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Title/Style of Cause:	Manuel Stalin Bolanos Quinones v. Ecuador
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Decided by:	Chairman: Dr. Alvaro Tirado Mejia; First Vice Chairman: Dean Claudio Grossman; Second Vice Chairman: Ambassador John S. Donaldson; Members: Dr. Patrick Robinson, Dr. Leo Valladares, Dr. Oscar Lujan Fappiano, Professor Michael Reisman.
Dated:	12 September 1995
Citation:	Bolanos v. Ecuador, Case 10.580, Inter-Am. C.H.R., Report No. 10/95, OEA/Ser.L./V/II.91, doc. 7 rev. (1995)
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I. BACKGROUND

1. The Inter-American Commission on Human Rights received a communication on August 29, 1988, alleging that:

On October 14, 1985, Marines entered the house of Elena Ortíz in the neighborhood of Isla Piedad Esmeraldas, where some young men were playing cards (at approximately 4:00 a.m.). Under the pretext of reviewing their identification documents, the Marines detained the following persons: Manuel Stalin Bolaños Quiñonez, William España Ordoñez, Miguel Mosquera Betancur, Bonifacio Angulo Ordoñez. The last three of those named were freed the following day. They said that the Marines had taken them to Balao (Port) in Esmeraldas, and there they were divided. Manuel was taken to another part, and from that moment they have had no further news of him. The family members of Manuel Bolaños tried to interpose writs of habeas corpus, but these were rejected.

On July 13, 1990, the Commission initiated the processing of this case, requesting that the Government of Ecuador provide information relative to the material facts of the denunciation within 90 days.

2. According to information submitted to the Commission by the petitioners in August of 1988 and June of 1990, family members and others had begun requesting information on the whereabouts of Manuel Bolaños in the late afternoon of the day he was detained. They approached authorities of the Navy and the naval base at Balao, the Balao Port Authority, the Minister of Interior and the Minister of Defense. A telegram requesting an investigation of the disappearance of Manuel Bolaños was sent on November 19, 1985 to the Ministers of Interior

and Defense, and to the Chiefs of the Criminal Investigation Service and Police Security. Another telegram dated November 6, 1986 was directed to the Ministers of Interior and Defense. Petitions for habeas corpus were presented before the Mayor of Esmeraldas, and petitions were filed with the Special Commission on Human Rights of the National Congress on January 6, 1987, and the Court of Constitutional Guarantees on April 21, 1988. The petitions for habeas corpus were denied. One such habeas corpus petition, filed by Mr. Bolaños' mother on January 8, 1986, had not been processed as of January 6, 1987. All of these measures had been unsuccessful in obtaining information. In 1987 and 1988 individual petitioners had unsuccessfully petitioned the Judge of the Third Naval Zone for permission to review the case file and any judgments issued in this matter.

3. On September 24, 1990, the Commission received additional information from the petitioners, which may be summarized as follows:

a. At the time of his detention, Manuel Bolaños was 22 years old, single, and a bricklayer by profession. Petitioners allege that he was illegally detained by Marines--members of a special investigation group--and held on Isabel Island, Esmeraldas. They further allege that he was tortured, and died "from the effects of interrogation" while held in custody by state agents on October 14, 1985. The petitioners state that they first learned on June 9, 1987 that Mr. Bolaños was dead. The petitioners had contacted the United Nations Human Rights Commission about the disappearance of Manuel Bolaños, and on that date the Human Rights Commission transmitted the response received from the Government. As stated therein, Mr. Bolaños had died, and an investigation into the circumstances and possible responsibility had been initiated on October 29, 1985.

b. Petitioners set forth that Mr. Bolaños had been detained in connection with an investigation into the October 12, 1985 assassination of Lieutenant Arturo Sotomayor at the naval base at Balao. The investigation was carried out by Naval Intelligence agents, and two police criminologists. The petitioners base these contentions on what they describe as the October 19, 1987 declaration given by Naval Station Commander Gracian Villota before the Military Criminal Court of the Third Naval Zone. (Petitioners quote the declaration, but did not provide a copy.) Mr. Velez Carriel, a suspect in that case detained at Balao, had at 11:00 p.m. on October 15 admitted his participation, and had inculcated others including Mr. Bolaños. An operation was mounted at 1:00 a.m. on October 16 to capture those inculcated. These assertions are based on the October 19 declaration noted above, and communication ESTESM-GVM-001-S, discussed below. Petitioners quote Commander Villota's October 19, 1987 statement as indicating that he followed the group carrying out the manoeuver in a separate jeep, accompanied by Officer Carlos Romero and a police official from Quito. Petitioners report that in what they describe as official communication number ESTESM-GVM-001-S, of October 20, 1985, Commander Villota had written to the Commander of the Third Naval Zone that Manuel Bolaños, also known as "Pedrito," had been detained on October 16, 1985 at 4:00 a.m., pursuant to having been accused of participation in the assassination of Officer Sotomayor. After having been identified by Mr. Velez, Mr. Bolaños was interrogated by Officer Morales and intelligence agents. (Petitioners quote the communication, but did not provide a copy.)

c. Also referred to, although not produced, is a declaration given by Naval Commander Hugo Unda Aguirre on December 21, 1988 [which notes that he assumed his post as of November 7, 1985 - almost one month after the assassination of Officer Sotomayor] in which he refers to an emergency operation carried out in Esmeraldas in response to the Sotomayor homicide. Special security measures were taken, based on the perception that the area harbored revolutionary activity and armed persons, and that such persons had carried out the homicide. Petitioners quote the declaration as describing the strong sense of camaraderie existing among those in the Navy, and the consequent need felt by all to rigorously investigate the Sotomayor homicide in order to protect "the honor of the institution." Petitioners report that in the declaration Commander Unda Aguirre acknowledges that the foregoing factors contributed to "a small" exaggeration relative to security. He notes, however, that corresponding legal processes had been initiated to correct the exaggerations, and that there "exists a military justice to deal with any type of exaggerations" that could be committed by the lower echelon officers.

d. Petitioners note from the October 19, 1987 declaration of Commander Villota, that between approximately 4:15 a.m. and 4:30 a.m. on October 16, 1985 he passed by the second platform on the base (an administrative area), and noticed three detainees lying face down, with their hands tied behind their backs, in a pool of water that had formed from the intense rain falling at the time. Afraid they would drown, he ordered that their positions be changed.

e. Petitioners state that in official communication ESTESM-GVM-001-S, Commander Villota wrote that according to reports received, Mr. Bolaños died from the "effects of the interrogation," and that the agents who had been conducting the interrogation had immediately buried his body. Petitioners cite the October 19, 1987 statement of Commander Villota as setting forth the recollection that he was informed of the death at 11:00 a.m. on October 16 by Commander Assan, who had received the information from Officer Morales at 6:30 a.m. The statement records that Commander Villota then telephoned the base at Balao, but Officer Morales was no longer there, having left for Quito. When Commander Villota inquired about the whereabouts of the body, he was told that it had been buried. Commander Villota questioned Commander Assan on this point, and was told that those involved had said "I don't know," or "I don't remember because I don't know the forest." Petitioners quote from but did not provide the October 19, 1987 statement of Commander Villota.

f. The petitioners report that a military criminal process was initiated to investigate the circumstances of the death of Mr. Bolaños. Petitioners contend that in the order initiating the process, the Military Criminal Judge of the Third Naval Zone had set forth that according to his information, Mr. Bolaños had been captured on October 15, 1985 in relation to the accusation of Mr. Velez Carriel. His death occurred as members of Naval Intelligence were arranging to interrogate him. The reason for his death was unknown. Among other measures, the Judge ordered that an autopsy be carried out. In support of these contentions petitioners quote from, but did not provide, the order opening the criminal process.

g. After Commander Villota learned of the death and burial, petitioners allege that he consulted others on how to handle the situation. Petitioners assert that communication ESTESM-GVM-001-S records that, given the "difficult and compromising situation," Commander Villota had consulted Political Chief Ricardo Gutiérrez, who had counseled that it would be best to leave

the body where it was--to disappear the body and maintain absolute silence about the matter. (Petitioners quote from but did not provide this communication.)

h. Petitioners contend that Mr. Gutiérrez advised that given the situation, with the population upset by the "series of raids and illegal detentions" carried out since the assassination of Sotomayor, it would be best to leave the body where it was. Mr. Gutiérrez reportedly reasoned that: handling the situation otherwise risked bringing the facts to light; an autopsy would reveal the real cause of death; and any maneuver that was done later would be easily identifiable and therefore very compromising. In support of these allegations petitioners cite but did not provide the October 19, 1987 statement by Commander Villota. Petitioners argue that the advice of the Political Chief to keep the body hidden because an autopsy would establish the real cause of death is pertinent in leading to the conclusion that Mr. Bolaños died from the effects of torture. Petitioners further contend that his participation demonstrates the disposition of the authorities to obscure the true facts and to effectively grant impunity to those involved.

i. Petitioners report that Dr. Romero Herrera was instructed to obtain a false autopsy report, which he did by means of bribery. They allege that the sum of \$200,000 (sucres) was paid for the false report, and that Esmeraldas Police Commissioner Perlaza signed the false report. In support of these allegations petitioners quote but did not provide the October 19, 1987 statement of Commander Villota.

j. Petitioners contend that Commander Gracian Villota made at least four official statements about the facts concerning the apprehension, detention and death of Manuel Bolaños, three of which had been directed by Third Naval Zone Judge Romero Herrera. They allege that he was ordered to change the first report, and was then ordered to destroy it, and others he had made. In one instance, petitioners assert that the Commander was ordered to switch a report with one that had been made up by Officer Pimentel. It was the fabricated report, petitioners quote the Commander as saying, that was used to initiate the criminal process. The petitioners contentions are based on text they quote as part of the October 19, 1987 statement of Commander Villota.

k. Petitioners recall from the above information that there were two police criminologists who participated in the Sotomayor investigation. The October 19, 1987 statement of Commander Villota is cited as recording that these two agents were integrated into the special investigation team. Petitioners assert that these two police agents were involved in the interrogation of Mr. Bolaños and would have possessed information with respect to the circumstances of his death. However, in response to an inquiry from the Court of Constitutional Guarantees, the Minister of Interior stated that the police had not intervened in the case concerning Mr. Bolaños, and therefore could provide no information. In support of this allegation petitioners quote but did not provide the April 10, 1986 response of the Interior Ministry to the Court of Constitutional Guarantees.

l. Petitioners note the participation of Dr. Carlos Romero Herrera in various aspects of this matter. He acted as judge in initiating the criminal process opened following Mr. Bolaños' death. In the order initiating the process, petitioners report that Dr. Romero required that an autopsy be carried out. Notwithstanding this order, petitioners allege that no autopsy was ever carried out, and that Dr. Romero instead procured a false autopsy report. The petitioners assert that, when the

Court of Constitutional Guarantees required information about this case in 1988, Dr. Romero appeared before it as Defense Counsel for the General Command of the Navy.

m. The petitioners also cite instances of conflicting information respecting the death of Manuel Bolaños and the pursuant investigation. Petitioners cite, but did not provide, the text of a letter from the Minister of Defense, General Luis Piñeros to the General Commander of the Navy, Admiral Hugo Unda Aguirre, of February 7, 1986, requesting clarification concerning contradictions between reports he had received from the Admiral and from the Commander of the Third Naval Zone. The Minister of Defense alludes to the former report as having recounted that "as to the disappearance of said citizen [Mr. Bolaños] a criminal process is being carried out to establish responsibility," and "to know his whereabouts." The Minister described the latter report as having detailed criminal matters initiated in the naval zone, including reference to a cause "concerning the death of" this citizen.

n. Mr. Bolaños' mother went to the naval base on the afternoon of October 16, 1985, asking for her son. She was told that they did not know who she was asking about, and was requested to return the following day with photographs. The petitioners assert that this is recorded in Commander Villota's October 19, 1987 declaration, which reports that when the woman returned the next day, the Commander deduced that she was looking for the detainee known as "Pedrito," that is, for Manuel Bolaños. The family was led to believe that Mr. Bolaños just disappeared.

o. Petitioners believe the matter to have been under the jurisdiction of the Military Criminal Court of the Third Naval Zone. Although years have passed since the date of Mr. Bolaños' death, they have been unable to ascertain the status of the process. The petitioners contend that while Article 63 of the Code of Military Procedure provides that the preliminary stage of the criminal process should last 10 days, proceedings had continued at least through the October 19, 1987 declaration of Commander Villota taken more than two years after Mr. Bolaños' death.

p. The petitioners further contend that the illegal detention, torture, and resulting death that they allege occurred in the case of Manuel Bolaños are consistent with other abuses committed by investigation authorities. Petitioners note that in the proceedings of the Multiparty Commission of the National Congress charged with investigating the disappearance of Consuelo Benavides there is a reference to excesses committed by officials within the investigation concerning the assassination of Arturo Sotomayor.

The pertinent parts of this information were transmitted to the Government of Ecuador on November 28, 1990, with a request that it provide all information relevant to the case within 30 days.

4. By means of a note of December 4, 1990, the Government of Ecuador acknowledged receipt of the Commission's July 13, 1990 transmission of the pertinent parts of the case. The Government informed the Commission that the judicial process initiated to investigate the detention and later events relative to Mr. Bolaños had been closed in 1989. The Government also noted that the matter concerning Mr. Bolaños was currently before the Human Rights Commission of the United Nations.

5. The pertinent portion of the Government's response was communicated to the petitioners by the Commission in a note dated January 15, 1991.

6. By a note of the same date, the Commission acknowledged receipt of the Government's response, and informed the Government that a pending examination of the matter by a human rights body mandated to examine general situations concerning human rights would not bar its consideration by the present body.

7. In response to the January 15, 1991 request of the Commission for information, on January 29, 1991, the Government of Ecuador remitted to the Commission a copy of the sentences issued in the judicial process initiated in relation to Manuel Bolaños. The military criminal process had been initiated at the order of the Military Criminal Judge of the Third Naval Zone. The first disposition transmitted was issued by the Law Court of the Third Naval Zone on January 27, 1989. The contents of the sentence may be summarized as follows:

a. Mr. Bolaños, also known as "Pedrito," was captured on October 16, 1985 at 4:00 a.m. He had been accused by Mr. Vélez Carriel of having participated in the assassination of Arturo Sotomayor Bustamante. Mr. Bolaños died of unknown causes while members of the Intelligence Service were arranging to interrogate him.

b. The summary stage of the process had been concluded, and the Public Prosecutor of the Zone and the Military Attorney General had issued their respective opinions. Both recommended that the cause be dismissed because there was no basis for a charge or finding of personal responsibility in the matter.

c. The testimony of ten persons is cited, in which it is consistently recorded that pursuant to the Sotomayor homicide, an operation was mounted to capture those responsible. Some persons were detained, but were freed once it had been shown that they had not participated in the crime. One of the detainees died at approximately 7:00 a.m. on October 16, 1985 of causes described in documents in the investigation file. Principally, the autopsy protocol indicates that he died due to alcohol intoxication. The investigation file contains the out-of-court declarations given before the Naval Intelligence Service by the citizens detained in that operation, from which it may be ascertained that "none of them had been physically or psychologically coerced so that they would voluntarily express the reason for their detention."

d. For the foregoing reasons, and in accordance with the opinions issued by the Public Attorney and the Military Attorney General, it was ordered by the Court that the process be dismissed.

8. The Government also transmitted a copy of the May 10, 1989 order issued by the Court of Military Justice in Quito confirming the dismissal of the cause by the Law Judge of the Third Naval Zone. This disposition reviews the points set forth as the basis for the opinion of the Law Judge above, also notes that the body of Mr. Bolaños presented no signs that he had been physically mistreated, and notes that the medical experts had concluded that his death was due to alcohol intoxication. In accordance with those points, the order of dismissal was confirmed.

9. The Commission transmitted a copy of the sentence to the petitioners by a note of February 8, 1991, requesting that any observations thereon be filed within 30 days.

10. By means of a note of February 20, 1991, the petitioners informed the Commission that neither they nor the family of Mr. Bolaños had yet received official notice of the death of Mr. Bolaños, the circumstances thereof, or of the location of his remains. They further noted that, despite numerous actions before competent authorities, they had been unable to obtain a copy of the criminal process initiated in the matter.

11. The petitioners filed their observations with respect to the Government's January 29, 1991 transmission on March 4, 1991. In response to the official finding that Mr. Bolaños died as a result of alcohol intoxication, they maintain that in fact he died as a consequence of the mistreatment he received while in custody. The petitioners again refer to the October 20, 1985 communication they refer to above, in which Commander Villota states that when he arrived at the base in Balao:

I was informed that the captured citizen (Manuel Bolaños) had died from the effects of interrogation, and that the same agents who had participated in the interrogation had proceeded to bury the body.... Given this very difficult and compromising situation, in a meeting of officials, I decided to consult with Political Chief Ricardo Gutiérrez, who counseled to disappear the body and maintain absolute silence on the matter....

12. The petitioners again quote from the October 19, 1987 declaration of Commander Villota in which he recounts that once informed of the death, he asked about the body, and was told that it had already been buried. Petitioners reiterate their reference to a passage later in the same declaration in which Commander Villota recalls the advice of Political Chief to leave the body where it was, as to do otherwise would risk bringing the facts to light, and because an autopsy would reveal the true cause of death.

13. With their response, the petitioners submitted copies of several documents which they had cited extensively in prior submissions: official communication ESTESM-GVM-001-S, the October 20, 1985 report of Commander Villota to the Commander of the Third Naval Zone; the February 7, 1986 letter of the Minister of Defense to the General Commander of the Navy; the operative portion of an order by Military Criminal Judge Romero which refers to some of the measures taken to investigate the matter; and three pages of the October 19, 1987 statement of Commander Villota before the Military Criminal Judge Barriga Chiriboga.

14. On March 21, 1991, the Commission requested that the Government of Ecuador provide a copy of the file compiled in relation to the investigation and criminal process carried out in relation to the disappearance and death of Manuel Stalin Bolaños Quinoñez. The Commission asked that all relevant information be submitted within 30 days.

15. By a note of July 4, 1991 the petitioners requested a thirty day extension to submit their observations on this case. The Commission acknowledged receipt and granted this request with a note of July 17, 1991.

16. The Commission's above request that the Government of Ecuador supply the information relevant to the case was reiterated in a note dated January 7, 1992.

17. With a note of the same date the Commission also reminded the petitioners that although they had requested and been granted an extension to file their observations in the case, no response had been received. They were requested to provide any response or new information within thirty days.

18. On January 27, 1992 the Government of Ecuador wrote to the Commission to acknowledge receipt of the January 7 correspondence, to note that it had been received by the Minister of Foreign Relations on January 23, 1992, and to indicate that the information requested was being compiled.

19. The petitioners supplied brief observations on the case in a note of February 27, 1992. They contest absolutely the May 10, 1989 court finding that Manuel Bolaños had died as a result of alcohol intoxication, and the court's conclusion that there existed no basis for a finding of personal responsibility. They maintain that the version of events set forth by the Government is clearly contradicted by other available information, including the October 20, 1985 report of Commander Villota, in which he set forth that Manuel Bolaños died from the effects of interrogation and was buried by his interrogators. They again reiterate the information found later in that report concerning the advice of Political Chief Ricardo Gutiérrez "to disappear the body and maintain absolute silence on the matter."

20. The petitioners requested that the Commission:

- a. find the Government of Ecuador responsible for the disappearance of Manuel Bolaños;
- b. declare the Government in violation of Articles 4, 5 and 8 of the American Convention on Human Rights;
- c. require an independent judicial investigation to determine the whereabouts of Manuel Bolaños, and to identify and punish those responsible in the case;
- d. and require the payment of compensation to the family of Manuel Bolaños for the damage caused by the state agents who ordered and carried out his disappearance.

21. The substantive portion of the petitioners' observations on the case was transmitted to the Government by a note of March 16, 1992.

22. A copy of the military criminal process, designated number 004/85, undertaken to discover the authors of and accomplices and abettors to the death of Manuel Bolaños, was submitted to the Commission by the Government of Ecuador on August 18, 1992. The file records that the process was initiated on October 29, 1985, and terminated on May 31, 1989. The file consists of eighty-three pages of documents relevant to the process, and will be discussed in more detail below.

II. ANALYSIS

ADMISSIBILITY

1. The complaint fulfills the formal requirements of admissibility contained in the American Convention on Human Rights and the Commission's Regulations. In accordance with Article 47.b of the Convention, the Commission is competent to examine this case as it alleges facts tending to establish a violation of human rights as defined by the American Convention on Human Rights.

2. In accordance with the requirements of Convention Articles 46.c and 47.d respectively, the subject of the petition is not pending settlement in another international proceeding, nor does it duplicate a petition previously examined by the Commission. The Government had indicated in its communication of December 4, 1990, that this matter had been placed before the United Nations Commission on Human Rights for study. The Inter-American Commission responded at that time that as the mandate of the United Nations Commission concerned general situations of human rights, its consideration did not inhibit the processing of the case in the instant forum.

3. The original petition was filed on August 29, 1988. According to documentation remitted by the Government, a military criminal process had been initiated on October 29, 1985 to investigate the circumstances of the death of Manuel Bolaños. The investigation remained open at the time the petition was filed. In accordance with the requirements of Convention Article 46.1.b, the petition was timely filed.

4. In accordance with Article 46 of the American Convention, remedies available to petitioners under domestic law must have been pursued and exhausted. The information before the Commission demonstrates that the petitioners attempted to invoke domestic remedies, and to obtain the information necessary to fully pursue and exhaust such remedies. The petitioners filed petitions for habeas corpus with the municipal authorities of Esmeraldas which were denied. The information before the Commission indicates that such petitions were filed after Manuel Bolaños died in custody, and while an investigation was presumably being conducted into the circumstances of his death. Yet, the petitions were denied, and one such petition was reportedly delayed for one year.

5. As to the denial of the petitions, "the mere fact that a remedy does not produce a result favorable to the petitioner does not in and of itself show the inexistence or the exhaustion of all the effective domestic remedies." (Velásquez Rodríguez, Judgment of July 29, 1988, para. 67). In this case, according to the Government's own data, Manuel Bolaños had died on October 16, 1985 while in the custody of state agents. Documents included in the military criminal process case file indicate that the Third Police Commissioner of Esmeraldas participated in the official October 23, 1985 examination of the place of the death. Moreover, on November 6, 1985, in view of the initiation of the military criminal process, the Commissioner remitted to Military Criminal Judge Herrera the original records of all measures taken under his authority in relation to the death of Mr. Bolaños. The foregoing suggests that the writ of habeas corpus, the remedy normally most effective to ascertain the location and status of a person presumably detained by the authorities, was functionally inoperative in this case. As to the presumed delay of approximately one year described by petitioners in the processing of one of those writs, this further indicates that the appropriate domestic remedies in this case were unresponsive and ineffective.

6. The requirement that domestic remedies be exhausted allows the state concerned the opportunity to resolve a situation before the complementary remedies of the inter-American human rights system are brought to bear. The remedies normally effective to discover the location or status of a detainee were in this case ineffectual and subject to unwarranted delay. The Commission therefore finds that domestic remedies have been sufficiently invoked in this case, and that, pursuant to Article 46.2, the requirement that domestic remedies be pursued and exhausted is inapplicable. The Government has not contested the admissibility of this case on the basis of non-exhaustion of domestic remedies.

7. In October of 1994, the Commission placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement of this case, in accordance with Article 48.f of the American Convention. The Commission's October 12, 1994 letter to the Government specified a period of 30 days for this process. The Commission's subsequent note of November 23, 1994, recalled that the Government had indicated its favorable disposition toward a friendly settlement of this case in discussions held during the Commission's on site visit to Ecuador. The Commission noted, however, that written notification of specific measures taken in this regard would be required forthwith--within ten days--in order for the Commission to consider that the friendly settlement process remained open. The Government responded with a note of December 26, 1994, briefly stating that the Foreign Ministry was seeking a rapid and definitive solution to the case, and had communicated with police and judicial authorities for this purpose. No further information has been received. As the Government declined over a period of several months to suggest any specific measures to amicably resolve this case, the Commission has no alternative but to consider the friendly settlement process terminated due to inaction.

MERITS

Article 7

8. Article 7 of the American Convention provides in pertinent part:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
- ...
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power....
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release....

In this case it has been shown that members of the Ecuadoran naval force entered the home of Mr. Bolaños' sister, placed him in their custody, and transported him to the naval base at Balao where he was held until he died. It would appear that no search or arrest warrants were

presented. The petitioners submissions indicate rather, that at the time the men were taken from the house, the stated purpose of the detention was to review their identification documents.

9. Article 19(17)(g) of the Ecuadoran Constitution provides in pertinent part:

No one shall be deprived of their liberty except by virtue of a written order by a competent authority, in the cases, for the time and with the formalities prescribed by law, excepting crime discovered in flagrante....

Specific provisions concerning detention are set forth in the Code of Criminal Procedure of Ecuador. Of the pertinent articles, Article 172 provides for preventive detention by judicial order. Article 174 authorizes apprehension in the case of a flagrant delict (defined in Article 175 as an offense committed in the presence of a person or persons, or discovered immediately after its commission, if the author is apprehended with arms, instruments or documents relative to the recently committed offense). Article 176 provides that no one shall be apprehended except by agents authorized by law. Apprehension by other persons is authorized only: at the moment an offense is about to be committed; in the case of a fugitive under sentence or subject to a detention order; in the case of a person charged, processed or accused who has escaped. A person so apprehended must be placed immediately under the authority of an agent of the National Police, Judicial Police, or in the appropriate case, the Political Deputy.

10. In this case, it seems clear from both the petitioners' and the Government's submissions that no judicial order for the arrest or detention of Manuel Bolaños had been issued. The information contained in the case file submitted by the Government consistently indicates that Mr. Bolaños was apprehended and detained in connection with an investigation being carried out by naval authorities into the October 12 murder of Officer Arturo Sotomayor. Mr. Bolaños was detained several days subsequently, at the home of his sister. The facts as set forth indicate that this was not a case in which apprehension without prior judicial order was authorized by law. Moreover, the agents who apprehended Mr. Bolaños were not authorized by law to perform that function. The Commission finds from the information before it that the apprehension and detention of Manuel Bolaños were carried out in contravention to the substantive and procedural requirements of the Ecuadoran Constitution, and the law established pursuant thereto.

11. American Convention Article 7.6 specifies that "anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention..." Article 19(17)(i) of the Constitution of Ecuador sets forth in pertinent part that: "Any person believed to be illegally deprived of their liberty is able to resort to the [writ of] habeas corpus. This right may be exercised by him or by his representative, without necessity of written order, before the Mayor or Council President of the jurisdiction in which he is found..." The Constitution requires that the municipal authority immediately order the presentation of the detainee and the order authorizing the deprivation of liberty. Further, those in charge of detention facilities are constitutionally required to comply without excuse.

12. The illegal arrest and detention in this case, apparently carried out absent any judicial order by agents unauthorized by law with the detainee held in an irregular location, presumably

rendered the detainee unable to access the legal means and remedies to assert this right on his own behalf. The right to petition for a determination of the legality of detention is the fundamental guarantee of a detainee's constitutional and human rights in the case of deprivation of liberty by the state. It must be noted as well that, according to the petitioners' submissions, there was a lengthy delay in the processing of a writ in this case. The Government has provided no information on the habeas corpus petitions filed in this case. The Commission observes that this presumed delay in processing a writ of habeas corpus contravenes both domestic law and the requirements of Article 7 of the American Convention.

Article 1

13. Article 1 of the American Convention sets forth the obligation of States Parties first, to respect the rights and freedoms recognized, and second, to ensure the free and full exercise of those rights to all persons subject to their jurisdiction. The latter obligation of Article 1 specifically

implies the duty of the State to organize the governmental apparatus and ... the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.

(Velásquez Rodríguez, para. 166).

14. The case file remitted by the Government contains 83 pages of documents related to the summary stage investigation carried out by the Court of Indictment in military criminal process 004/85, initiated October 29, 1985 and terminated May 31, 1989. The order of Military Criminal Judge Romero initiating the summary investigation sets forth that Mr. Bolaños died of unknown causes while members of the intelligence service were arranging to interrogate him. An investigation to identify the authors and accomplices was ordered, as the facts related constituted a punishable offense under the Military Criminal Code. (File, page 3.) By a letter of October 18, 1985 Judge Romero had requested that the Third National Commissioner of the Esmeraldas Police remit all the measures practiced by his office in relation to this matter. (File, page 6.) In a response dated November 6, 1985, the original copies of the act identifying the place of the death, the act recording the removal of the body, and the autopsy protocol were remitted. (File, pages 7-11.)

15. By note of February 25, 1986 Judge Romero requested that the Director of Navy Intelligence name the personnel who participated in the Sotomayor investigation under the command of Officer Fausto Morales. (File, page 12) The response, dated February 27, 1985 and stamped "confidential," lists the following naval personnel as having participated in the investigation:

Fausto Morales V. Carlos Albuja O.

Agustín Novillo L.Segundo Castillo Ch.

Raúl Coello R.Marco Pacheco P.

Vicente AlvaradoGracian Villota M.

Luis Chacon R.Jorge Guerrero C.

Manuel Plua G.and Guillermo Reyes M.

(File, page 13.) By notes of March 6, 1986, April 21, 1986, and June 19, 1986, Judge Romero requested that Naval Intelligence present seven of those named to provide statements. (File, pages 15, 23, and 25.) Twice the Director of Naval Intelligence responded that the named personnel were on assignment, and would be presented some days later. (File, pages 21, 24.) In a communication of April 22, 1986, the Director indicated that two of the agents would be presented that day; however, as of July 4, 1986, the file records that none of the seven had been presented. (File, pages 24, 26.)

16. Declarations were provided on July 8, 1986 by the following: Lieutenant Commanders Gracian Villota M. and Luis Chacon Romero, Carlos Albuja O., Segundo Castillo Ch., Fausto Morales V., Vicente Alvarado, Marco Pacheco F. and Gustavo Proano Garaicoa. The file also contains a copy of a report dated October 29, 1985, authored by Officer Chacon Romero, concerning the Sotomayor investigation. After additional requests by the Judge, on July 14, 1986, Guillermo Reyes M. and Baltar Enrique Prias provided their declarations.

17. Although the Judge had explicitly requested that Agustín Novillo L. and Raúl Coello R. be presented to give statements, there is nothing in the file to indicate that they ever appeared. Nor, according to the case file, did Jorge Guerrero C. or Manuel Plua G. ever provide information as to their participation in the Sotomayor investigation.

18. On April 16, 1986 the Director of Naval Intelligence remitted to the Military Criminal Judge the list of names of those detained in the October 16, 1985 operation in Esmeraldas:

Fredy Rubing García Carreño José Delgado Bone

Jimmy Moreno NazarenoEnrique Torres García

Agapito Granja CastilloJosé Caicedo Medina

Miguel Gabriel Mosquera BetancourtVíctor León Acosta Caicedo

Manuel Adolfo Loave SatizabalOnesio Segundo Mera Salas

Juan Klever Mora BegneOscar Aníbal Becerra Rojas

Guber Mina Achillie

In September, 1987 it was determined that the above persons should be located to provide statements. The Naval Intelligence Agency was requested to present them, although one of those named was not included in this request: Guber Mina Achillie.

19. Pursuant to the request of the Military Criminal Judge, on October 28, 1987, Lieutenant Albuja Obregón remitted copies of the declarations taken from those detained in connection with the Sotomayor investigation. Only eight declarations are included in the case file. Of those persons named in the Naval Intelligence list, the case file contains the statements of José Delgado Bone, Jimmy Moreno Nazareno, Enrique Torres García, Agapito Granja Castillo and Juan Klever Mora Begne. The additional three declarations are those of detainees Willyam Antonio España Ordonez, Nicasio Bonifacio Angulo Jama and Telmo Fernando Montaña García. Only two of the declarations indicate the date taken (October 16, 1985).

20. The case file records that, as of December 10, 1987, none of the detainees had been presented to give statements relative to the investigation into the death of Manuel Bolaños.

21. The State is obligated to investigate every situation involving a violation of the human rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, it has failed to comply with its duty to guarantee the free and full exercise of those rights to the persons within its jurisdiction.

(Velásquez Rodríguez Case, para. 176.) The fact that an investigation fails to produce a particular result is not determinative. Rather, the investigation must be undertaken in a serious manner designed to be effective. (See, *id.*)

22. The information submitted by the Government clearly shows that Manuel Bolaños was apprehended by state agents acting under the mantle of public authority. The apprehension of citizens is not a role within the authorized functions exercised by members of the Ecuadoran Marine Corp or Navy. It further appears that the apprehension was not authorized by judicial order, as required by the laws of Ecuador. These facts alone, as they were revealed by petitions filed before various authorities by family members and by the petitioners, should have been sufficient to instigate an investigation by the organs of the judicial branch.

23. The information before the Commission indicates that the organs of the Executive and Judicial branch failed to act in this case. Although family members and petitioners contacted numerous authorities in both branches, filed petitions of habeas corpus before local authorities, and before the Court of Constitutional Guarantees, it appears from the information before the Commission that none of these efforts produced any meaningful measures of investigation.

24. The fact that the family members, despite having been in contact with numerous state authorities and having made many pleas for information, have never been officially notified of the death of Manuel Bolaños demonstrates a severe deformity in the systems of Ecuador designed to guarantee respect for the rights of its inhabitants. To date the family is unable to provide a proper burial for the body of Manuel Bolaños because they have never been informed

of the location of his remains. The Commission concludes that the appropriate organs of the Government of Ecuador failed to take effective action to guarantee respect for human rights in this case.

25. Even if the authorities of the Navy had been attributed with the authority to conduct the investigation into the death of Mr. Bolaños, the investigation they carried out was not designed to be effective. The process was fraught with delay which cannot be justified in an investigation of this nature. There are no contemporaneous first hand accounts of the circumstances of the death in the case file. The contemporaneous reports of those on the scene at the time of the death would serve as records critical to establishing the exact circumstances of death. Yet these critical accounts are not in the file. There is no first hand testimony from anyone who witnessed his death. There is no first hand testimony from anyone marking the precise time of death. In fact, there is no information in the case file of any kind indicating first hand knowledge of the circumstances of Mr. Bolanos' death. Each of the ten naval personnel who provided statements contained in the case file had been informed of the death by someone else. Only three of the declarant were asked any questions during their depositions.

26. There are also inconsistencies in even the most basic facts. For example, in his report of October 29, 1985, Lieutenant Luis Chacón refers to the capture as having taken place on October 17, 1985, although in his declaration he stated that it occurred on October 16. (File pages 28, 30.) Agent Reyes Mendoza also described the operation as having occurred on October 17. (File page 44.) In another instance, agents Pacheco and Proaño attested that they were notified by others of the death of one of the detainees at around 7:00 a.m. Both apparently observed the body very soon thereafter. Both noted in their statements that Officer Morales was then on the scene. In Officer Morales' statement, however, he says he was informed of the death by someone else at around 7:00 a.m., when he was in another sector of the Base, "distant" from where the detainees were held. In another instance, Naval Intelligence supplied a list of names of those detained in the operation. Although it is clearly indicated in other records that Manuel Bolaños was detained at that time, his name is not on the list. Lieutenant Chacón was requested to remit the declarations taken from those detained in the operation. Of the eight declarations remitted, only five of the declarant were named on the Naval Intelligence list, although the other three had been detained in the same operation. The Commission observes that the measures taken by the State to investigate the death of Manuel Bolaños, as reflected in the information submitted were not designed or undertaken in such a way as to produce effective results.

Article 4

27. The Commission observes that, in the same way the burden of proof is on the state to produce the detainee and the order justifying the detention in a habeas corpus case, when the agents of a state have engaged in an illegal detention in which the death of the detainee ensues, the burden is on the State to demonstrate the precise circumstances of the death. The burden is on the Government, very obviously, because the Government is in possession of the body and the relevant information.

28. In the Gangaram Panday Case, the Inter-American Court of Human Rights examined the relationship of illegal detention to an alleged violation of the right to life. The Court affirmed

that the test for state responsibility under the Convention must focus on whether the violation in question "is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention. (Gangaram Panday Case, *supra*, para. 62, citing Velásquez Rodríguez Case, para. 173; Godínez Cruz Case, para. 183.) In the Panday case the Court determined that the circumstances made it "impossible to establish the responsibility of the State in the terms described above because, among other things, the Court is fixing responsibility for illegal detention by inference but not because it has been proved that the detention was indeed illegal or arbitrary...." (Gangaram Panday Case, *supra*, para. 62).

29. In the instant case the Commission has determined that the detention of Manuel Bolaños was clearly illegal. The acts of the state agents were substantively and procedurally inconsistent with Ecuadoran law, and with the requirements of the American Convention. The guarantee of habeas corpus, normally most effective to ascertain the legality of detention, as well as to ascertain the location and status of the detainee was functionally inoperative. While the Court found in the Gangaram Panday Case that it could not determine responsibility by drawing an inference from an inference, here the base presumption has been proven. In fact, the submissions of the Government indicate incontrovertibly that the apprehension and detention of Manuel Bolaños was illegal.

The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person shall be deprived of his or her life.... It also demands of the States that they take all appropriate measures to protect and preserve it.... The international protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions.

(Gangaram Panday Case, Judgment of January 21, 1994, dissenting opinion of Judges Picado-Sotela, Aguiar-Aranguren and Cançado Trindade, at paras. 3, 4.)

30. In the instant case, Manuel Bolaños was, by the Government's own submission, in the custody of state agents at the time of his death. As to the cause of death, the case file supplied by the Government supplies three indicia, the first of which is the autopsy protocol dated October 16, 1985 which states the finding that the death was due to alcohol intoxication. (File, page 10.) The second indicia is found in the report which records the identification of the place of the death. In this report, dated October 23, 1985, it is affirmed by persons present that the place identified is in fact the place where Manuel Bolaños died, "at the moment that he suffered a heart attack." (File, page 8.) The third indicia is found in the July 8, 1986 statement of Commander Villota, in which he recounts that he was informed of the death by telephone, and when he asked the cause was told that agents went to bring Mr. Bolaños to the interrogation room and found him laying on the floor, "they noticed that he had symptoms of having ingested alcohol and he wasn't moving." They subsequently realized he was dead. (File, page 32.)

31. Looking first to the autopsy protocol, the Commission observes that the finding as to the cause of death is not supported by the evidence set forth therein. The sole notation on the protocol which is probative with respect to the finding is that an odor of alcohol was detectable in the gastric contents. The existence of an odor of alcohol indicates only that a person ingested

alcohol shortly prior to death, it does not indicate the quantity of alcohol ingested. (August 13, 1994 report to the Commission from expert forensic pathologist Robert H. Kirschner, M.D.) Neither the protocol nor the case file contain any record of a toxicologic analysis of the victim's blood. A diagnosis of death due to alcohol intoxication can only be made pursuant to toxicologic analysis of the blood. The minimum lethal blood alcohol concentration is approximately 350-400 mg/dl (0.35-0.40%), or 18-20 drink equivalents. Moreover, the diagnosis of fatal alcohol intoxication can be made only in the context of an otherwise negative autopsy and toxicologic examination. (Id.)

32. The Inter-American Commission and Court have set forth repeatedly that the Article 1 obligations of a state party to the American Convention include the duty to investigate alleged human rights violations. When an individual dies of unexplained causes while in the custody of the state, the required investigation must be undertaken promptly, thoroughly and impartially. The Commission notes that the United Nations has set forth detailed illustrative criteria for investigations of unexplained deaths in custody in its annex to Economic and Social Council resolution 1989/65, "Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions." For example, all surfaces of the decedent's corpse should be photographed. In this case, there is no indication that photographs were taken, either of the body or of the place where it was found. In Ecuador, moreover, it is legally stipulated that in the investigation of a death implicating possible criminal responsibility, photographs shall be taken of the place where the body is found. (Ecuadoran Code of Penal Procedure, Article 83(4).)

33. Further, an autopsy protocol in such a case should describe all body marks, scars or injuries of any kind. The entry on the instant protocol to record body marks was left blank, although it is noted elsewhere in the case file that the victim bore at least one scar on his left leg (file, page 9). While subcutaneous incisions and dissections to probe for injuries not visible on the body surface are essential in such an investigation, the protocol makes no reference to these. Nor, it appears, were radiologic, microscopic or toxicologic studies performed.

34. The procedures which should be employed in the case of an unexplained death in custody exist to provide assurance that it does not remain unexplained. In this case, the autopsy protocol fails to meet the fundamental requisites of a viable investigation, and is inadequate as basis to make a finding as to the cause of death of Manuel Bolaños.

35. The second indicia in the case file is the notation in the October 23, 1985 report confirming the place of the death that persons on the scene said that Manuel Bolaños died as a consequence of suffering a heart attack. The persons who provided this information are not identified. This notation concerning the cause of death is uncorroborated by other evidence, but stands in marked contradiction to the finding of the autopsy protocol. There is no indication in the case file that this contradiction was ever investigated.

36. The third notation in the case file which could be relevant to the cause of death in this case is the notation in a report that Commander Villota was told that agents went to summon Mr. Bolaños for interrogation and "noticed that he had symptoms of having ingested alcohol and he wasn't moving," and then realized he was dead. Neither the person who reported this to the Commander, nor the agents who saw Mr. Bolaños are identified. Nor is there any clarification of

what symptoms were detected. According to the report, the victim was lying motionless on the floor at the time, and was in fact dead.

37. In the view of the Commission, the death of Manuel Bolaños while in the custody of agents of the Government of Ecuador remains unexplained. The illegal apprehension and detention of Manuel Bolaños, his unexplained death in custody, and the failure of the Government to undertake adequate measures to address the grave allegations raised in relation to his death, lead the Commission to conclude that the right to life of Manuel Bolaños was violated as a result of the failure of the Government to fulfill its duty to respect and guarantee the right to life of Manuel Bolaños recognized in Article 4 of the American Convention.

Article 5

38. The petitioners argue that the information available forms the foundation from which it must be concluded that Mr. Bolaños was tortured by the authorities while held in custody at the base in Balao. In their submissions, the petitioners extensively cited from what they described as statements made by Commander Villota, in which he reported that he was informed that Mr. Bolaños died from the effects of the interrogation, and was counseled by Political Chief Gutiérrez to hide the body because an autopsy would reveal the real cause of death. This information, the petitioners maintain, is evidence of torture.

39. These statements relied on by the petitioners are not contained in the case file, nor has the Government directly responded to or challenged the excerpts from this purported statement as cited and extensively quoted by petitioners. Rather, the case file contains a statement of Commander Villota, dated July 8, 1986, which indicates that he was informed that agents had gone to take Mr. Bolaños to the interrogation room, at which time they discovered that he was dead. The Commander notes that, pursuant to his inquiries, the personnel involved in the investigation told him that neither the dead detainee nor the others interrogated had been physically mistreated. The personnel who provided this information are not identified. Review of the statements of the ten naval personnel included in the case file reveals that none of these declarants referred to the physical treatment or physical integrity of any of the detainees.

40. The claims raised by the petitioners, and communicated to the Government at various junctures in the process, raise very serious allegations. The Government has provided information to the Commission which, while it does not directly rebut or respond to the allegations, in effect contradicts them. The Commission further observes that the military investigation failed to take adequate measures to determine the physical treatment and condition of the decedent. The case file indicates that ten declarations were taken during the military investigation. The declarants are described as military personnel who were involved in the apprehension of Mr. Bolaños. Yet, only one declarant, Commander Villota, makes any assertion about the victim's physical wellbeing. The assertion he makes is not based on his own knowledge, but on information allegedly received from sources not identified. The other nine declarants appear to have had no personal knowledge of the physical treatment or condition of the victim.

41. The information in the case file on this point is insufficient as a basis for the Commission to assess the treatment accorded to Mr. Bolaños. Nor can the Commission make a finding based on the allegations raised by the petitioners. It must be noted, however, that the fact that the information is insufficient further implicates the failure of the Government in this case to appropriately investigate the human rights violations alleged.

Article 8

42. The American Convention provides in Article 8.1 that all persons have "the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law ... for the determination of his rights and obligations of a civil, labor, fiscal, or other nature. "The right to an independent and impartial judicial process implies not just the right to have certain guarantees observed in a proceeding already instituted; it also includes the right to have access to the courts, which may be decisive in determining an individual's rights, or in the case of a criminal proceeding in which the injured party is denied the opportunity to accuse. The right of an aggrieved party to make a charge in a criminal proceeding is recognized in the legal system of Ecuador. Chapter V of the Code of Criminal Procedure of Ecuador sets forth the conditions in which victims, their legal representatives, or immediate relatives may bring a criminal accusation. The victim's family was effectively prevented from exercising their right to participate in criminal proceedings against those responsible for the illegal apprehension, the illegal detention, and the death of Manuel Bolaños in that all the information pertinent to such a charge was withheld from them. Numerous inquires, both informal and formal failed to produce any information on the whereabouts of Manuel Bolaños. When the family learned, through unofficial channels (see para. 3.a above) of the death of Mr. Bolaños, the matter was subject to a military criminal investigation. Although petitioners petitioned for review of the file or decisions in the matter, they were unable to ascertain the status of the investigation.

43. Article 17 of the Code of Criminal Procedure of Ecuador provides that "[s]entences executed in the criminal processes produce the effect of *res judicata* in a case concerning the exercise of a civil action, only when they declare that there exists no infraction; or, when existing, they declare the defendant is not culpable for the same. Therefore, one is not able to demand a civil indemnity while there does not exist a criminal sentence of condemnation that declares a person criminally responsible for the infraction." Thus, as the possibility of a judicial finding of criminal responsibility was foreclosed by the failure of the appropriate judicial organs to investigate the case of Manuel Bolaños, and by the withholding of all pertinent information from the family, so too was the option of indemnization by means of a civil suit.

44. Moreover, the Commission notes that Article 8 provides that one wishing to exercise his right to be heard by a competent tribunal must be able to do so within a reasonable time. The investigation carried out by the military penal court was initiated October 29, 1985 and terminated on May 31, 1989. In light of the facts of this case and the insufficient measures that were actually carried out during the investigation, this delay in the legal process of almost four years was clearly not reasonable.

Article 25

45. The Government of Ecuador failed to honor its obligation to provide simple, swift and effective legal recourse to the victim's family, so that their rights might be determined. The family of Manuel Bolaños has the right to know the truth about what happened to him, the circumstances of his detention and death, and to know the location of his remains. This flows from the obligation of the state to "use all the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction [in order] to identify those responsible." (Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.) The Commission has established that victims and their relatives have a right to a judicial investigation by a criminal court designed to establish and sanction responsibility for human rights violations. (See generally, Report Numbers 28/92 (Argentina), and 29/92 (Uruguay), Annual Report 1992-93.)

46. The judicial bodies competent to investigate facts such as those set forth in the present case apparently failed to undertake any investigation into the apprehension of Mr. Bolaños by agents of the state, and his detention and death in custody. The investigation carried out by naval authorities lasted for approximately three years and seven months, but nonetheless failed to exhaust all available measures to know the truth. Notwithstanding that the Government was in possession of information the family had a right to know, including where Mr. Bolaños had been held, the fact of his death, and the location of his remains, the family and petitioners were never informed of any of this. The lack of an investigation by impartial competent authorities, and the delay and insufficiency of the investigation which was carried out, and the failure of the State to provide information, constitute a serious violation of the family's right to prompt and effective judicial recourse. The delay in and insufficiency of any efforts of the State to investigate the grave allegations raised by family members in domestic channels has effectively prevented them from realizing their right to justice, and their right to know the truth about what happened to Manuel Bolaños.

47. The rights under Convention Articles 8, to a fair trial, and 25, to recourse to judicial remedies, as well as the Article 1 obligation of the Government to investigate, all require that the authorities responsible for legal action be competent, independent and impartial.

48. It is the obligation of the Government to carry out a full, independent and impartial investigation into an alleged violation of the right to life. This obligation is incident to the Government's duty to protect and ensure the human rights recognized in the American Convention. Where the state allows investigations to be conducted by the organs potentially implicated, independence and impartiality are clearly compromised. Legal procedures compromised in this way are incapable of affording the investigation, information and remedy purportedly available. In this case, military authorities conducted an investigation into facts implicating responsibility on the part of members of the organization and the organization itself. Military authorities were not attributed with the legal authority to perform such functions in this case, nor could they possibly act with the requisite independence and impartiality. It is instructive to note in this regard that all the witnesses summoned to provide testimony in the military penal process carried out in the case were members of the military. The consequence of such compromise is insulation of those presumably responsible from the normal operation of the

legal system. This type of de facto impunity is corrosive of the rule of law and violative of the principles of the American Convention.

III. CONCLUSIONS

1. Report 6/95 was approved by the Commission on February 17, 1995, during its 88th period of sessions, and was transmitted to the Government on March 9, 1995. The Commission requested that the Government inform it of the measures taken to comply with the recommendations set forth therein within a period of 60 days. The response received was dated August 21, 1995, and indicated that the measures recommended had not been taken. The Government asserted that, even assuming that Manuel Bolaños had been killed as a result of torture, responsibility would fall on the individuals responsible, and not on the state. The Commission therefore finds it advisable to reiterate to the Government of Ecuador the following essential principle: State responsibility is engaged under the American Convention when a violation of a protected right is carried out by an act of public authority or by persons acting under the color of such authority; when a violation occurs with the acquiescence or support of a government; when a government fails to bring the appropriate legal mechanisms to bear when a violation occurs; or when a government fails to take required measures to prevent such a violation. Consequently, in the instant case the Commission has determined that the State of Ecuador is responsible for the deprivation of liberty and murder of Manuel Bolaños, as well as for having failed to respond to these violations as required by law, thereby having denied his family justice.

2. Victim Manuel Bolaños died while in the custody of the state. The Government has, however, failed to produce his body, or to explain why it has not been produced. This failure to act perpetuates the violation of the family's right to know the truth about the fate of Manuel Bolaños. The provision by a family of a proper burial upon the death of one of its members is an act of inestimable importance within family life. This most profound and intimate right has been and continues to be denied to the Bolaños family. The Commission will continue to request information on this point until it is satisfied that the remains of Manuel Bolaños have been located and produced.

3. Finally, it must be noted that the Government's August 21, 1995 submission offered that the Procurator's Office would undertake the measures to ascertain through the Prosecutor General of Esmeraldas whether the files of the Court of the Third Naval Zone contained further information relative to the location of the remains of Manuel Bolaños. Report 6/95 required such information to have been furnished to the family immediately. The fact that relevant information may be in the possession of the Government and has yet to be communicated to the family is inexcusable and must be corrected forthwith.

4. Based on the information and observations stated above, the Inter-American Commission on Human Rights finds that the State of Ecuador has violated Articles 4, 7, 8 and 25 of the American Convention, and has failed to uphold its obligation established in Article 1.

5. The Commission recommends to the Government of Ecuador that it:

- a. Undertake a prompt, impartial and effective investigation of the facts denounced so that the circumstances under which they occurred may be fully brought to light, and those responsible identified and brought to trial.
- b. Immediately inform the family of Manuel Bolaños of the location of his remains, and facilitate the wishes they have as to the appropriate final resting place of his body.
- c. Redress the consequences of the violation of the rights enunciated, including the payment of fair compensation to those injured as a result of the foregoing violations.

6. The Commission resolves to transmit this report to the Government of Ecuador and the petitioners, and to request that the Government inform it, within a period of 15 days, with respect to the measures that it has taken in the present case in accordance with the recommendations formulated in paragraph 5 above. In the event that timely compliance is not forthcoming, the Commission will order the publication of this report in its Annual Report, pursuant to Article 51 of the American Convention and Article 48 of its Regulations, because the Government of Ecuador did not adopt the measures stipulated to correct the violations set forth within the time period provided.