Vulnerable Lives, Militarized State

The Forced Disappearance of Children in Las Malvinas, Ecuador

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Ecuador is grappling with a security crisis, fueled by the growing stranglehold of drug cartels. Fear grips the population, while the government, in a bid to restore order, has resorted to declaring states of emergency in the hardest-hit cities. Rather than alleviating the crisis, the measures have had tragic consequences for the enjoyment of human rights, leaving citizens consumed by anger, fear, and a sense of hopelessness.

The case that caused the greatest outrage involved the forced disappearance and alleged subsequent execution of four Afro-Ecuadorian children who lived in one of Ecuador's poorest neighborhoods, las Malvinas in December 2024. I argue that this event constitutes a gross human rights violation that undermines fundamental human rights premises, such as the limits of state power, state accountability, and the rights of children.

The four children from Las Malvinas, Guayaquil

Four teenagers went out to play soccer and happened to be in the wrong place at the wrong time. On December 8, 2024, Josue, Ismael, Saul and Steven were apprehended and taken to a military outpost by military officials. No news of them was heard, until a video recording surfaced, showing military agents forcibly apprehending the children, torturing them, and leading them away with no clear destination.

This tragic event occurred just two months before national elections. The government of Daniel Noboa remained silent for several weeks, and it was only through the mobilization of their parents, who sought the support of civil society organizations, that they began to gain attention from the general public. The government failed to take immediate action, and it was not until 15 days later that the president, without disclosing any plan of action, declared the missing children national "heroes". Even more shocking was the response from the Minister of Defense and high-ranking military officials, who referred to the event as an "incident" and accused the children's parents of politicizing the issue.

Tragically, over Christmas and New Year's Eve, the worst possible scenario was confirmed. On December 24, four charred bodies with signs of violence were found, and on December 31, it was confirmed that the children had been killed. On the same day, the Prosecutor's Office initiated proceedings against 16 military personnel. All of Ecuador mourns with the families while the President remains silent, as this case marks a breaking point for human rights in the country.

This case is not unique in terms of human rights violations, as others in vulnerable socio-economic conditions have also disappeared. Reports indicate that in the past decade, there have been 146 complaints of the crime of forced disappearance. But the case of Las Malvinas reveals that the Ecuadorian state is fracturing the core of human rights. These fundamentals are: i) that the purpose of human rights is to limit state power, ii) that the Head of state and Commander-in-chief, both vested in the president, holds ultimate responsibility for the actions of state agents, iii) and that children are a priority group deserving special protection and should not be detained under the conditions in which these events occurred.

The limits on state power

My first human rights course during law school began with an overview of what human rights are and their purpose. The response that resonated most was that human rights serve to limit state power. This suggests that the state's primary role is to safeguard individual

and fundamental rights and that it must not stray from this mandate, even when acting to protect those same rights. The point is not tautological: conflicts emerge, for instance, when the state pursues economic development or security (ostensibly to protect rights) through actions that may undermine them.

The protection of rights is inherently applicable during states of emergency or states of exception. The Constitutional Court of Ecuador defined that the state of exception is a constitutional anomaly in which state organs are authorized to take urgent measures in response to exceptional situations, in the event of aggression, international or domestic armed conflict, severe domestic unrest, public calamity or natural disaster, with the aim of restoring stability. Under the Constitution of Ecuador, various measures can be taken to restore normalcy, including the suspension of certain rights such as freedom of movement and inviolability of the home, deploying the military to support the police, and reallocating the budget to address the crisis.

Nonetheless, the measures enacted during a state of emergency are not without limits, precisely because such periods place rights, particularly those related to protest, freedom of expression, physical integrity, and even life, in heightened vulnerability. Thus, mandatory judicial review by the Constitutional Court ensures that such actions meet constitutional standards, examining their justifications against principles of proportionality, legality, temporariness, territoriality, and reasonableness. This is even more pressing given that Ecuador has been held accountable by the Inter-American Court for military overreach during states of emergency. In the Zambrano Vélez case, the Court underscored that the use of military force must remain exceptional due to the distinct training and objectives of military personnel. An initial regulation that allowed the military to support the police even outside states of emergency was struck down by the Constitutional Court. However, the Ecuadorian government persisted in pushing for the expansion of militarization.

Over the past three years, Ecuador has increasingly relied on militarization to assist police in restoring security. While the government vowed to reclaim cities from drug cartels, its actions went further. Under the state of exception, the military has overstepped, treating everyone as potential enemies and disregarding the proportional use of force. The case of the children from Las Malvinas demonstrates how military brutality has disproportionately targeted Ecuador's poorest and most vulnerable population.

Human rights and criminal responsibility

In Ecuador, the president, ministers, and the military high command are ultimately responsible for state actions under human rights law. In a state of exception, state responsibility is not suspended; on the contrary, it is heightened due to the exceptional nature of the measures. While military personnel remain criminally accountable for torturing and the live depravations, the president bears political responsibility. This distinction is necessary because it could be mistakenly categorized as a crime against humanity, whereas experts point out that it constitutes a gross human rights violation that should be individually attributed to the prosecuted military personnel for enforced disappearance and extrajudicial execution.

The issue of responsibility has been widely debated, given the persistent overreach of military deployment by successive administrations. In response, a constitutional reform is under consideration to regulate the complementary use of military force. The constitutional reform, outlines the process by which the Armed Forces would provide "complementary support" to the National Police. While the Constitution assigned internal security and public order exclusively to the National Police, the proposal seeks to make military involvement a general rule rather than an exception during states of emergency, in response to rising insecurity in the country.

Additionally, a law on the use of force already exists, containing provisions regarding the armed forces' auxiliary role. The cost of the lack of both state and individual accountability is ultimately borne by the citizens. This dynamic is illustrated in the case of Las Malvinas, where several fundamental rights, including the right not to be unlawfully deprived of

liberty and the right to life, were violated. Despite the significant legal power concentrated in the hands of the president and the military, responsibility was deflected, with both attributing the tragedy to a web of criminal groups.

The detention of the children

The international human rights convention with the highest record of ratification is the Convention on the Rights of the Child. According to this convention, when children are detained, they must be brought before the competent authority, and such detention must be a measure of last resort. In the "Street Children" case, the Inter-American Court of Human Rights held that arbitrary detention of children alone constitutes torture and cruel, inhuman, and degrading treatment. This is especially true when considering the heightened psychological suffering and the heightened vulnerability of children subjected to state power in a clandestine manner.

The horror experienced by the children aligns with scenarios condemned under international human rights law. They were detained by an unauthorized authority, subjected to physical and psychological abuse, and taken to a military barracks instead of being brought before a competent judge. And it is even more troubling than the scenarios addressed in Inter-American case law, as the torture led to the violent deaths of four children.

Conclusion

Militarization have become the rule in Ecuador, and the civilian population is bearing the consequences. If militarization continues and is institutionalized, the risk of further systematic human rights violations grows. At this critical juncture, reinforcing the system of checks and balances is essential. The Prosecutor's Office and the judiciary must oversee the actions of the military to ensure they comply with the law. For now, the tragic event must be investigated to the fullest extent of the law.

Under the state's international responsibility to investigate and punish crimes, this means that a criminal process must be initiated, those involved must be sanctioned, the parents and families of the children should be compensated, and policies must be designed to prevent such incidents from recurring.

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