced disappearance as an offense, which makes it easier for legal mechanisms to protect victims. On the other hand, there are countries that have not yet criminalized this law on enforced disappearances, which leads to the offense being committed repeatedly and without laws to defend its victims. This is why the open clause is so important in international treaties.

Eradicating Enforced Disappearance at an international level has become urgent, since the countries where it frequently occurs are slowly losing their identity and cannot move forward with their own liberation.

3.1 The Situation Worldwide

The issue of Enforced Disappearance takes place at an international level. Even if this offense is more common in countries under dictatorships or authoritarian regimes, today in age it has been proven that enforced disappearance can happen in any State, whether a democracy or a dictatorship. This offense cannot be judged as a common abduction that seeks financial profit but is judged as such in many countries because it has not been criminalized as an individualized offense. During enforced disappearance the State becomes a delinquent since it is the main accomplice to the offense and violates the international legal system that obliges it to protect the rights of individuals.

The importance of international instruments is due to that they are the only means that have been able to help the victims of enforced disappearance, putting pressure on States to carry out justice. The organizations that help victims have more and more weight within the international community and their suggestions have been taken up as international doctrine.

This is why it is imperative to consider the worldwide situation of Enforced Disappearance, according to international doctrine and treaties of Public International Law.

The international condemnation of the enforced disappearance of persons expressly solidified for the first time in 1992, through the United Nations Declaration on the

Protection of all Persons from Enforced Disappearance (DPPED)³⁸, an international instrument of unconventional character. (Ambos & Bohm, 2009, p. 219).

This declaration came about due to the worry across the world about the frequency and persistence of enforced disappearance that, far from decreasing, increased every year in many countries, which violates a great number of human rights, affecting social values, primarily the right to life, the right to liberty, personal security, the right to not be subjected to torture and the right to recognize a legal identity. What this declaration and other international instruments seek to do, beyond trying to stop the offense of enforced disappearance, is amplify and deepen the significance of human rights worldwide, regulating legal relations of States in order to protect human rights, imposing the need that all means adopted by States be able to guarantee the international legal framework that prioritizes persons above all else. To Carlos Maria Pelayo it is opportune to point out that:

The organs of human rights treaties are constituted by committees of independent experts charged with supervising the application of the primary international instruments. They have been created according to what is laid out in the treaties they supervise. These Committees meet periodically to review the state that protects the human rights in each of the signing countries and to make recommendations. (Pelayo, 2012, p. 10)

Enforced Disappearances take place every day across the world. This is why it so urgent to create awareness to bring this crime to attention. It is important to provide data on the approximate number of victims of enforced disappearance worldwide, without forgetting that the number given on disappeared persons is merely an estimate of the cases that have been brought to the United Nations. There are thousands more cases that are not reported for various reasons, which do not figure into the estimate. According to the last report from

³⁸ Declaration approved by the General Assembly of the United Nations, res. 47/133 on 18 December 1992.

the Working Group on Enforced and Involuntary Disappearances, presented in August of 2014, there is the following information:

The total number of cases transmitted by the Working Group to governments since its creation reaches 54,405. The numbers of cases that are still being studied because they remain unresolved, closed, or suspended is 43,250, and involve 88 States. In the last five years, the Working Group has managed to resolve 254 cases.³⁹

The UN Working Group on Enforced Disappearances makes an effort to resolve the thousands of cases that take place every day because of this issue, but it is crucial that governments join in the cause to investigate all past and present cases of enforced disappearances worldwide. It is extremely worrying to see such high rates of disappearances and that some States still do not commit to ending this terrible practice.

The 10 countries with the greatest number of cases of disappearances being investigated by this working group are: Iraq (16,555), Sri Lanka (12,536), Argentina (3,449), Guatemala (3,155), Algeria (3,074), Peru (3,010), El Salvador (2,668), Colombia (1,258), Chile (908), Philippines (786).⁴⁰

It is the duty of all the world's Governments to impartially investigate cases of Enforced Disappearance. The victims have the right to find those responsible and bring them before tribunals of justice. The continued use of the illegal practice of enforced disappearance in dozens of countries cannot be permitted. It is necessary to create awareness that behind every case of enforced disappearance there are one or several persons suffering innumerable human rights violations: detained in secret, tortured and even murdered. And behind every disappeared person is his or her entire nuclear family that is also victim to this

³⁹ Working Group on Enforced and Involuntary Disappearances Report. August 2014, available at: <http://www.ohchr.org/SP/Issues/Disappearances/Pages/Annual.aspx>

⁴⁰ Ibid.

deplorable practice, victims of the uncertainty of not knowing the whereabouts of their loved ones, who are deprived of justice and truth by corrupt governments that do not see beyond their needs and political ambitions.

When broaching in this chapter the situation worldwide of Enforced Disappearances, it is important to emphasize the countries where this offense has been denounced, according to data from the Working Group on Enforced and Involuntary Disappearances:

Afghanistan, Algeria, Angola, Argentina, Bahrain, Bangladesh, Belorussia, Bhutan, Bolivia, Brazil, Burundi, Cambodia, Cameroon, Chad, Chile, China, Costa Rica, Colombia, Democratic Republic of Congo, Cypress, Democratic Republic of Korea, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, France, ex Yugoslavia, Gambia, Georgia, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Islamic Republic of Iran, Iraq, Israel, Italy, Japan, Jordan, Kuwait, Liberia, Libya, Mauritania, Mexico, Morocco, Montenegro, Mozambique, Myanmar, Namibia, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Russian Federation, Rwanda, Saudi Arabia, Serbia, Seychelles, Spain, Sri Lanka, Sudan, Arab Republic, Syria, Tajikistan, Thailand, Timor-Este, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, United States of America, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zimbabwe, Palestine Occupied Territories.⁴¹

It is alarming how many countries suffer from this issue, which is why it is necessary to give due importance at an international level to the abolition of the practice of enforced disappearances. Despite untiring efforts by mainly the United Nations, among other organizations, this issue has not ceased. In order to control it and find a solution to this

⁴¹ Gabriella Citroni, Dave Hardy, Patricio Rice. Guide to the International Convention Against Enforced Disappearance. (ICAED) in 2007 (approved 22 August 2015) Available online at: <http://www.ediec.org/es/biblioteca/item/id/511/>

offense, it is necessary that the majority of States ratify the International Convention on the Protection of all Persons from Enforced Disappearance. This would be a solution at an international level, since all States that belong to the convention and have ratified it ensure the rights of all persons to not be disappeared.

In the world there are only 50 of 195 countries that have ratified the Declaration on Enforced Disappearance. Of these, in Latin America it has been ratified by Cuba, followed by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Panama, Peru, Paraguay, Uruguay and Mexico. In Europe only eight countries have ratified it: Austria, Belgium, Spain, France, Germany, Portugal, the Netherlands and Malta. In Eurasia it has been ratified by Albania, Armenia, Bosnia Herzegovina, Kazakhstan, Montenegro, Serbia, Slovakia and Lithuania. In Southeast Asia only Japan, Mongolia, Cambodia, Samoa and Togo. On the African continent it has been ratified by Burkina Faso, Gabon, Mali, Mauritania, Nigeria, Senegal, Morocco, Tunisia and Zambia. In the last few months it was ratified by Belize, Greece, Ukraine and Niger.⁴²

It is important to create awareness at an international level of such a worrying topic as enforced disappearances. Many people are unaware of what is really happening around the world with disappeared persons and their families, which is why it is necessary to inform more in depth on the issue, so Governments feel the pressure from all persons and not just from the direct victims. Political will of all States must exist to put an end to enforced disappearance and achieve true commitment to Human Rights at an international level.

⁴² UN. United Nations Treaty Collection. Available at:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

3.2 The Regional Situation

Enforced Disappearances occur all over the world. This subchapter will analyze the situation in the Latin America region, which have been the countries most affected throughout history, and what organizations have been created to try and combat this evil. In this chapter I have decided to look at three Latin American countries in particular, which are Argentina, Chile and Mexico.

Argentina is among the Latin American countries with the greatest number of disappearances throughout its history; Chile hit a landmark in its history with the enforced disappearances during the military regime in 1973; and Mexico because of recent occurrences of disappearances, which manifest the urgent necessity to take action against the Human Rights crisis it is going through.

Throughout its history, Latin America has had to face multiple cases of enforced disappearance by dictatorial regimes that governed many countries. Between 1966 and 1986 alone there were close to 90,000 disappeared persons.

The phenomenon of disappearances did not develop in the same way in all Latin American States. Despite the common ties evident in the military dictatorships that predominated in the region until the '80s, in each nation Enforced Disappearance of Persons emerged and developed in its own way.⁴³

This is why it is important to analyze three countries like Argentina, Chile and Mexico, since the origin of enforced disappearances in those countries has been different, which will

⁴³ Maldonado Conde, Julio Cesar. The offense of Enforced Disappearance of Persons as a Mechanism of Defense of Human Rights. (online) Available at: <http://servicio.bc.uc.edu.ve/derecho/revista/idc24/24-3.pdf>

give us a greater perspective at a regional level. It is important to clearly understand that the issue of enforced disappearance is susceptible to being approached from different perspectives, despite the fact that throughout the history of Latin America disappearances have occurred in social aspects and political practices. However, they occur outside of any context, transcend ideologies and forms of government. Currently, the majority of Latin American countries are no longer governed by military dictatorships, but unfortunately the practice of control and terror remains rooted in the region and many Latin American States continue to use it, not in the same way but to the same purpose.

After military dictatorships ended, the situation of enforced disappearances changed in Latin America. There was access to material that was previously classified and the atrocities committed during that time became known. Not because of that did this criminal practice cease to exist. Today, despite democratic governments predominating the American Continent, there are still reports of enforced disappearances.⁴⁴

Over the years, although the practice of enforced disappearance in Latin America still exists, it is important to mention that currently there has been a change. This is the awareness that has grown of Human Rights through the work of different organizations. Even if it has not managed to annihilate this practice, it has still been a major support and has to a degree lowered the numbers of enforced disappearances. Currently, there are Latin American organizations that were created exclusively to help the victims of enforced disappearance, which are the following:

FEDEFAM (Federación Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos or "Latin American Federation of Associations of Families of Detainees or Disappeared") was founded in 1981. The members of this federation or organizations of family members of the disappeared Argentina,

⁴⁴ Ibid.

Bolivia, Brazil, Colombia, Chile, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Perú y Uruguay.

AFADEM (Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones a los derechos humanos or "Association of Families of Detained, Disappeared and Victims of Human Rights Violations"), México

Abuelas de Plaza de Mayo (Grandmothers of May Plaza), Argentina

Familiares de Desaparecidos y Detenidos por Razones Políticas (Families of Disappeared and Detained for Political Reasons), Argentina

Asociación Madres de Plaza de Mayo (Association of Mothers of May Plaza), Argentina

AFDD (Agrupación de Familiares de detenidos Desaparecidos or "Families of Detained or Disappeared Group"), Chile

ASOFAM, Bolivia

ASFADDES (Asociación de familiares de Detenidos Desaparecidos or "Association of Families of Detained or Disappeared"), Colombia

COFADEH (Comité de familiares de Detenidos- Desaparecidos de Honduras)

CODEFAM, El Salvador

GAM (Grupo de Apoyo Mutuo or "Mutual Support Group"), Guatemala

Madres y Familiares de Detenidos Desaparecidos (Mothers and Families of Detained and Disappeared), Uruguay

COFADEPA-HG (Comité de Familiares de Desaparecidos de Panamá or "Panamanian Committee of Families of Disappeared"), Panamá

Tortura Nunca Mais (No More Torture), Brasil

AFADEVIG (Asociación de Familiares de Desaparecidos y Víctimas de Genocidio or "Association of Families of Disappeared and Victims of Genocide"), Perú⁴⁵

Society seeks a solution to the disappearance problem. Currently, thanks to the information and technological age in which we live, it has been easier for families of the disappeared to form organizations at a regional and international level, which break the silence and the passivity of governmental bodies that feel greater pressure to resolve cases of disappearances and avoid their continuation. It is important to create awareness for a greater respect for Human Rights. Even though Latin America has been a region that has suffered serious economical and social problems, it is time to seek alternatives to get at the root of all human rights violations like Disappearances.

3.2.1 Argentina

Enforced disappearance in Argentina is symbolized by the military dictatorship that was in power from 1976 to 1983. It completely attacked all alleged leftist opposition; the principle method against political and ideological opposition was the disappearance of persons.

⁴⁵ EDIEC Enforced Disappearances Information Exchange Center. Available at: <http://www.ediec.org/es/mapamundi/informacion-regional/las-americas/>

This practice that violated multiple human rights took place especially during the first years of the military regime, when the oppression of political opposition was the bloodiest. Early on, the Inter-American Commission on Human Rights (ICHR) proved, in its report published on April 11, 1980, that disappearances of persons occurred basically during the years 1976 to 1978; from then on, reports of new cases of disappeared persons declined, but, as the ICHR took the trouble to emphasize, the problem of disappearances did not cease because the Government had not taken any measures to clarify the situation of said persons. (Malarino, 2009. p. 24)

The situation in Argentina is a clear example of how governments hold power to take measures so that the crime of enforced disappearance does not continue. Throughout history, State representatives have been and continue to be intimately connected to this offense, using as a defense that it is in order to combat terrorist groups and protect the Argentine public when it was the complete opposite. They created an environment of complete insecurity and violation of the main Human Rights. No law or authority has the right to take lives and make them disappear without a trace. In Argentina the Armed Forces abused their power, justifying themselves by saying it was necessary to combat all persons who could pose a threat to State security.

In 1975, the Argentine army resorted for the first time to the disappearance of people in Tucumán, while fighting a guerilla uprising. The victims were not only those in arms but also elements of the civilian population. In a bloody process, whose victims were chosen by such broad criteria as being opposition of the military government, legal detentions were substituted for abductions and disappearances.⁴⁶

⁴⁶ Molina Theissen, Ana Lucrecia. Enforced Disappearances of Persons in Latin America. (online) Available at: <http://www.derechos.org/vii/molina.html>

In Argentina, enforced disappearances emerged primarily for political reasons. It was a fight against all opposition to the military government. Unfortunately, in a totalitarian regime like the one in Argentina at that time, there were only two kinds of people, those who were in favor of the regime and were considered friends and those that were against and were considered enemies. War was declared against the latter through repressive means that violated basic human rights; the right to life, physical integrity and liberty were not respected.

On June 17, 1982, the British won the war of the Maldives, which led to the fall of General Fortunato Galtieri. This allowed a debate to ensue on the modernization of society and the possibility of a transition to democracy. This transition solidified with the triumph of Raul Alfonsín of the Radical Union Party. It was at the beginning of his administration that the National Commission on Disappeared Persons was formed, which released a previously mentioned report, not tied to the government that was actually a ratification and amplification of the report by the Human Rights Commission of the Inter-American Organization released on April 18, 1980.⁴⁷

Around the year 1983, Argentina began to become aware of the cases of enforced disappearances that took place during the military dictatorship, during which Argentine society suffered a brief but bloody period of time with grave consequences to human rights. The internal political conditions in Argentina at the time were completely disagreeable to its people, since the army took power over society, seeking only to benefit its ideals and not those of the people.

Despite the fact that Argentina is no longer under military dictatorship, the fight against enforced disappearances continues. The offense continues to occur, although in small

⁴⁷ Maldonado Conde, Julio Cesar. The offense of Enforced Disappearance of Persons as a Mechanism of Defense of Human Rights. (online) Available at: <http://servicio.bc.uc.edu.ve/derecho/revista/idc24/24-3.pdf>

numbers, and the families still do not know the whereabouts of the victims of disappearances during the military dictatorship that was in power between 1976 and 1983.

It is necessary for Argentina to have some kind of combination between national law and international law so that the first can be in charge of criminalizing and sanctioning cases of enforced disappearance and the second take responsibility for ensuring that the government complies with the defense of human rights according to international regulations.

3.2.2 Chile

Chile, like many Latin American countries, was governed by military dictatorships, which generated a wave of Human Rights violations. Committing the offense of enforced disappearances was the charge of security forces and was indiscriminate. What many Latin American countries have in common in the case of enforced disappearances is that they emerged for political reasons; in Chile's case the rise of military to power gave rise to the method of disappearances, above all directed at militants of the Chilean Communist Party.

Since the day of September 11, 1973, when the coup d'état took place that overthrew the government of the time⁴⁸, the military apparatus that took power drew upon all its repartitions and resources, with the purpose of intimidating, detaining and, in many cases, physically removing persons connected to dissident political parties and groups. In the dark enterprise, army personnel had a leading role, around which the other branches of the military gathered together as well as members of the preventative police force. Considering the poisonous atmosphere of extreme ideological polarization, which preceded the events of September, as well as the old proximity of conservative sectors to the high ranks of the military, it comes as no surprise that such operations could sometimes count on civilian collaboration,

⁴⁸ The constitutional government of Salvador Allende

encouraged by anti-communism and a thirst for vengeance that equaled if not surpassed that which fed the officials. (Guzmán, 2009, p. 55)

The coup d'état that occurred in Chile caused the disappearance of thousands of people, suffering a repeated violation of Human Rights. The conflict that Chile went through at the time encompasses ideological, political and cultural issues, which, if added up in the military events that occurred, are the result of a great oppression of the public using violent methods. As they governed the military dictatorship in Chile, the army was used as the last resort to restore social order, trying to impose on the public the idea that democracy is too weak to defend national security, which turned out to be quite the opposite. An internal enemy whose objective was to carry out anything the regime imposed constantly threatened the Chilean people.

Political persecution and extermination, especially in the cruelest period from September 1973 till the end of 1976, translated into a growing number of abductions of persons considered to be enemies of the state, followed by torture and often by the assassination of the detainee, not to mention forced entry, illicit associations, extortive threats, falsified documents, illegal reproduction or suppression of legal records, and even murders to cover up what was happening. Until the repressive apparatus managed to create a specific organization, which occurred at the beginning of 1974 with the so-called National Intelligence Agency, the people hunt was generalized, like a rake. That is, it was not selective, and, in reality, it is known that in those first months of tyranny, until December 1973, the greatest number of victims was made up of individuals who had no connection to political militancy, and among these the majority were workers and peasants. (Guzmán, 2009, pp. 55-56)

Undoubtedly, what José Guzmán relates about what happened in Chile with the so-called National Intelligence Agency⁴⁹, was one of the worst atrocities. The majority of the enforced disappearances of the majority of victims was without rhyme or reason. Many innocent people who had nothing to do with political movements were tortured and assassinated, simply to make the job easier for the tyrants who could not bother to commit the crime selectively, acting perversely and mercilessly. At that time Chile went through a civil war, which tried to eliminate all sectors and individuals who were considered enemies of the State. All these crimes were justified by the Chilean government⁵⁰ at the time, claiming that it was for national security and development. The State felt free to manipulate the population since there was no social power to limit, control or threaten it, and so enjoying complete autonomy. This was devastating to the Chilean people since it implied a massive violation of human rights, generating degrees of conflict and instability in the country.

A curious fact of the Chilean military dictatorship that is worth mentioning is the constant presence of a certain opposition, more or less organized. Different from other Latin American dictatorships, in which the opposition was practically eliminated, this did not happen in Chile. Proof of this is the creation of a series of agencies destined to protect Human Rights, fostered by the opposition of the military regime. Even though the government knew that these entities could cause problems at a national and international level, it allowed their creation and operation.⁵¹

⁴⁹ Dirección de Inteligencia Nacional (DINA) Chile, 1974-1977. The DINA acted as the main agent of repression, detaining, torturing, executing and disappearing its "enemies" and, effectively, carrying out what is called State terrorism, or crimes against humanity executed by State agents.

⁵⁰ Government of Augusto Pinochet (17 December 1974-11 March 1990)

⁵¹ Maldonado Conde, Julio Cesar. The offense of Enforced Disappearance of Persons as a Protection Mechanism of Human Rights. (online) Available at: <http://servicio.bc.uc.edu.ve/derecho/revista/idc24/24-3.pdf>

The existence of agencies in charge of protecting victims that suffered from human rights violations made the Chilean people feel supported, even though, of course, it was not enough against the military dictatorship they lived in. At least there was legal follow-up to bring to light the abuses of the system and to raise voices to denounce the violent climate. They manifested their solidarity with pursued persons and their families and structured a support group for them.

The more important organizations were:

- The Cooperation Committee for Peace in Chile (1973-1975)
- Solidarity Vicarage (1973 - 1992)
- Group of Families of Detained and Disappeared (1974 -)
- Group of Families of Executed Political Prisoners (1973 -)
- The Committee for the Defense of the People's Rights (1980 -)
- The Foundation for the Protection of Childhood Damaged by States of Emergency (1979 -)⁵²

It is important to emphasize that when the regime ended, 3,178 people had fallen victim to enforced disappearances, and lost their lives during captivity.⁵³ The only advantage that Chile had against the military dictatorship in comparison to other Latin American countries was that there was an opposition to the regime. The creation of all the organizations was a great help, at least psychologically for the families of victims of enforced disappearances at the time, but later this opposition triumphed when the democrat Cristiano Patricio Aylwin assumed the presidency in 1990, ending the military dictatorship and all its consequences.

⁵² Ibid.

⁵³ Data established by the National Commission on Truth and Reconciliation, in its report cited above, note 3, t. II, especially p. 883, and the National Corporation for Reconciliation and Reparation, in its report on the qualification of victims of human rights violations and of political violence, Santiago de Chile, 1996, cfr. p. 565, which complimented the rate of deceased or disappeared persons after being deprived of liberty, registered by the Commission five years before.

3.2.3 Mexico

The case of enforced disappearances in Mexico is different from those of the cases previously analyzed, since in Argentina and Chile the disappearances resulted from military regimes that governed those countries at the time. When the military dictatorships finally ended the offense of enforced disappearances began to decline, thanks to all the organizations and treaties that have come into being. In Mexico the opposite has occurred, which is why I decided to analyze it. Currently, there are more cases of enforced disappearance. This practice emerged in Mexico in the 70s but has increased alarmingly over time.

Between 1969 and 1988, within the framework of the counterinsurgent fight that the Mexican state deployed against insurgent movements and social organizations, a period known as the "dirty war", different organizations of families and for human rights registered between 1,200 and 1,800 enforced disappearances for political reasons. In the UN Working Group on Enforced and Involuntary Disappearances report on their mission to Mexico, presented in 2012, the human rights organizations that were documented up until 2010 were mentioned. Around 3,000 forced disappearances in the country, however, since 2011 human rights organizations and social organizations began to mention that the number of enforced disappearances could surpass 10,000 and has even talked in 2012 of up to 30 thousand enforced disappearances, during the administration of Felipe Calderón alone (2006-2012).⁵⁴

As can be seen, the increase in enforced disappearances has occurred at an alarming rate in Mexico in the last few years. Mexico is going through a constant war against drug trafficking, which has lead to serious human rights violations. There has been an increase in state violence that has endangered the general population, an example of which is the

⁵⁴ Report on the situation of enforced disappearances in Mexico, before the CIDH. Until they are found. Available online at: <http://desaparecidos.espora.org/spip.php?article952>

repeated practice of enforced disappearances that do not only apply to political circumstances, as in other cases. Many people fall victim, such as human rights defenders, family members of disappeared who demand justice, migrants traveling through Mexico and young women that disappear, which is associated with human trafficking. In the majority of cases, the justification for the crimes committed is that they are attempting to detain members of organized crime.

The situation in Mexico is extremely worrisome. There is no control agency that can stop such human rights atrocities. To the contrary, the very agents of the state are those who commit these violations and unfortunately they work simultaneously for organized crime. Lately, the large number of corruption cases occurring has identified Mexico. Enforced disappearances are an example of this, since in cases where state agents did not directly commit the crime, the persons who did bribe the police with money to keep them quiet. Enforced disappearance happens whenever state agents are involved and this would be one of the ways in which they are involved:

In Mexico there is no national regulatory framework that guarantees the prevention, sanction and eradication of the practice of enforced disappearance of persons, including as such concrete and effective protective measures, the right to the truth, justice and comprehensive reparation of the damage to victims of this offense and which puts an end to the perpetrators' impunity.⁵⁵

As there is no national regulatory framework that guarantees the fight against enforced disappearances in Mexico, inhabitants are left completely unprotected and the only option they have is to turn for help to human rights organizations. It is urgent that Mexico take measures and create a law against enforced disappearances, that all States criminalize this practice as an offense and above all, support the victims of this offense and give them the right to the truth. All the limitations on laws against human rights violations happening in

⁵⁵ Ibid.

Mexico put in doubt the political will of the government to eradicate the constant torture and impunity that has been persistent for so long in this country.

Up until now, neither the political will nor the necessary instruments could be counted on so that searches begin immediately after a report is made, or to do so without the need of one. In some federal institutions immediate search protocols have been implemented. However, these have worked to locate missing persons and not in cases of enforced disappearance. In other institutions there is still the directive that a few days must go by before starting an investigation.⁵⁶

The lack of measures to guarantee that all detentions are registered immediately and precisely is especially worrying in the current public security crisis in Mexico. The great majority of military detentions are carried out without judicial order and as a flagrant offense. The detainee is then secluded at a military base or taken to an isolated location and tortured or mistreated to get information. In many cases, he or she can be released without having appeared before the public ministry, as required by law. In others, he or she can be taken before the public ministry with a declaration from authority responsible for the detention that specifies its motive, including all the proof that could have been confiscated or obtained. (Amnesty International, 2012, p. 21)

The main problem Mexico faces is the lack of laws and government support to fight against human rights violations; quite the contrary, in the last few years the government has adopted public security policies that have been responsible for the use of torture and mistreatment on a national scale. The government gives impunity to all cases of enforced disappearance, there has not been political will to eradicate this practice, there are no exact registration measures or investigate the thousands of cases of violations that have taken place daily in Mexico and to put an end to impunity. It is necessary to take count of all the

⁵⁶ Ibid.

public officials implicated in cases of enforced disappearance and that all persons who have been victims have the opportunity to exercise their right to an effective defense, carrying out complete investigations in order to give victims the right to the truth.

3.3 The National Situation

The situation in Ecuador in regards to enforced disappearances has changed radically in the last few years, since Ecuador did not have a clear criminalization of the offense of enforced disappearance until 2014, in which the National Organic Criminal Code (COIP) was modified and specified enforced disappearance. It was criminalized as a crime and the agent who acts consciously and subjects a person to the deprivation of liberty will be punished with 22 to 26 years imprisonment. This is an advancement in Ecuadorian justice, since in the previous COIP the true meaning of enforced disappearance was not clear and the penalty considered in the regulation was from six months to two years in prison. Likewise, it is important to clarify that Ecuador is in the International Convention for the Protection of all Persons from Enforced Disappearance, which it signed on May 24, 2007 and ratified on October 20, 2009⁵⁷. Another important aspect to emphasize on the protection of human rights in Ecuador and especially in the cases of enforced disappearance is the creation in 2007 of the new Truth Commission, which was created to clarify and investigate the numerous human rights violations that have occurred in Ecuador.

It is important to stress the history of enforced disappearance in Ecuador, since even though there is great justice now for cases of human rights violations there are historical antecedents that still hold consequences.

⁵⁷ UN. United Nations Treaty Collection. Available at:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV16&chapter=4&lang=en

In the last decades, Ecuador has passed through periods of political upheaval. After being yoked by the military junta from 1972 to 1979, the country returned to democracy in 1979 with the adoption of a new constitution. Under the government of Osvaldo Hurtado, elected in 1982, the country suffered a profound economic crisis. Hurtado was replaced in 1984 by León Febres Cordero, who reintroduced a severe system of political repression. In response to his administration, towards the end of 1984 an armed social movement group appeared called the "Alfaro Lives Movement". To fight against the guerilla, Cordero loosed a grand scale war against terrorism, during the course of which the representatives of the police force would be considered presumably guilty of multiple human rights violations and of numerous enforced disappearances.⁵⁸

In the history of Ecuador, the León Febres Cordero Administration is marked by its multiple cases of human rights violations, consequence of the political repression that took place. At that time some of the most emblematic enforced disappearances in Ecuador occurred, such as the case of the Restrepo brothers who were assassinated by a criminal regime. Febres Cordero's terror machine was managed in a tight circle comprised of his trusted men and high ranking military officers of the time.

The Ecuadorian Truth Commission was created with the purpose of investigating human rights violations from the period between 1984 - 2008, committed by elements of the Air Force, National Police, and other State agencies related to the areas of national defense and security. The Commission focused on six acts of violation: illegal deprivation of liberty, torture, sexual violence, enforced disappearance, attempts on the right to life and extrajudicial killings. In large or small scale, these offenses were committed throughout the period analyzed, establishing a total of 456 victims. The investigation found that a total of 459 state agents of the police and Air Force were responsible for the human rights violations.

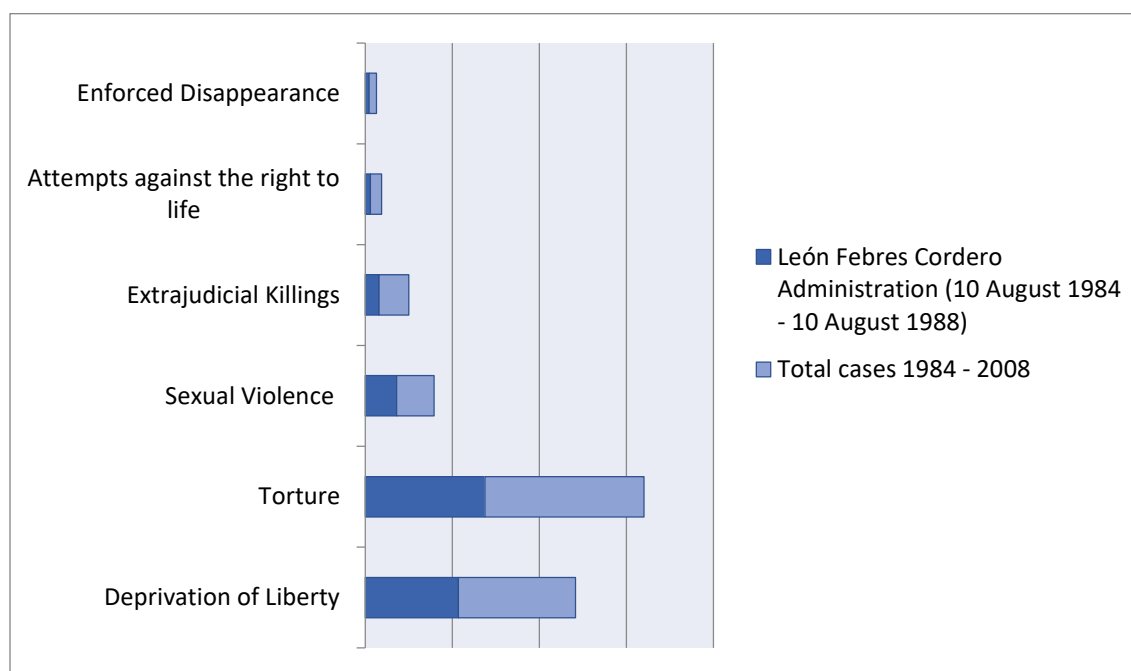
⁵⁸ TRIAL Trac Impunita Alas. Truth Commissions. Ecuador Truth Commission. Available at: <http://www.trial-ch.org/es/recursos/comisiones-de-la-verdad/america/equateur.html>

There was a particular emphasis between the years 1984 and 1988, a time period that coincides with the presidency of León Febres Cordero, and is the period in which most cases took place - 68% of all victims. It also coincides with the most active period of the guerilla group Alfaro Vive Carajo! (AVC). (Rivera, 2011, pp. 62-63)

It is considered an enforced disappearance when and if State agents are involved, which is why it is necessary to investigate in-depth all the cases of human rights violations that have taken place throughout Ecuador's history. These human rights violations that have taken place because of the State often correspond to serious pretensions against the integrity of persons and their lives, since as in the case of the León Febres Cordero Administration it had all the power and used it for personal gain without caring about the rights of the Ecuadorian people. This led to the necessity to create a Truth Commission in Ecuador, which has a group of people prepared to investigate the cases of human rights violations, giving due importance to the testimonies of the victims who many times were not heard, assuring an adequate level of support both in testimony and documentation. It is necessary to mention that the Truth Commission completely dedicated itself to investigating all of the violations that are based on pretensions to the rights of life, liberty and personal integrity, in both of which the State is involved.

The following table taken from the Ecuadorian Truth Commission's report on the period from 1984 - 2008, clearly shows that the León Febres Cordero Administration is one with the most human rights violations in the country.

Table 4. Comparison of the León Febres Cordero Administration with other Administrations in regards to Human Rights Violations.



(Truth Commission, 2010, p. 93)

According to testimonies and documents in the Truth Commission's records, it has been established that there exist 459 State agents of whom there are indications of having been involved in the violations of human rights whether directly or within a chain of command or some other form of showing knowledge of the events. The number pointed out corresponds to the alleged perpetrators whose names and institutional affiliation have been established by the express mention of the victims and official documents. (2010, p. 100)

Ecuador, like other countries, has been victim to human rights violations, among them cases of disappearances. However, it is important to clarify that there is a much smaller number in comparison with other countries that have been analyzed in the present work. As we can see, the 1984 - 1988 period, governed by León Febres Cordero, is a landmark in Ecuadorian history since the high number of victims represents the majority of cases that

took place during the period analyzed by the Truth Commission. Despite Ecuador having a low percentage of enforced disappearances compared to other countries, it is still worrisome that there continue to be new cases and that specialized legal personnel and police do not carry out investigations. It is necessary for all officers responsible for the investigation of enforced disappearances be specialized and follow clearly stipulated protocols and procedures in order to bring the country's cases of enforced disappearance to justice. Ecuador has a Truth Commission, which was created in order to acknowledge victims, establish civilian, legal and administrative responsibilities, design reparation policies and impede the impunity of human rights violations. However, the investigations carried out by the Truth Commission are not of a legal or forensic nature, which is why it is incredibly important that legal authorities do the investigative work on cases of enforced disappearance in order to provide answers, prevention mechanisms and the corresponding sanctions.

According to the Commission's reports, 17 persons, 16 of whom were Ecuadorian and one Peruvian, were victims of enforced disappearance in events that took place in Ecuador during the period from 1984 - 2008. The general distribution of victims is shown in the following table:

Table 5.

Forced Disappearances in Ecuador by years, victims and locations						
YEAR	PROVINCE	CASES	NUMBER OF VICTIMS (male)	NUMBER OF VICTIMS (female)	LOCATION	BRANCH OF PUBLIC SERVICE

1985	Pichincha	Susana Cajas and Francisco Jarrín	1	1	Montúfar Battalion, Esmeraldas Military Intelligence Battalion (BIM), Concoto	Army
1985	Pichincha	Luis Vaca	1		Montúfar Battalion, Esmeraldas Military Intelligence Battalion (BIM), Concoto	Army
1985	Esmeraldas	Manuel Bolaños Quiñones	1		Balao Naval Base, Esmeraldas	Marines
1985	Pichincha	Jaime Otavalo	1		Police Academy – Posuquí	National Police
1986	Pichincha	David Alberto Troya Castro	1		Criminal Investigation Service (SIC-P)	National Police
1988	Pichincha	Carlos	2		Criminal	National

		Santiago Restrepo A. and Pedro Andrés Restrepo A.			Investigation Service (SIC-P)	Police
1988	Lima	Enrique Roberto Duchicela Hernández	1		Peruvian Investigation Service	Peruvian Army
1990	Pichincha	Gustavo Garzón	1		Criminal Investigation Service (SIC-P)	National Police
1995	El Oro	Jorge Vásquez	1		Teniente Hugo Ortiz Barracks, Portoviejo Migration Police, Huaquillas	Army National Police
2000	Tungurahua	Elías López Pita	1		Provisional Detention Center (CDP) - Ambato	National Police
2000	Tungurahua	Luis	1		Provisional	National

		Alberto Shinin Lazo			Detention Center (CDP), Ambato	Police
2003	Guayas	Jonhy Gómez Balda, Cesar Mata Valenzuela, Edwin Vivar Palma	3		Local pharmacy Fybeca Guayaquil	National Police
2004	Los Ríos	Luis Sabando Véliz	1		Provisional Detention Center (CDP), Quevedo	National Police

(Truth Commission, 2010, p. 187)

Of the 17 victims of enforced disappearance, 3 have been recognized for their alleged membership in Alfaro Vive Carajo ("Alfaro Lives Dammit", 1985) and one has been connected to the organization Montoneras Patria Libre (Free the Country Rebel Group) (Gustavo Garzón, 1990). Another 9 victims were apparently connected with police or military investigations and, finally, the two Restrepo Arismendy brothers, Elías López and Luis Alberto Shinin disappeared under completely mysterious circumstances and without finding any clues still today. (2010, p. 188)

The case of the Restrepo brothers combines all the elements of an enforced disappearance that became a crime against humanity. This is the case that began Ecuador's national awareness, since the two youths disappeared without a trace. This has become a reference for hundreds of reports of human rights violations in the country. After this incident the country became aware of the violations committed by State agents because the Restrepo brothers' parents began pacific protests so all of Ecuador would find out about what had happened to their sons, who were unfortunately victims of torture, unjustly detained and murdered by members of the Criminal Investigation (SIC).

The Restrepo Brothers Case

On the morning of January 8th, 1988, Carlos Santiago Restrepo Arismendy and Pedro Andrés Restrepo Arismendy, Ecuadorians 17 and 14 years of age, respectively, sons of Colombian parents residing in the country, after having left their sister at school and were on their way home, were heading towards the north of Quito, between 9:00am and 10:00am, in the family's almond colored 1984 Trooper, on their way to a friend's house to take him to the airport. They never arrived at their destination and since then have never been found.

Since their parents were not in the city at the time, their friends and family members started looking in detention centers and health centers trying to find them. Sunday, January 10th, 1988, a friend of the family reported the disappearance to the Criminal Investigation Service of Pichincha and at 5:00pm that same day a call was made to the Quito Provisional Detention Center and the person who responded indicated that, "Santiago and Pedro Restrepo were there (...) that, since they were minors, their parents had to come and pick them up and since it was late they should come the next day". When the friends of the family went to get them, they could not find them and nor their registration confirming their detention.

That January 11th, the parents of the minors who had just returned to Quito were informed of the situation and they immediately made arrangements to find them, and went to the Police Attaché Office of the Colombian Embassy in Ecuador.

On February 13th, 1988, the remains of the Trooper driven by Carlos Santiago Restrepo were found at the bottom of the Paccha gorge, located along the Inter-ocean Parkway, which he was driving along with his brother at the time of their disappearance. No bodily remains were discovered.

The effort by police to validate the hypothesis of a car accident became the official and definitive explanation of the minors' disappearance, they were as insistent as they were resoundingly inconsistent, in the light of testimonies and other evidence. With police documents - national and international - the hypothesis that the disappearances were some kind of vengeance against the family for some presumed illegal business was torn down during the investigation and, on the other hand, Second Lieutenant Doris Morán's statement that connected the older brother with subversive activities was acknowledged to be false, revealing the pressures she had put on high school classmates of the Restrepo brothers to try and sustain the theory that the young men consumed drugs, among other perverse manipulations.

There are evidence and testimonies that the Restrepo brothers were moved from the Provisional Detention Center to the Criminal Investigation Service of Pichincha, driven by agents of the SIC 10 and that the oldest of them was victim to torture. In November 1994, the Supreme Court of Justice sentenced several members of the National Police to prison who, under the regulations of parole, ended up serving half of their sentence time in police prisons. One of those convicted, Hugo España, published a book in 1996 in which he confirmed his participation and that of the other detained officers (Camilo Badillo, Guillermo Llerena and "Chocolate", whose

identity has still not been established), furthermore ensuring that the bodies of the young Restrepos were thrown into Yambo Lake.

In March 2008, due to declarations by an ex-police officer, a new version emerged of the events that took place in the SIC-Pichincha that directly incriminated three ex-officers of the Motor Vehicle Brigade (Edgar Fraga, Libardo Gudiño and Jorge Medrano) and established that the body of Carlos Santiago Restrepo was taken to the police morgue and later buried in the Mariano Rodríguez Cementery (El Batán) of Quito as a John Doe, without making any references, however, to the whereabouts of Andrés Restrepo.

This new version caused the Attorney General of Pichincha to reopen a previous inquest and the Truth Commission expressed its opinion that the case should be processed through the corresponding legal authority.

Moreover, to comply with the Agreement signed by the Ecuadorian State and the Restrepo family, a new specialized search was carried out at Yambo Lake, the report of which was presented in September 2009 and concluded that there were no human remains found in the lakebed.

As the father of the minors, Pedro Restrepo, stated in the previously mentioned report: "(...) Once again it was not God's will, God will speak and we must accept the pain. It's still a mystery (...) the Restrepo case won't close, the Restrepo family's fight continues and the responsibility of the Ecuadorian State continues (...)" (2010, p. 196)

The Restrepo brother's case has come to symbolize enforced disappearances in Ecuador. Despite there being witnesses and evidence of the events, still today the bodies have not been found even though there have been intense searches in the places they could have been according to some statements from those implicated in the case. Unfortunately, this is the worst part of an enforced disappearance, the victims are not only disappeared but it begins a chain of victims, starting with family members, to friends and acquaintances and, in my opinion, society as a whole. In a crime committed for whatever reason there is the same pain of losing a loved one, but in the case of enforced disappearance in addition to that is having to live with the uncertainty and pain of not being able to bury the disappeared loved one, in the majority of cases. It is important that the State be more aware when training members of the National Police, the Army, and the National Navy. These individuals must pass a series of psychological tests and be trained to act in defense of human rights. The majority of enforced disappearance cases occurring in Ecuador have been because of illegal detention by State agents who did not know how to act coherently, abusing authority and utilizing unjustified and excessive force to try to get victims to confess something that in many cases they did not do, torturing them to death, abusing their authority.

Ecuador has participated in the majority of International Agreements and Treaties on enforced disappearances. This has been a great advantage, since victims can count not only national laws but on international support. Crimes against humanity can be investigated and judged in Ecuador as long as they have not been judged by international criminal courts. It is important to clarify that in cases of enforced disappearances, Ecuador has the responsibility to comply with what is established in the national criminal code that is, the country's national laws, as well as with what is established in the international treaties it has signed and ratified. When there are cases of human rights violations in Ecuador or offenses against international humanitarian law, the Ecuadorian State is obliged to begin a criminal investigation, which is why in August 2013 the Ministry of the Interior created the National Agency for Crimes against Life, Violent Deaths, Disappearances, Extortion and Abductions, which is in charge of investigations.

Respecting the participation of associations of disappeared persons in the elaboration of pertinent legislation, in Ecuador there exists the "Committee of Victims and Families of Victims of Human Rights Violations and Crimes Against Humanity" of the Truth Commission, in which cases of enforced disappearances are found, ASFADEC (Association of Family Members of Disappeared in Ecuador), the National Association of Murdered and Disappeared in Ecuador (ANADEA) and the ANFJND⁵⁹. These organizations can exercise the right to participation dedicated in Art. 103 of the Constitution, which allows presentations of legislative proposals to the Assembly when a certain number of signatures are gathered (Art. 193 of the Democratic Code⁶⁰).⁶¹

In the last few years, Ecuador has advanced radically on the topic of the defense of human rights, referring exclusively to enforced disappearances, due to all the international agreements and treaties it has ratified; the great achievement of having criminalized enforced disappearance as a crime against humanity approved in the Organic Criminal Code; the creation of the Truth Commission and for the creation of the Association of Disappeared Persons. All of this has been crucial to the development, progress and promotion of Human Rights in Ecuador. Despite the great advancement, improvement is still necessary in some regards and to keep fighting for the end to offenses of enforced disappearance. To achieve this it is necessary to make the whole country aware of the issue, primarily its leaders, training them on human rights protection regulations. It is also necessary to seek answers for all the victims of enforced disappearance in Ecuador, beginning a continuous follow-up process to find to the truth and so victims can accede to the right to reparation of the all the damaged suffered.

⁵⁹ National Association of Family Members of Disappeared Children and Youth. Created through the Ministerial Agreement #649, 7 September 2007.

⁶⁰ Supplement of the Official Register #578, 27 April 2009.

⁶¹ First Periodic Report of the Ecuadorian State to the United Nations Committee against Enforced Disappearances, April 2014. Quito, Ecuador. Available online at: http://www.ohchr.org/Documents/HRBodies/CED/SPReports/CED.C.ECU.1_sp.pdf

FINAL CONCLUSIONS

Enforced disappearance is a crime against humanity that violates basic human rights and my times this crime goes unnoticed by society. Since it involves a crime committed by agents of the State, the families of the victims panic and often prefer to keep quiet out of fear of what could happen. During this research I have been able to investigate in-depth how human rights have been violated around the world and continue to be violated. Enforced disappearance is a clear example of the abuse of power that annihilates lives and in many cases the whereabouts of the victims of this crime never become known. Only through in-depth investigation can one understand the reach of the damage this offense has caused throughout time, mainly in Latin America due to the dictatorial regimes that governed in many countries.

Enforced disappearance produces many more victims than commonly thought, another truly worrying matter analyzed in this work. At first sight one would think that the victims are only the disappeared persons, but that is not the case. This issue brings with it a great number of victims for each disappeared person. Family members, friends, and acquaintances of the disappeared become indirect victims, causing a serious impact on and consequences to their loved ones. From my point of view, enforced disappearance of a person affects all of society since the prevalence of this offense implies that there exists an abuse of authority by State agents and all of society is at constant risk of suffering some kind of injustice and violation of their rights.

Enforced disappearance is a very complex topic that in most cases involves political power, which makes it very complicated when trying to seek answers and perpetrators since it is the State itself that commits this crime in many instances. That is why international agencies are so important to this issue, since internal guarantees of States are not sufficient and these agencies are fundamental to ensuring compliance with human rights worldwide.

The guilt of the State cannot be generalized in cases of enforced disappearance, since they could have taken place during previous administrations or simply carried out by state Agents but without the acknowledgment of higher command, this is different in every case. What must be pointed out is that importance of the international treaties and agreements that exist to combat enforced disappearance. They are a guide and a controlling body for all countries that sign and ratify them. This is the basis of the importance the Open Clause has in the international agreements and treaties analyzed in this work about Ecuador.

The purpose of the Open Clauses is to attempt that States not only base themselves on the rights declared in their constitution but also inherent human rights and those declared in international constitutions on human rights, which prioritize citizens over States. International instruments ensure that States comply with the duty to protect human rights. While carrying out this research, I have realized how important international relations are between countries, since in the majority of isolated States that do not adhere to international treaties, multiple human rights violations are committed because there is no controlling body as there are with international treaties, which have managed, in some way or another, to prevent human rights violations, establishing international clauses so countries have support and know how to handle different situations that can occur.

To conclude, it is important to emphasize that this study was able to analyze the situation in Ecuador in regards to enforced disappearance and the conclusion reached is that the country is advancing positively on the issue of the respect and defense of human rights. An analysis compared Ecuador with other Latin American countries and it was seen that although there are still cases of enforced disappearance in Ecuador, compared with other countries analyzed the rates are very low. In the last few years in Ecuador there has been an important advancement on the topic of laws that defend human rights and precisely on the issue of enforced disappearances. The offense was criminalized in 2014, clarifying its definition and sentencing perpetrators to a prison term relatively long for Ecuador. Institutions were also created that are specifically dedicated to the disappearance of persons and the International Convention for the Protection of all Persons from Enforced

Disappearance was ratified. If the last few years have meant a significant advancement for Ecuador on the issue of human rights, it cannot be generalized and say that everything is fine. There are still cases of enforced disappearances and the investigations have not gotten to the bottom of the cases. The country is on the right track but there is still much to do. The goal is for all countries, including Ecuador, to end all actions that violate human rights, establish laws that definitively combat practices like enforced disappearance and above all make governments in power aware that the work they do always has to be focused on the benefit of the citizens and on the respect for their rights.

BIBLIOGRAPHY

Ambos Kai, María Laura Bohm. (2009) Desaparición Forzada de personas. Análisis comparado e internacional. Editorial Temis S.A. Bogotá.

Amnesty International. (2011) No a la impunidad de las desapariciones forzadas. Editorial: EDAI. Spain.

Amnesty International. (2012) Culpables Conocidos, Víctimas Ignoradas. Tortura y maltrato en México. Editorial Amnistía Internacional (EDAI) UK.

Ávila Santamaría, Ramiro. (2008) La constitución del 2008 en el contexto andino. Análisis de la doctrina y el derecho comparado. Editorial V&M Graficas. Quito.

Brewer-Carías, Allan R. (2008) El sistema interamericano de protección de los derechos humanos y su repercusión en los órdenes jurídicos nacionales. México.

CHACÓN, Bazán Iván, Los delitos de genocidio y de lesa humanidad. La cuestión de la imprescriptibilidad. (Added 15 May 2015)[online] available at: <http://blog.pucp.edu.pe/item/24219/los-delitos-de-genocidio-y-de-lesa-humanidad-la-cuestion-de-la-imprescriptibilidad>

Citroni, Gabriela. (2003). Desaparición forzada de personas; desarrollo del fenómeno y respuestas de la Corte Interamericana de Derechos Humanos. International Law Annual, vol. XIX. Editorial España. Spain

Citroni Gabriella, Hardy Dave, Rice Patricio. (2009) Guía sobre la Convención Internacional para la Protección contra las Desapariciones Forzadas. (ICAED) in 2007 (Added 22 May 2015) Available online at: <http://www.ediec.org/es/biblioteca/item/id/511/>

Comisión de la Verdad. (2010) Informe de la Comisión de la Verdad Ecuador. Sin verdad no hay justicia. Ecuador. (Added 24 August 2015) Available online at: http://www.dhnet.org.br/verdade/mundo/equador/cv_equador_3_059_244.pdf

Courtis, Cristian. (2008) El sistema interamericano de protección de los derechos humanos y su repercusión en los órdenes jurídicos nacionales. Editorial: Dirección General de Coordinación de Compilación y Sistematización de Tesis. México.

Corte Interamericana de Derechos Humanos (1987). Caso Velásquez Rodríguez vs. Honduras. Sentencia el día 26 de junio de 1987. San José, Costa Rica

De la Cuesta Aguado, P. M. (1996). Tipicidad e imputación objetiva:(según el nuevo Código penal de 1995). Tirant lo Blanch. Spain.

EDIEC Enforced Disappearances Information Exchange Center. (Added 6 August 2015) Available at <http://www.ediec.org/es/mapamundi/informacion-regional/las-americas/>

González, Nazario (1998) Los derechos humanos en la historia. Edición Ilustrada Univ. Autónoma de Barcelona. Spain

Guzmán Dalbora José Luis. (2009) Desaparición Forzada de Personas. Análisis Comparado e Internacional. Editorial Temis S.A. Bogotá.

Hinkelammert, Franz J. (1990). Democracia y totalitismo., Editorial DEI. San José

Hubner, Jorge.(1994) Los derechos Humanos, Editorial Jurídica de Chile. Chile

Informe sobre la situación de desaparición forzadas en México ante la CIDH. Hasta encontrarlos. (Added 10 September 2015) Available online at: <http://desaparecidos.espora.org/spip.php?article952>

Informe del Grupo de Trabajo sobre las Desapariciones Forzadas o Involuntarias. August 2014. (Accessed 20 August 2015) Available at <http://www.ohchr.org/SP/Issues/Disappearances/Pages/Annual.aspx>

Kordon, Diana, Lucila Edelman (1986): Efectos psicológicos de la represión política. Buenos Aires.

Malarino Ezequiel. (2009) Desaparición Forzada de Personas. Análisis Comparado e Internacional. Editorial Temis S.A. Bogotá

MALDONADO CONDE, Julio Cesar, El delito de las Desaparición Forzada de Personas como Mecanismo de Protección de los Derechos Humanos, (Accessed 10 August 2015) (online), available at: <http://servicio.bc.uc.edu.ve/derecho/revista/idc24/24-3.pdf>

Manfred Nowak (2002). Los derechos civiles y políticos, en particular las cuestiones relacionadas con las desapariciones y las ejecuciones sumarias. "Informe presentado por el Sr. Manfred Nowak, experto independiente encargado de examinar el marco internacional existente en materia penal y de derechos humanos para la protección de las personas contra las desapariciones forzadas o involuntarias, de conformidad con el párrafo 11 de la resolución 2001/46 de la Comisión. 2002"

Mestre, José. (2007.) Los Derechos Humanos, Editorial S.L EDITORIAL UOC. Spain

MOLINA THEISSEN. Ana Lucrecia, La Desaparición Forzada de Personas en América Latina, (Accessed 27 July 2015) [online], available at: <http://www.derechos.org/vii/molina.html>

Monroy, Marco, Navarro del Valle, Hermes (2001). Desaparición Forzada de Personas: Análisis Jurídico de Los Instrumentos Internacionales y de la Ley Colombiana 589 Del 2000 Sobre Desaparición Forzada de Personas, Ediciones Librería del Profesional. Colombia.

Nash Rojas, Claudio. (2008) El Sistema Interamericano de Protección de los Derechos Humanos y su Repercusión en las Ordenes Jurídicas Nacionales. México.

OEA. ORG. (1985), Informe sobre la situación de los derechos humanos en Chile. Comisión de Derechos Humanos, Washington.

Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. (2009). Desapariciones forzadas o involuntarias. Folleto informativo No 6/Rev.3. (país) [Accedido el 13 de diciembre de 2014] Disponible en: http://www.ohchr.org/Documents/Publications/FactSheet6Rev3_sp.pdf

ONU. ORG (2006). Convención Internacional para la protección de todas las personas contra las desapariciones forzadas. . Accessed: 07 March 2015. Available at: <http://www.ohchr.org/SP/ProfessionalInterest/Pages/ConventionCED.aspx>

ONU.ORG. (2010). Informe del Grupo de Trabajo sobre las Desapariciones Forzadas o Involuntaria. Accessed: 22 February 2015. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.48.Add.3_sp.pdf

ONU. United Nations Treaty Collection. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

PARENTI, Pablo. (2007) Los crímenes contra la humanidad y el genocidio en el derecho internacional. Buenos Aires.

Pásara, L. (2012). El uso de los instrumentos internacionales de derechos humanos en la administración de justicia. 2da ed. Naciones Unidas. Quito.

Pelayo Carlos. (2012) La Convención Internacional para la Protección de todas las Personas contra las Desapariciones Forzadas. Editorial Zeury. México D.F.

Plate Ewoud. (2009) Usar el derecho contra las desapariciones forzadas. Guía práctica para las familias de personas desaparecidas y ONG's. Netherlands

Primer Informe Periódico del Estado Ecuatoriano al Comité contra la Desaparición Forzada de la Organización de las Naciones Unidas, Abril de 2014. Quito, Ecuador. Available online at: http://www.ohchr.org/Documents/HRBodies/CED/SPReports/CED.C.ECU.1_sp.pdf

Rivera Vélez Fredy. (2011). Inteligencia Estratégica y Prospectiva. Flacso – Sede Ecuador. Quito

TRIAL Trac Impunita Alas. Comisiones de la Verdad. Comisión de la Verdad Ecuador. Available online at: <http://www.trial-ch.org/es/recursos/comisiones-de-la-verdad/america/equateur.html>

Vélez, Giovanna.(2004.) La desaparición forzada de personas y su tipificación en el Código Penal peruano. Editorial: Fondo Editorial de la Pontificia Universidad Católica del Perú.
Country: Perú

LOS DERECHOS CIVILES Y POLÍTICOS, EN PARTICULAR LAS CUESTIONES RELACIONADAS CON LAS DESAPARICIONES Y LAS EJECUCIONES SUMARIAS
Informe presentado por el Sr. Manfred Nowak, experto independiente encargado de examinar el marco internacional existente en materia penal y de derechos humanos para la protección de las personas contra las desapariciones forzadas o involuntarias, de conformidad con el párrafo 11 de la resolución 2001/46 de la Comisión, UNITED NATIONS, 2002