SUBJECT: ALTERNATIVE REPORT PRESENTED BY CEDHU IN VIEW OF THE ADOPTION OF THE LIST OF QUESTIONS PREVIEW ECUADOR'S REPORT

1. INTRODUCTION

The Ecumenical Commission for Human Rights (hence CEDHU),¹ considering that the Human Rights Committee will adopt a list of questions previous the presentation of the Ecuadorian State’s Report regarding the application of the International Pact of Civil and Political Rights (hence the

¹ CEDHU is a legally constituted organization in 1978 for the promotion and defense of human rights. Our legal department receives the complaints of persons whose rights have been violated, their family members or kindred. Another source is the information published by the media regarding human rights abuses.

More information: http://www.cedhu.org/
Pact) has elaborated the present document with information that could contribute to the elaboration of questions mentioned above.

This document describes several violations of the civil and political rights which the CEDHU has registered during the last four years. These include violations of the right to an effective remedy, the right to life, the prohibition of torture, the right to personal liberty and security, the rights of prisoners and the right to freedom of expression.

Efforts must be redoubled in order to ensure the full exercise of human rights in accordance with the Ecuadorian Government’s commitment to the International Covenant of Civil and Political Rights.

II. NORMATIVE FRAMEWORK FOR THE APPLICATION OF THE COVENANT

The Constitution of the Republic of Ecuador in force since October 2008 recognizes Ecuador as a constitutional State governed by rights and justice. Its greatest duty is to respect and demand respect for the human rights ensured by the Constitution and the instruments, treaties and international agreements in force. It ensures a wide range of rights with their respective enforceability mechanisms. It establishes that no authority may deny a right based on the excuse of the lack or obscurity of a law. Every authority, both administrative and judicial, during the process of a petition or when resolving a case, must first of all apply the Constitution and the International Agreements. Consequently, all contrary norms have no judicial value.

They recognize that crimes of genocide, crimes against humanity, war crimes, the forced disappearance of persons or acts of aggression against a State are not subject to a statute of limitation. They prohibit torture and cruel, inhuman or degrading treatment or punishment. The State is responsible for arbitrary detention, judicial error, unjustified delay or inadequate administration of justice, violation of the right to effective judicial protection and violations of the guarantees of due process.

Nevertheless, in spite of the existence of a favorable normative framework for the exercise of human rights, the following points show that the real situation contradicts what the Constitution and international instruments that protect human rights have approved.

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2 Considering that the recommendations of the Committee to the Ecuadorian Government were made in October 2009. The CEDHU has taken the period between October 2009 and October 2013 as the point of reference for the present analysis.
III. FULFILLMENT OF THE COVENANT AND FOLLOW-UP OF THE RECOMMENDATIONS GIVEN TO ECUADOR BY THE HUMAN RIGHTS COMMITTEE

Following is an examination of the situation of civil and political rights in accordance with the Articles guaranteed in the Covenant taking into account the recommendations which the Human Rights Committee gave the Ecuadorian Government in 2009.

- THE RIGHT TO EFFECTIVE RECOURSE (ARTICLE 2.3)

Recourse is effective when in addition to being part of the legal system, it fulfills the purpose for which it was created, is carried out within a reasonable amount of time, and observes the guarantees of due process. The effectiveness of recourse also implies the impartiality of the judge, the proscription of defenselessness and most especially, the carrying out of judicial decisions. The State cannot dismiss its function of carrying out justice without which neither order nor right can exist.

The Covenant establishes that competent authorities will fulfill every decision in which recourse has been deemed fitting. In practice, however, authorities refuse to carry out judicial sentencing so when faced with this negative response, affected people are forced to initiate new legal processes in order to demand that sentences and resolutions be carried out.

For example, on September 17, 2009, the Constitutional Court ordered that a hospital employee be reinstated in his place of work in the hospital in the canton of Guamote in the province of Chimborazo. The authorities refused to carry out the sentence handed down in favor of the fired worker, and quite the contrary, the day he returned to work he discovered the locks on his office door had been changed to prevent him from entering. In 2012, this wronged person initiated new legal proceedings in order to demand that this sentence be carried out.

In another case being processed since in 2011, the Municipality of Santa Cruz in the province of Galapagos refuses to carry out the resolution for precautionary measures ordered by a court in Quito in favor of an elderly person. The judge ordered the restitution of a property that family members had arbitrarily seized. This refusal has prevented him from having a dignified life as well as depriving him of his right to own property.

Refusal to comply with judicial resolutions also impairs the right to the effective legal recourse which guarantees that every person who seeks help from the legal system has the right to have due process respected and be granted a decision based on the law with regard to proposed claims, that he assurance that the judge is impartial and there will be a prompt process, and most importantly, that judicial decisions will be carried out.
It is important to mention that the public authority to whom a resolution of recourse is directed does not have the discreitional authority to allow him or her to qualify the convenience of carrying out a judicial decision. This resolution is to be obeyed immediately in its entirety, especially when dealing with decisions based on jurisdictional guarantees whose purpose is to cease, avoid or remedy the consequences of illegitimate acts or omissions of public authority that violate human rights.

Conclusions

The carrying out of a judicial decision is not subject to the will of the authorities to which it is directed. The practice of public dignitaries and functions is a service to the community that demands capacity, honesty, efficiency and consequently, the defiance of a public official or authority nullifies a recourse and opposes the guarantee inherent in judicial security.

A constitutional state of law is guaranteed by an effective administration of justice. A resolution’s legally binding effects need to be respected by the parties and consequently, the decisions taken by means of a resolution become actions that must be executed.

Questions directed to the State

¿How does the State guarantee that the sentences passed by the judges are efectively and efficiently executed?

¿ What sanctions does the State enforce against civil servants or authorities who refuse to comply with the sentences and resolutions passed by judiciary instances?

• THE RIGHT TO LIFE (ARTICLE 6)

Life is the fundamental base for the enjoyment of the other rights. It is the principle underlying the existence of people and as such, and based on this, it is possible to enjoy and demand the fulfillment of the other rights.

In order to assure the right to life, the Government, in addition to establishing proper conditions for the dignified life of persons, has the obligation to investigate, identify, prosecute and sanction those responsible for violent deaths, especially deaths in which incidents of government agents appear to have been involved, in order that these deaths are not left unpunished and can
become a way to prevent similar events from happening.

From October 2009 to October 2013, the CEDHU registered 292 homicides which included 53 extrajudicial executions, 133 femicides and 23 deaths in custody.

Violations of the Right to Life
October 2009 to October 2013
23 victims      53 victims
Extrajudicial executions
Femicides
Deaths in custody

Violaciones del derecho a la vida
octubre 2009 a octubre 2013
23 víctimas
53 víctimas
133 víctimas

➡ Extrajudicial Executions

With regard to extrajudicial executions, it is noticed that the pattern continues. Law enforcement officials go unpunished for violations of the right to life defending themselves with assumed confrontations in which there is no proper progressive use of force or the use of a firearm as a last resort. Following are some of these cases.

- Manta, January 2009: Two persons were arbitrarily detained and killed. Months later, one of them was declared innocent in a criminal procedure in which the death of a police officer was investigated. In spite of having been acquitted, another police officer threatened his family saying that, “I will not rest until I have his head.” During the investigation of three deaths, the district attorney made no charges and the case was filed.

- Manta, April 2009: Two persons were killed, one was wounded and another person left
unharmed. The victims were followed by members of the National Police in two vehicles. According to the police, there was an armed confrontation; however, the victims were not armed. Once again, the District Attorney did not file charges and the case was filed.

- Quevedo, July 2010: A legal physician who documented several violations in the Quevedo jail was executed a few days after interviewing the UN special Rapporteur, Philip Alston, with regard to arbitrary, summary and extrajudicial executions. The victim’s family was threatened and had to change their residence several times. Since 2010, nothing is known about this investigation, and it is feared that this case will go unpunished.

- Sabanilla, August 2010: A military official died after a gunshot wound in the abdomen during a training session with parachute commanders. His body was removed from the scene and irregularities were denounced during the investigation.

- At this time, the District Attorney has not yet charged those presumed responsible in spite of serious indications implicating members of the Army.

- Manta, September 2010: Three persons were killed by police officers. Carlos (not real name) received 9 gunshot wounds but survived and was taken to a hospital where he told family members that the police had tried to kill him. After hearing this story, Carlos’ brother Miguel (not real name) left and tried to find the assailant. Several hours later, the death of a police officer was reported. In response to this event, nearly 100 police officers initiated an operation and killed Miguel and two other persons. Carlos’ brother appeared with fractured arms, two stab wounds in his body and more than 20 gunshot wounds in the head and abdomen. According to neighbors, the victims were alive when they were detained.

- Guayaquil, December 2010: One person was killed by 3 gunshots - one in the heart, one in the arm and the third in the back. From a window of his house, the victim’s brother saw a group of police officers shoot his brother. After the investigation was initiated, a group of police officers were charged, but the process was declared null because the shell casings found at the scene had been handed over by the father of the victim and not the official investigators in spite of the fact that they belonged to police weapons. According to the judges assigned to the process, that violated the chain of custody.

- Arenillas, December 2011: A young man was killed by 3 gunshot wounds after leaving a discotheque with his brother. The victim was intercepted by police officers and a commissioner. According to witnesses, the victim was forced to kneel, was pushed down and then shot. In March 2013, the El Oro Penal Tribunal absolved the accused by a majority vote.

- Chongon, April 2012. Three persons were killed after being detained by a military patrol.
Christian and Xavier (not real names) were playing on a volleyball court when they were detained by a military group. Another friend intervened trying to keep them from being taken away, but he was also detained. The next day, the three bodies with their hands tied behind their backs were found in some bushes with gunshot wounds to the head and bruising in the neck. On August 19, 2013, the Guayas Penal Tribunal condemned the principle perpetrator who was sentenced to 25 years, the co-perpetrators to 16 years, and the accomplices to 8 years.

- **Quito, March 2013:** A person was killed in a confusing event involving a diplomatic caravan transporting the Argentinian Vice President. The Commander of the Armed Forces issued two communications. The first indicated that military intelligence elements had repelled an assault against the caravan. The second communication indicated that common delinquents had attempted to assault the caravan but the incident had nothing to do with either the Vice President or his retinue. No judicial process against the military was opened. The only thing done was to open a judicial process against the one survivor.

- **Esmeraldas, May 2013:** Two persons died and two others were wounded in a police operative. According to the police report, residents of the sector had prevented the capture of a suspect who was hiding in a house. A police officer arbitrarily entered the house and fired shots that wounded four persons, including an 8-year-old minor. The Esmeraldas Second Tribunal of Penal Guarantees will soon set the date for the hearing against the involved police officer for the crime of homicide.

The situation in these cases intensifies when the District Attorney does not carry out a real investigation to try to discover the truth. Lack of trials and sanctions of those responsible leaves them unpunished for any demand presented against them and reduces the effectiveness of the protection mechanisms of a damaged legal entity. The penal process is one means of carrying out justice, and it is through the penal process that the Government can guarantee victims’ families the right to truth since it is through an exhaustive investigation that it is possible to establish the facts and circumstances that surround a violation of a right, which in this case is the right to life.

- **Femicide**

  Because of the increase in the number of complaints of murdered women, in 2010 the CEDHU began to register cases of *femicides* considering as such the cases produced with extreme violence against women just because they are women. An analysis of the 133 cases registered is reason for concern because of the cruel nature of the commission of these crimes. Bodies of women burned, beheaded, dismembered, stabbed or with firearm wounds have been found. In some of these cases, they have been previously abused sexually, with
this occurring in the presence of their children. The cruelty involved in these women’s murders has become a pattern seen in all the following cases.

- **Guamote, March 2010**: A divorced woman returned to her ex-husband after his alleged repentance and proposal of remarriage. The night before the wedding, the aggressor murdered the woman and fled. He was later detained and placed in custody.

- **San Antonio de Pichincha, November 2010**: A young student was raped, murdered and dismembered by a cousin and an unidentified person who entered her house with the intent of stealing her belongings. After raping her, they dismembered the body with a knife and threw her limbs into some bushes.

- **Quito, February 2011**: A woman was hung by a cord from a post. The murderer was her husband who had constantly abused her. The body showed signs of beating, abrasions on the arms and the trachea was also destroyed.

- **Guayaquil, March 2011**: A woman was beheaded with a wire and a knife. The murderer was the husband who had previously tried to hang her. He also beat and strangled his two sons, but the younger one managed to escape.

- **Guayaquil, April 2011**: A woman’s estranged husband hacked her to death with a machete. In the early morning hours of April 14, 2013, the aggressor entered the house through the roof and murdered her. Their son witnessed the crime, but the father threatened to kill him with a knife if he said anything. During the judicial process, the victim’s son testified that his mother had constantly been assaulted and raped.

- **Guayaquil, March 2012**: In an act of jealousy, a woman was beaten, raped and strangled by her partner. The victim’s body was wrapped and dumped in an abandoned lot.

- **Ibarra, October 2012**: A woman died after being strangled during a fight with her boyfriend. The pair had an argument that got heated and he grabbed her by the neck and suffocated her with both his hands.

- **Esmeraldas, February 2013**: A woman was murdered and incinerated. Her totally burned body was found in an African palm plantation, and only some of her clothes could be identified.

- **Salcedo, April 2013**: The dismembered body of a woman was found in a burlap sack. It showed signs of having been raped.

- **Chibuleo, April 2013**: A 94-year-old woman was raped, beaten and strangled.

The cases registered by the CEDHU show that the majority of femicides occur in the women’s normal surroundings, and the aggressor is the victim’s partner or ex-partner who may be a
spouse, partner, fiancé or boyfriend. Witnesses or victims’ family members have noticed systematic episodes of violence. Many women who survive these attacks against their lives are left fearful, go into hiding and live in a state of constant anxiety near family members or in isolated places in order to ensure their lives and personal integrity. Others stay with the aggressor because they are afraid to denounce the aggression, believing they will become victims of retaliation and not be able to find their way out of a vicious circle.

Chart 2 shows the number of femicides registered in the Province of Pichincha with the Province of Guayas in second place.

**Chart 2**

**Femicide**

<table>
<thead>
<tr>
<th>Province</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Pichincha</td>
<td>35%</td>
</tr>
<tr>
<td>Guayas</td>
<td>33%</td>
</tr>
<tr>
<td>Cotopaxi</td>
<td>2%</td>
</tr>
<tr>
<td>El Oro</td>
<td>3%</td>
</tr>
<tr>
<td>Esmeraldas</td>
<td>3%</td>
</tr>
<tr>
<td>Sucumbios</td>
<td>1%</td>
</tr>
<tr>
<td>Sto. Domingo</td>
<td>3%</td>
</tr>
<tr>
<td>Tsachilas</td>
<td>2%</td>
</tr>
<tr>
<td>Manabi</td>
<td>4%</td>
</tr>
<tr>
<td>Los Ríos</td>
<td>2%</td>
</tr>
<tr>
<td>Loja</td>
<td>1%</td>
</tr>
<tr>
<td>Imbabura</td>
<td>2%</td>
</tr>
</tbody>
</table>

Source: CEDHU Database

In 2009, the Committee expressed its concern regarding the high incidence of cases of violence against women and girls. For this reason, it recommended the Government to:

α) Proceed with the investigation and punishment of aggressors.

β) Permit an effective access to justice for victims of gender violence.

χ) Grant police protection for victims and also create shelters where they can live with dignity.

δ) Double efforts to provide an educational environment free of discrimination and violence by organizing awareness campaigns and training public officials and students.

ε) Take preventive measures and create awareness with regard to gender violence by training police officers and especially train people who work in Women’s Commissaries in women’s
rights and gender violence.

Although it is true that the District Attorney has carried out diligent investigations with regard to the deaths of women, there is cause for concern because the number of victims has increased during recent years. This shows that the prevention and awareness measures adopted by the Government regarding gender violence are insufficient. It is necessary to undertake actions directed at society in general in order to change the violent machista culture of our society, create shelters for women who are victims of domestic violence, and legislate penalties. Although categorizing “femicide” will not abolish these crimes *per se*, it will transmit the message to society that the lives of women are to be respected, and it is also necessary to sanction those responsible for the crimes.

- **Deaths in Custody**

  During the last four years, *23 deaths in custody* have been registered as taking place in the prisons listed below.

  ![Graph showing deaths in custody from 2009 to 2013](image)

  Related to these violations of the right to life are factors such as overcrowding and the lack of control in prisons, aspects which reproduce violence inside these prison facilities. Following are some of the registered cases:

  - **Sucumbios Provisional Detention Center, October 2009:** A Colombian woman was raped, tortured and murdered. She had been accused of possession of drugs. Her spouse said police officers had threatened to kill her. At first it was said the woman had committed suicide, but during the investigation irregularities came to light that jeopardized the investigation.
  - **Santo Domingo de los Tsáchilas Social Rehabilitation Center, November 2010:** A prisoner
was murdered and two others suffered gunshot wounds. These events took place during a shootout in the prison.

- **Quito Social Rehabilitation Center, January 2011:** A South African prisoner died after lack of specialized medical attention. He was HIV/AIDS infected and was taken to a hospital where he was not cared for properly. When he was returned to the prison, he was left on the floor where he died. The other prisoners protested the incident.

- **Ambato Provisional Detention Center, January 2012:** A person was murdered in the prison where he had been detained after causing a public scandal. According to the District Attorney, the event took place during an alleged quarrel inside the prison. The victim died after three hours of agony. The police who were guarding the prisoners said they did not hear anything, but another prisoner said the victim screamed to the police begging for a telephone call because he had pain in his lungs, but they did not pay attention. The scandal caused unrest among the prisoners because the victim had been brutally attacked.

- **Quito Women’s Prison, August 2012:** A Lithuanian woman was found dead in her cell. It seemed to be suicide, but authorities of the Ministry of Justice said they will investigate her death. The other prisoners rallied in protest to demand better conditions and reduced sentences.

- **Quito Provisional Detention Center, July 2013:** A prisoner died from 19 stab wounds in his body when he was attacked by another prisoner. The director of the prison had previously notified the authorities about the death threats the victim had received and she requested that he be moved in order to protect his life and personal integrity. However, her request was not granted in time. She also reported that the number of guards is too few in relation to the number of prisoners in this place. This situation puts the lives and integrity of both prisoners and the people who work in the Center at risk.

- **Quito Remand Unit, May 2013:** A prisoner presumably committed suicide in the Quito Remand Unit. A damaged security camera prevented learning the real circumstances of the death of this person who had been sentenced to five days of prison for intrafamily violence.

Victims’ relatives have manifested that the investigations are still deficient. During the processing of cases, irregularities arise that impair the guarantees of due process, and in many cases this results in impunity. Because of this situation, prisoners have carried out protests demanding more attention from the Social Rehabilitation System authorities.

**Conclusions**
Forms of violation to the right of life such as extrajudicial executions, femicides, deaths in custody and other types of death are cruel, atrocious acts and constitute such serious violations of human rights that they must not go unpunished. This means that the material and intellectual authors as well as the accomplices of behavior conducive to the violation of rights cannot be left impervious to the legal consequences of their acts.

The role of the District Attorney during the preprocessing and processing stages of investigations is fundamental in clarifying violent deaths and other crimes in general. In the cases detailed here regarding extrajudicial executions and deaths in custody, it is noted that the investigations have not been exhaustive, thereby favoring impunity.

The cruelty apparent in the murders of women is alarming, especially when these practices reoccur. It is urgent to deal with this problem in an integrated multidisciplinary manner starting with education and prevention in homes, educational establishments, workplaces, neighborhoods, communities and other places in order to counteract the violent machista culture prevalent in society.

Prisoners are under the custody of the Government and consequently, authorities are obligated to adopt all the necessary measures to guarantee their right to life and diligently investigate the deaths that take place inside the prisons.

**Questions directed to the State**

**Extrajudicial executions**

¿How does the State guarantee that in the judicial process the minimum judicial proceedings be observed according to what international standards in regards to extrajudicial executions consider fundamental elements in order to clarify this type of serious international crimes?

¿How many administrative summaries have been initiated or how many sanctions have been applied in order to guarantee that there be no delay due to negligence and inactivity of judiciary officials.
What measures has the State taken to enhance the program of protection of victims and witnesses, better its capacity and credibility?

¿How does it guarantee that this program be independent from other actors such as the public prosecutors and the police.

Does the program of protection of victims and witnesses depend on the police and the public prosecutor?

Femicides

¿How many cases of femicides have been reported and investigated during the last four years and of these how many have been sentenced?

¿Are data and statistics being gathered in order to make sure that the problem of violence against women does not remain invisible.

¿How many juridical, political, administrative, social and cultural actions has the State gathered in order to prevent violence against women?

¿Are there adequate measures in the area of education and the media in order to raise consciousness of violence against women as human rights violation in order to eliminate discriminatory practices against women.

Deaths in Custody

¿What actions have been adopted by the State in order to prevent the death of persons deprived of liberty?

¿Are those who have been processed separated from condemned ones?

¿How many investigations have been undertaken upon finding arms inside detention centers and how many sanctions have been adopted?

¿When serious human rights violations against detainees occur, why have jail security systems not functioned properly?

• THE PROHIBITION OF TORTURE (ARTICLE 7)
Both the Constitution of the Republic and the International Covenant of Civil and Political Rights establish that no one shall be submitted to tortures, penalties or cruel, inhuman or degrading treatment. Nevertheless, during the last five years the CEDHU has registered 96 victims of torture. The persons affected were detained, tortured and forced to sign police reports in which they declared that the agents who detained them had respected their rights. There are serious shortcomings in the preparation of medical examinations which cast doubt on the credibility of the documents as well as the professional character of those who prepare them. Several cases can be mentioned:

- **Quito Provisional Detention Center, April 30, 2009**: A detained person was tortured for an hour when penitentiary guides kicked and clubbed him. After the beating, they put a tire around his body and forced him to do sit-ups. Then they beat him again with clubs.

- **Quito Judicial Police Jails, June 26, 2009**: A young man was tortured and accused of murder. Police officers covered his eyes with newspaper and adhesive tape, handcuffed him and beat him on the head. They took him to another room where a police officer kicked him on the back and forced him to kneel to “make him say what he knows.” The young man was declared innocent.

- **The Quito 24 de Mayo Police Station, July 4, 2009**: A 14-year-old minor was arbitrarily detained by police officers while he was playing with his brothers in a public park. He was a victim of torture and bad treatment because they wanted to make him confess to having committed a crime. They took his clothes off and warned him that “something worse” could happen to him. He had to be taken to a hospital afterwards.

- **The Quito 24 de Mayo Police Station, June 16, 2010**: A person was accused of stealing an item of clothing from the owner of a restaurant who called the police to detain the suspect. Police officers detained him and a little later freed him for lack of proof. However, while he was walking down the street a police car drew up and detained him once again. They handcuffed him and began to beat him with a baseball bat. They threw tear gas in his face, kicked and punched him all over his body and threatened to kill him “like the Restrepo brothers,” they said.

- **The Quito 24 de Mayo Police Station, May 16, 2010**: A person was tied up and attacked by two police officers who beat him with a club and kicked him all over his body. They also threw tear gas in his face and forced him to spend the night in the station restroom while the police officers beat the walls with a baseball bat to intimidate him and make him declare that he had robbed a taxi driver. The detention happened after the victim had an argument with
the taxi driver because he had charged too much for the service. Two medical doctors from the District Attorney’s office submitted contradictory medical examinations. The first indicated that the detained person had not been beaten. The second exam stated that he needed three days of rest because of the beating he had received.

- The Santo Domingo de los Tsáchilas Social Rehabilitation Center, August 27, 2011: Four inmates who tried to escape were tortured with electrical shock and beatings. One of them offered money to a guide so he would stop beating him, but the guide hit his head against a sink and this caused his death.

- The Tambillo Police Training School, January 2, 2013: An applicant to the police force was forced to do physical exercise for several hours, but when he did this incorrectly, he was punished and forced to drink 12 liters of water. Hours later he presented medical problems and was taken to the emergency room of a hospital. At present, the young man exists in a vegetative state. In the meanwhile, the Attorney General is investigating the causes for his condition.

The most common forms of torture registered are tying the person’s hands and feet, covering their face or eyes with duck tape and sometimes they are forced to take off their clothes. They endure brutal kicking and punches all over their body or on the head, stomach or genitals. They are also beaten with heavy objects such as clubs and boards. They are forced to kneel, endure electrical shock, have tear gas thrown in their face or are suffocated.

In this regard, the Committee expressed its concern regarding the cases of maltreatment of detained persons by police officers at the time of the detention when this conduct is not sanctioned, and it recommended the Government to:

a) Take immediate and efficient steps to put an end to this type of abuse and to monitor, investigate and when appropriate, prosecute and sanction police officers who commit acts involving maltreatment and also compensate the victims.

b) Redouble the training methods used by the police with regard to human rights so this type of conduct is not repeated.

The problems described under this point show that the recommendations made by the Committee in 2009 have not been adequately implemented. People continue to be victims of maltreatment when they are detained. And even worse, these abuses remain unpunished due to the complexity that exists regarding the value placed on detained persons when medical examinations are submitted.

Conclusions
Torture is a serious offense to human dignity. Law enforcement officials, especially police officers and penitentiary guides have the obligation to assure the human rights of persons. Due to the nature of their functions, they are agents of authority and are obligated to adjust their conduct to the Constitution and international instruments and agreements. Since their actions must respond to the objectives of the Government, one of them is to guarantee that people have the full use of their rights. Consequently, behavior which contradicts this objective and releases an excessive use of force such as torture and maltreatment are clothed in illegality and unconstitutionality and consequently, those responsible for such acts need to be sanctioned.

Torture also brings with it other types of violations such as the arbitrary detention and incommunication which harm the right to due process through which the detained is assured communication with a lawyer and his or her family members. On repeated occasions, the Inter-American Commission on Human Rights has established in its reports that incommunication constitutes cruel, inhuman and degrading treatment.

The errors that have been denounced with regard to the preparation of medical examinations and police reports also represent conduct that contradicts the objectives of the Government in the defense of human rights and leave crimes against humanity such as torture unpunished.

Questions directed to the State

¿Is the crime of torture typified according to international standards?

¿How do you make sure that the declaration obtained under torture is not used as a proof against the victim?

¿How many investigations have been undertaken regarding complaints of false reports elaborated by the police and/or medical examinations done to the detainee. How many sanctions have been adopted?

• THE RIGHT TO LIBERTY AND PERSONAL SECURITY (ARTICLE 9)

The International Covenant of Civil and Political Rights establishes that no one may be deprived of his or her freedom except for causes established by law and in accord with the established procedure. The Constitution of the Republic also guarantees that no person may be detained arbitrarily. In spite of this understanding, the CEDHU has registered 702 victims of arbitrary
detentions during the last four years.

- **Circumstances of Detentions**

  Registered denouncements show that police agents detain a person without a judicial order and then later legalize that detention or just explain the presumed crime was *in flagrante* in order to justify their action.

  One example of this is the case of March 3, 2012 when ten young people were detained in a house in Quito and accused of terrorism. Weeks before the detention several social organizations called for a national mobilization for the defense of water, life and dignity, questioning the regime’s mining policy, the restriction of the right to freedom of expression in the country and the lack of participative democracy. For his part, the President questioned this mobilization saying that it was about destabilizing the Government, so that same day he called for concentrations and marches to support the Government and confront the national mobilization. It was in this context that these ten young people were detained and accused of terrorism.

  The day they were detained, the affected persons were peacefully talking together when a police contingency that did not identify themselves or show them a judicial order entered the place and apprehended them with no explanation for the detention. According to the police report which was wrongly dated, the suspects were caught in the act. The victims claimed maltreatment, torture and incommunication. They were forced to squat for four hours in a bedroom. Although one of the detained was pregnant, she was placed face down and beaten while lying on the floor. Medical examinations were not performed immediately to prevent the torture from being evident. One hour after the detention, the prosecutor on duty arrived with a portable computer and legalized the police action. The victims claimed that documents not belonging to them were included with the alleged evidence found by the police, and because of this they refused to sign the police report.

  During the investigation, the detainees denounced these violations, but they were not taken into account and quite to the contrary, new irregularities appeared during the trial which made the impartiality of the process questionable. In TV addresses, the Government asked that this group of young people be condemned and called them “The Luluncoto 10.” After being detained nearly one year, they were sentenced to one year in prison for the crime of tentative terrorist activity.

- **Abuse of Preventive Imprisonment**

  With regard to *preventive imprisonment*, it is disconcerting that this measure has become a general rule. It also worsens the situation of overcrowding in prisons because of the high number of unsentenced persons who are kept in national prisons. As a result, 24,589 persons are registered in the prison population at this time. Of this number, 8,822 persons have not been convicted.
According to research carried out by the Due Process of Law Foundation and published this year,\(^3\) the number of unconvicted persons has increased. This situation is caused by a lack of procedural promptness, and most especially to the little use judges make of alternative measures to prison which are established in the Constitution of the Republic. In the meanwhile, people pay time for a sentence they may or may not receive and live in the same space destined for persons who have been convicted. Preventive imprisonment has become a loss ratio mechanism applied indiscriminately and is becoming increasingly frequent.

- **Arbitrary Detention of Foreigners**

Among the registered cases, there are arbitrary detentions experienced by immigrants during the process of deportation. These people do not have the necessary resources or the possibility of appealing the order for departure. Many times they stay at a hotel two or three months while waiting to return to their country of origin or be able to remain in Ecuador. In these circumstances, they are victims of aggression, maltreatment, discrimination, sexual abuse and the violation of the fundamental guarantees of the right to due process.

One example is the case of October 15, 2013, when habeas corpus was requested for six persons from Cuba, Haiti and Portugal who had been illegally detained in a hotel in Quito, some for one month and others for two months, in spite of the fact that the authorities had ordered their deportation.

In these cases, it should be remembered that the process of deportation as described in the law is not a criminal action since deportation is not a sanction imposed by the commitment of a crime. It is rather a procedure to establish if a foreigner has incurred or not in one of the reasons that prohibit residency in the country.

**Conclusions**

In the registered cases, it can be seen that at the time of depriving a person of his or her right to freedom, the basic guarantees contemplated in the Constitution are not taken into account. These are the right to be told clearly and in simple language the reasons for the detention, the identity of the judge who has ordered the detention, the identity of who is carrying it out and the persons responsible for questioning, the right to remain silent, the right to ask for a lawyer, and the right to talk to a family member or any other person if so desired.

If preventive imprisonment continues to be applied indiscriminately in every case, the

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\(^3\) “Independencia judicial insuficiente, prisión preventiva deformada. Los casos de Argentina, Colombia, Ecuador y Perú”
problem of overcrowding in prisons will worsen while a large number of persons will continue paying time for a conviction they may not receive.

Questions directed to the State

¿Of all persons processed under penal law, how many are under preventive prison and how many remain with alternative measures?

¿Explain the reasons why foreigners with order of deportation remain detained in Ecuador for days or weeks?

- THE RIGHTS OF PRISONERS (ARTICLE 10)

The Constitution of the Republic and the International Covenant of Civil and Political Rights stipulate that every person deprived of freedom has the right to be treated humanely and with due respect to his or her dignity. Prosecuted persons need to be separated from convicted prisoners and they should be treated differently in accord with their condition of persons who have not been sentenced.

However, during the last four years the CEDHU registered 22,202 persons deprived of their freedom who had been affected by the loss of different rights. This is explained in the following points.

➤ Overcrowded Prisons

According to statistics of the National Direction of Social Rehabilitation (DNRS), in July 2010 there were 41 prisons in the country with an approximate capacity for 9,000 inmates, but at the end of January 2011, 13,000 persons were incarcerated. At present, there are 56 prisons with a capacity for 12,338 persons, but 24,589 prisoners are being held. This means that the prisons that have been built recently are not sufficient for the existing prison population.

For example, the Esmeraldas Men’s Rehabilitation Center has a capacity for 624 persons, but 1,000 persons are detained there.\(^4\) The women’s prison in Quito has a capacity for 340 persons, but at present there are about 780 women there, making it necessary for as many as five women, plus the babies who accompany their mothers, to share an approximate space of 2x2.5 meters. This situation shows that the density of the population is higher than the international norm which is 20

square meters per prisoner.

The number of prisoners has doubled during recent years. The same can be said for the levels of insecurity and violence inside the prisons. During the inspections carried out at the national level, prohibited articles have been found in the possession of prisoners. There have also been a number of incidents between gangs that challenge each other for control of the centers.

One example is the shootout that lasted three consecutive days in the Machala prison in February 2012. Several prisoners were wounded in a confrontation involving inmates. The cause of the confrontation was said to have been an argument over the control the inmates have inside the prison. No one can explain how the firearms entered the facility. In October that same year, there was another shootout in the Penitentiary of the Litoral. Three inmates were killed and another taken to hospital. Detainees’ relatives ask how firearms get inside prisons if visitors are required to pass a rigid inspection before entering. In June 2013, another shootout occurred in Machala. Several inmates were wounded. A few days before, the prison guards warned the National Police about possible incidents, so the police were at the prison.

The percentage of women in prison has also increased. According to DNRS statistics, in August 2012 nearly 1,518 women prisoners were registered in the country. 80% of these women have been detained for drug-related crimes. There are cases of trafficking, drug mules or “witches,” and suppliers of small amounts for personal use. According to the October 2013 report, “Women, Drug Crimes and Penal Systems of Latin America,” of the International Drug Policy Consortium of the United Kingdom, the lack of economic resources is the main reason women traffic drugs to other countries and get apprehended. Ecuador and Bolivia have the highest percentages: 10.7% and 13.4% respectively of women detained in South America. In 1982, 18.5% of the women had been detained for drug-related crimes. This percentage has increased now to 75% or 80%.

Statistics show that 85% of the persons who leave prison return within a 10-year period. Unfortunately, it is predicted that the number of prisoners will increase significantly with the promulgation of the Integrated Penal Organic Code (COIP) which is being debated in the National Assembly. A punitive legal body that establishes the hardening and accumulation of penalties could determine up to 40 years of imprisonment but the policies for reinsertion are still insufficient. COIP’s Third Book incorporates the National System of Rehabilitation as the entity in charge of the administration of the prisons, whether they are provisional or for rehabilitation, in order to

5 CEDHU Database, November 2013.
6 National Direction of Social Rehabilitation.
7 Fiscalía General del Estado, Delincuencia and Penal Justice, Quito, 2013.
8 El Comercio, “Hasta el 80% de detenidas está por tráfico de drogas”, in El Comercio, Quito, November 12, 2013, http://www.elcomercio.com/seguridad/narcotrafico-drogas-carcel_de_mujeres_0_1028297257.html
guarantee integrated attention for prisoners. It is expected that the National System of Rehabilitation will plan policies that take into account the reality of the prisons in the country.

The best option is not always imprisoning more people since that represents a high cost for the Government. Prison overcrowding is a mode of reproduction of the violence that affects prisoners and society in general, because a person who has not been properly rehabilitated finds it very difficult to reinsert him or herself into society.

➢ Violence in Prisons

Overcrowding and the lack of control are factors that reproduce violence inside prisons. This explains what happened in the Penitentiary Litoral in April 2012 when two prisoners who had a knife and a gun challenged other prisoners. The fight started when prisoners belonging to two different gangs were placed in the same cell. The wounded were taken to a hospital in Guayaquil and the attackers were taken to the Judicial Police where a process for attempted murder was initiated.

On March 24, 2013 a news organization visited seven prisons in the country and discovered that inmates still pay money so they can live in better conditions. In the former Garcia Moreno Penitentiary in Quito, some prisoners offer others everything from a cell phone at $60 to a pistol valued at $1,000 or a knife worth $40. Guards wer disposable gloves to examine women in their intimate parts. The scanner is not used to detect prohibited objects in bags or backpacks, and the metal detector is not used to see if coins are being carried inside.

During these visits, the visitors observed that the control is less rigorous in the prisons in Machala and Quevedo. Inside the facilities, they saw prisoners who had cell phones and portable computers. In the Quevedo prison, there is a room called the “quarantine room” for the prisoners who cannot pay to live in better conditions. They sleep on the floor while rats crawl over their bodies. In order to get a private or shared cell, they have to pay between $20 and $3,000 or more depending on the person who gets the space. Payments for living in better conditions are also part of the picture in the prison in Cuenca.10

➢ Cruel, Inhuman and Degrading Treatment

The relatives of detained persons claim to have passed through examinations that disrespect their dignity. This is the case of a 58-year-old woman who said, “When I went to visit my son, I was the victim of the worst dishonor of my life, because in order to enter I had to let a woman put on

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gloves and put her fingers in my most intimate parts. As if this wasn’t enough, she rubbed my breasts and finally made me drop my pants and walk around the room in a squatting position. My daughter-in-law had just given birth and the squatting we had to do nearly caused her to hemorrhage. If it’s true that they have scanners in this prison, then why do they degrade a person by forcing them to do such a dishonorable thing?”

In November 2013, a relative of a prisoner claimed that in the Santo Domingo de los Tsáchilas prison the treatment prisoners get is totally beneath human dignity, the food is terrible, and they are physically and psychologically battered by prison guards who pound them with their fists or rubber bullets. The stronger men called “corporals” extort the weaker prisoners to keep them from being beaten. No authority from the Rehabilitation System pays visits to the prison to talk to the prisoners to detect the corruption inside the facilities. The guards threaten the prisoners with the idea of making negative reports regarding discipline if they say anything about the abuse they suffer.

In March 2012, a prisoner was placed in the “hole” in the Ambato Provisional Detention Center where he was abused and raped by two inmates. He said police officers asked him for money when he arrived offering to put him in a cell, but since he did not have money, they put him in the hole. He asked the guards to help him but no one paid attention.

Women who are detained are also treated badly by prison guards, and there is discrimination like the case in the women’s jail in Quito. Lesbianism is on the increase and this affects heterosexual women who have to share cells.

Arbitrary Transfers

Accusations with regard to arbitrary transfers and denied requests for transfer are also frequent. Sometimes prisoners are threatened by cellmates or prison guards. Their lives and personal integrity are threatened and they request a transfer to a safer place. In other cases, they are detained in prisons far from their families making it impossible to receive visitors. Nevertheless, most requests are denied with the justification that the prisoners are extremely dangerous.

In January 2013, a prisoner was transferred from the La Roca Prison in Ambato to Guayaquil because he was considered extremely dangerous. The prisoner had had an incident with prison guards in the Ambato prison when they found him with a cell phone and took it away from him. The prisoner was dragged and beaten by guards and then left in solitary confinement in the calaboose for three days. He was later transferred to the La Roca Prison without notifying his relatives. While he was in the calaboose, one of the guards performed a medical exam in order to say he had been abused by a prisoner and then when he was taken out of the calaboose, they performed another

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11 Testimony received by the CEDHU of a relative of a prisoner serving a sentence in the La Roca Jail.
exam that obviously did not show any aggression because of the time that had passed. The victim’s relatives denounced the changes made in the report the Ambato prison guards presented to the DNRS. The victim had been sentenced to one year of prison for robbery.

In February 2013, another inmate was transferred from the prison in Ibarra to the Penitentiary of the Litoral in Guayaquil. Family members accused the director of the prison in Ibarra of presenting two different reports to the DNRS in order to justify the transfer. In January 2012, after a shootout in the La Roca Prison, an inmate was threatened to be killed. Family members requested his transfer in order to preserve his life and personal integrity, but the request was denied. On September 8, 2013, a grenade was thrown into his cell and he was seriously wounded and transferred to a hospital. Family members claimed the authorities were responsible for this prisoner’s life and personal integrity.

**Poor Nutrition**

One example of problems with food is from March 2012. In the La Roca Prison there is a list of food showing the quantities and brand names of food products and cleaning supplies that relatives are allowed to give prisoners. The list includes 200 grams of ham, 2 liters of yogurt, 1 loaf of Supan bread and so on. This means that if a relative arrives with 1 liter of yogurt, it is rejected because the quantity indicated is 2 liters. The food has to last 2 weeks, so because of the weather and lack of refrigeration the prisoners eat spoiled food and then get sick.

Recently, a reporter visited the Provisional Detention Center in Quito and among other things, observed that visitors may not leave cooked food or food that needs to be cooked, fruit that can spoil, canned food, oatmeal or snacks. Because of this rule, relatives ask guards to buy food and give it to the inmates. Consequently, chicken that costs $7 or $8 dollars outside may cost as much as $30 inside. The daily food allowance is so small that 15 to 20 inmates are left with nothing because there is not enough food for all of them. A worker indicated that sometimes they get only half a sausage with rice. Meal schedules are not respected either. Lunch gets served first in Prison 3 which is next door to the Center. Consequently, they get lunch about 4 p.m. and supper at 8 p.m. Breakfast is just plain coffee and bread.12

The Provisional Detention Centers overseen by the Police do not have a budget for food, so prisoners depend on family members to take them food. This situation is even worse for prisoners from other provinces who have to ask other prisoners to share their food.

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Health Problems

During this tour of prisons, it was noticed that prisoners in the Quito Provisional Detention Center hang their blankets at different heights and use them like hammocks for sleeping. Dozens of thin sponge mattresses lie on the floor side by side. At night, there is a lack of oxygen in the rooms and sometimes the prisoners who are sleeping in the hammocks fall on top of those who are asleep on the floor. There are mattresses even in the bathroom along with food and prisoner’s belongings. Inmates stand in long lines waiting to use the bathroom where there is only one shower for more than 50 persons. The right to sleep alone in a bed costs as much as $400. Because of such a reduced space, only one visitor per prisoner is allowed to enter.\(^\text{13}\)

In spite of the fact that in November 2012 Judge Baltazar Garzón ascertained that the Quito women’s jail did not meet the international standards required for penal institutions, there are still only two showers for the approximately 50 women who are held there. There are only three toilets and of these, one does not work and the other two are in bad condition. The water pipes are in bad condition and the water pressure is very low. The cells are approximately 2x2.5 meters, and as many as five women are assigned to this space. Some of them are pregnant or have babies with them. They nail boards and mattresses close to the ceiling in order to have more space.

Health Deficiency

The physical and mental health of prisoners is one of the most important aspects in the process of rehabilitation. Nevertheless, medical attention in the prisons in the country is still deficient.

For example, in the women’s jail in Quito there are only 1 dentist, 1 male gynecologist and 1 psychologist for approximately 780 women. There are two general practitioners who work from 8 to 12 in the morning and from 2 to 5 in the afternoon. This means that if a problem occurs at any other hour, a prisoner must wait until the next day to receive medical attention. If there is an emergency, 911 is called but the prisoners say that help often never arrives. There is also a lack of medicine for the treatment of serious illnesses.

In July 2012, seven prisoners reported having contracted tuberculosis in the Quevedo jail. These people were given medicine and taken to a special pavilion, but they were not taken to any hospital. It seems that one of these persons had passed the disease to the others, so the inmates were worried about the unsanitary conditions of the jail. That same month, an inmate with HIV/AIDS was transferred from the jail in Portoviejo to a jail in Quito. He was isolated in a cell and left to sleep on the floor with no blankets or proper food. Consequently, his health worsened and his lungs were affected, but the authorities did nothing in spite of different requests and finally a complaint was

\(^{13}\) Ibid.
made public in the news media. Then the Ministry of Justice and Human Rights justified the transfer because of the presumed dangerousness of the prisoner and offered him medical attention at that facility as well as retroviral drugs provided by the Red Cross.

In August 2012, a prisoner in the Latacunga jail had an infected tooth after going two months without medical attention. His relatives declared that there was no dentist who could provide medical attention for inmates in the jail. The security guides hindered the relatives from denouncing the case to the director of the jail, and when one of them managed to enter the director’s office, the director told him that he was too busy to take care of the case. The inmate’s health worsened and then he finally had to be taken to a hospital.

Around the middle of this year, a woman detained in the Ibarra jail had surgery for hemorrhoids. However, her post-surgery condition worsened with severe pain and hemorrhage so the doctor who was treating her requested an emergency transfer to a hospital in Quito to avoid gangrene setting in. At first, the prison authorities did not process the transfer, and a guide just gave her pain relievers and administered an IV drip.

Women in the jail in Quito also complained that there is discrimination and maltreatment on the part of prison guards, but the inmates prefer not to say anything for fear of repercussions that could affect their requests for reduced sentences. These women are asking that the authorities train the prison guards and make officials aware of the way prisoners should be properly treated.

➢ Deficit in prison staff

At present, there are 1,389 prison guards for a population of 24,589 prisoners. The deficit is even greater when taking into account that 24-hour shifts reduce that number of guides by half. This situation makes control difficult and minimizes security in prisons.

The lack of personnel in charge of detained persons to cope with the accelerated increase in the prison population affects the National System of Rehabilitation generally speaking. This is even worse when among this small number of guards, some have been investigated for their presumed participation in escapes like the one early this year when 18 prisoners escaped from the La Roca jail.

With regard to prisoners, this Committee manifested its concern about the high indexes of crowding and bad conditions existing in the social rehabilitation centers, especially with regard to health, lack of potable water, violence, lack of medical attention and insufficient personnel. It recommended that the Government increase its efforts to improve the conditions of all prisoners and fulfill all the requirements established in the bare minimum of rules for the treatment of inmates.

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14 Fiscalía General del Estado, Delincuencia and Penal Justice, Quito, 2013.
should specifically make the question of overcrowding a priority.

This situations shows that the Government still has actions pending in order to implement the recommendations made by the Committee and be able to guarantee and effectively and efficiently the rights of prisoners.

**Conclusions**

Imprisoning more people is not always the best option because in addition to worsening the problem of prison overcrowding, it also represents a high economic cost for the Government. More detained persons in a reduced space results in a higher index of violence.

Persons who lose their freedom are nevertheless persons and consequently should be treated as such because they have not lost their rights. It is necessary to initiate effective actions in order to guarantee them the full exercise of their rights. The Constitution decrees that women are entitled to specific rights, especially pregnant or breastfeeding women who are imprisoned. Consequently, the Government needs to pay more attention to them. Children accompanying their imprisoned mothers also need the authorities to provide them with specialized and integrated attention.

One of the obligations of prison authorities is to guarantee the life and integrity of the persons under their care so, consequently, they should adopt the measures that are necessary in order to preserve those rights when they are threatened.

Finally, it is necessary to continue efforts to improve the conditions of detention as well as apply a system of social reinsertion in order to improve the conditions of prisoners.

**Questions directed to the State**

¿What actions have been taken by the State in order to eradicate overcrowded conditions and guarantee the right of detainees to receive family visits frequently?

¿Are there actions taken by the State which evidence reinsertion of persons who have served their sentence?

¿How many investigations in situ have been realized in regard to denunciations of cruel, inhuman and degrading treatment of detainees. ¿How many sanctions have been adopted?

¿How does the State guarantee that all women’s detention centers have women doctors specialized in gynecology and in general that all detention centers be supplied with sufficient medicine and medical personnel in order to insure permanent medical attention in
cases of emergency?

¿What measures have been taken on the part of the State in order to render opportune attention to detainee’s solicitudes?

¿What mechanisms does the State use in order to periodically divulge official statistics related to penitentiary population, detention centers, detainee’s juridical situation, budget distribution, among other aspects?

¿How often are training courses given to penitentiary personnel in regard to detainee’s rights?

¿Is there a nutritionist that controls the detainee’s nourishment?

¿Are there sufficient beds, mattresses and blankets for all detainees?

• THE RIGHT TO FREEDOM OF EXPRESSION (ARTICLE 19)

Throughout history persons and groups have expressed their demands and discontent with authority. As a result, we now have a normative framework that guarantees the right to the freedom of speech. The Constitution sanctifies the right of persons to freely speak, meet and express themselves. It also guarantees persons and groups the exercise of the right to resistance as a mechanism of enforceability of respect and a guarantee of human rights.

A constant theme of Rafael Correa’s Government has been to use different means to attack persons and organizations that do not agree with his form of government. For this, he has used the penal justice system as a method of criminalizing social protest and prosecuting social leaders, indigenous leaders or students for sabotage and terrorism (more than 150 penal processes). These cases of presumed terrorism include those of Pepe Acacho and another Shuar indigenous leader accused of calling for manifestations in defense of water, of Mery Zamora, a leader among educators accused of inciting students to protest against the Government, the conviction for the crime of rebellion of 12 Central Técnico High School students for carrying out protests, the conviction of the “10 of Luluncoto” for tentative terrorist activity because they had met together just before an indigenous march, the conviction of indigenous leader Carlos Pérez for carrying out protests in defense of water, the conviction for sabotage and terrorism of 8 leaders and residents of Nabón, the ongoing penal processes against Manuel Pachecho and one for opposing the construction of the Hidrotambo Dam.

The defense of human rights and the rights of nature cannot be considered as partisan activities and activities against the internal security of the Government. It is the right and obligation of every citizen to oppose public policies that violate human rights. It is the obligation of the Government to
respect and demand respect for the human rights of the entire population, and in accord with the Constitution, it is its duty to also respect the rights of nature. According to the UN Declaration regarding defenders and the OEA resolutions along the same line, it is the obligation of the Government to protect the work carried out by defenders of human rights.

In another case, during a Saturday broadcast on August 31, 2013, the Government expressed that “there are students protesting and persons hiding behind them. If they go out to protest, we’ll deny them the right to study in any public institution.” This is how the students who protested oil exploitation in the intangible area of Yasuni were threatened.15

In order to question these practices which have become frequent, on September 4, 2013, an Ethical Tribunal for Justice was set up in Quito to carry out a legal analysis of cases in which the defendants were condemned for crimes of terrorism, sabotage and rebellion. This Tribunal decided to condemn the inappropriate use of criminal types in order to restrict the right to personal freedom and the freedom of expression and resistance guaranteed by the Constitution of the Republic.16

In spite of the fact that the months of November and December 2013 are not yet entered into the analysis period of this report, it is vital to mention a very serious case that transpired on December 4th when the Pachamama Foundation17 was arbitrarily dissolved and accused of interfering in public policies, attacking the internal security of the Government and affecting public peace.

The antecedent of this closure took place on November 30, 2013 during the Saturday broadcast of the President of the Republic when he presented a video that showed aggressions against the Ambassador of Chile and the representative of the Bielorusnet enterprise who had attended the opening of offers for the XI Oil Round for the exploitation of the Southeastern Block in the Ecuadorian Amazon region inhabited by indigenous nationalities.

The President accused the representatives of the Yasunidos organization and the Pachamama Foundation of trying to boycott the event and warned them that he would take measures against these violent actions. Later, and without allowing for the legitimate right of defense of this organization, the Ministry of the Environment resolved its dissolution.

The Pachamama Foundation and other organizations attended a manifestation in front of the Government institution where the oil offers were being opened. They demanded that the right of the indigenous communities to be consulted in a free previous process be respected and that they be informed in accord with ILO Agreement 167. Unfortunately, several incidents caused by some of

15 http://youtu.be/zjSFYztimiw
16 http://cedhu.org/index.php?option=com_content&view=article&id=239%3Atribunal-etico-por-la-justicia-condeno-la-criminalizacion-de-la-protesta-social&Itemid=42
17 The Pachamama Foundation has been working for 16 years in the promotion and defense of the rights of nature and the group rights of the Amazon peoples.
the people involved in the protest did take place, although the people involved were not members of the Foundation as the President claims.

It should be mentioned that after the President ordered the exploitation of oil, these organizations participated in the process of collecting signatures requesting that the destination of the crude oil located under the Yasuni Park in the Ecuadorian Amazon region be defined in a popular consultation

Organizations belonging to national and international civil society have expressed concern and rejection because of this serious offense, because the dissolution of the Pachamama Foundation is an act that violates a number of rights including the basic guarantees of due process. The decision of the Ministry of Environment was announced with no previous notification or previous procedure established in accord with Constitutional guarantees.

Its only basis was Executive Decree 16 announced by the President several months before which regulates the functioning of the Unified System of Information of Social Organizations and Citizens. This decree has been questioned because it premeditates the violation of rights guaranteed by the Constitution and the international standards and principles that protect freedom of association. For this reason, a group of social organizations presented a demand of the unconstitutionality of Executive Decree 16 which until the present time is still awaiting a response from the Constitutional Court.

This situation shows that in Ecuador there is a systematic practice of criminalization and judicialization used as a method to weaken organization. Persons who are criminally charged face a repressive system that utilizes criminal law to restrict rights by utilizing penal processes, the imposition of preventive detention and sanctions that result totally disproportionate to the events such as the sanctions planned for cases of terrorism, sabotage and rebellion that are frequently applied by judges and justice tribunals.

Conclusions

Persecution by police officers and the criminalization of actions carried out by sectors of workers, indigenous peoples, women, students, social organizations and the society in general as they mobilize to demand their rights is a serious concern. It should be remembered that the recognition of human rights is the fruit of many years of social struggles in different historical and sociopolitical contexts that have emerged through organizing. These achievements became reality through the resistance and social protest that have made it possible to visualize the oppression, poverty, marginalization and discrimination that an important part of society experiences.
Executive Decree 16 is a norm contrary to the Constitution of the Republic and the international instruments of protection of human rights Ecuador has subscribed to. It breaks down the constitutional State of rights and justice as it increasingly separates itself from a democratic society in which legal order is carried out and justified by observing and guaranteeing human rights.

**Questions directed to the State**

¿Why is criminal justice used to criminalize social protest, applying such figures as terrorism, sabotage, rebellion, among others?

¿According to the principle of legality, are all administrative sanctions of natural or juridical persons established by law?

¿What actions are taken by the Government in order to guarantee the work of human rights defenders?

¿Why was the legitimate right of defense not guaranteed in the dissolution of Pachamama Foundation?

The applicability of civil and political rights depends on the existence of a legal order that more than recognizing them, truly and effectively guarantees them. It is hoped that the information contained in this alternative report will help Committee members better understand the reality of civil and political rights in Ecuador.

Respectfully,

Elsie Monge

EXECUTIVE DIRECTOR
CEDHU