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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 19/01; Case 11.478
Session:	Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause:	Juan Clímaco Cuéllar, Carlos Cuéllar, Alejandro Aguinda, Leonel Aguinda, Demetrio Pianda, Henry Machoa, Carmen Bolaños, Josué Bastidas, José Chicangana, Froilán Cuéllar and Harold Paz v. Ecuador
Doc. Type:	Decision
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie Commissioner Julio Prado Vallejo, of Ecuadorian nationality, did not participate in the discussion of this case, in keeping with Article 19 of the Commission's Regulations.
Dated:	20 February 2001
Citation:	Climaco Cuellar v. Ecuador, Case 11.478, Inter-Am. C.H.R., Report No. 19/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by:	APPLICANT: Fundación Regional de Asesoría en Derechos Humanos
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I. SUMMARY

1. On November 8, 1994, the Fundación Regional de Asesoría en Derechos Humanos (hereinafter “INREDH” or “the petitioner”) presented a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State”) in which it denounced the violation of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to honor and dignity (Article 11), all in breach of the obligations set forth at Article 1(1) to the detriment of Juan Clímaco Cuéllar, Carlos Cuéllar, Alejandro Aguinda, Leonel Aguinda, Demetrio Pianda, Henry Machoa, Carmen Bolaños, Josué Bastidas, José Chicangana, Froilán Cuéllar, and Harold Paz.

2. The parties reached a friendly settlement in this case on June 25, 1998. This report contains a brief presentation of the facts plus the text of the settlement agreement, in keeping with Article 49 of the Convention.

II. THE FACTS

3. On December 18, 1993, at approximately 10 a.m., armed and hooded members of the military detained Colombian citizens Froilán Cuéllar and José Otilio Chicangana in the Montepa sector. On December 19, 1993, at approximately 9 a.m., also detained in the community of Nueva Esperanza were Juan Clímaco Cuéllar, Henry Machoa, Alejandro Aguinda, and Demetrio Pianda. Later that same day, and in the same place, Leonel Aguinda and Carlos Enrique Cuéllar were detained. On December 20, 1993, Josué Bastidas and Harold Paz were detained. All were detained by members of the Ecuadorian Army, without the legal formalities and without being informed as to the causes of the detention.

4. On December 27, 1993, the persons detained were handed over by the Ministry of Defense to the Ministry of Government in Quito, with the request that they be placed at the disposal of the corresponding judicial authority.[FN1]

[FN1] There is nothing in Ecuadorian law according to which the military authorities can deprive persons of liberty, keep them incommunicado, and then hand them over to the competent civilian authorities.

5. From the moment they were detained until their transfer to Quito, the victims were kept incommunicado, without access to an attorney or their relatives, in violation of Article 130 of the Ecuadorian Code of Criminal Procedure.[FN2]

[FN2] Article 130: "If the accused is deprived of liberty, his or her testimony shall be taken within 24 hours, counted from the moment he or she is brought before the Judge. This term may be extended for another 24 hours when the Judge considers it necessary or when the accused so requests.

"The incommunication of the accused, which may only be ordered by the Judge, and may not last more than 24 hours, shall not keep him or her from having direct communication with his or her defense counsel."

6. During the detention, the victims were subjected to physical and psychological torture, such as deprivation of food, water, and sleep, being forced to drink urine and mud, being blindfolded during the detention, deprivation of mobility of the arms and feet, electric shock to the genitalia and extremities, inhalation of gasses, beatings with sticks, burns on the body, asphyxia in water and with plastic covers, sexual abuses, injection of drugs, threats to kill family members, and simulated shooting. The only woman detained was also raped by the members of the military, and even by other detainees, who were forced to commit such acts. The purpose of the torture was to obtain self-incriminating statements. Four of the detainees withstood the torture without incriminating themselves; the other seven were broken.

7. The victims were also deprived of the guarantees of due process. The appeal of the detention and the criminal proceeding were subject to unwarranted delay. Four of the victims regained their freedom on August 30, 1994, after charges were dismissed with prejudice. The

other seven were released on September 4, 1996. All were acquitted, and in the proceedings it was shown that there had been human rights violations.

8. On December 17, 1996, the victims presented a claim to the President of the Republic, requesting compensation for acts carried out by state officials, called for in Article 23 of the Constitution. This claim was denied. In May 1997, an action was presented to the Contentious-Administrative Court, for the same purpose. The legal counsel to the President answered that the action should be dismissed, since the statute of limitations had run, and noted that the President of the Republic was not responsible for the actions of the members of the armed forces or police. The Office of the Attorney General never answered the action.

III. PROCESSING BEFORE THE COMMISSION

9. After the Commission received the complaint and opened the case, on April 24, 1998, the Commission placed itself at the disposal of the parties for the purpose of reaching a friendly settlement. That settlement was reached on June 25, 1998. The parties asked the Commission to ratify the present friendly settlement agreement in its entirety, and to supervise its implementation.

IV. FRIENDLY SETTLEMENT AGREEMENT

10. The friendly settlement agreement signed by the parties reads as follows:

PARTIES APPEARING

The following persons were present at the signing of this friendly settlement agreement: For the first party, Mr. Milton Alava Ormaza, in his capacity as Attorney General, and sole judicial representative of the Ecuadorian State, as accredited in the appointment and certificate of office, duly authenticated, which are attached as qualifying documents, and for the second party Catholic Church prelate Bishop of Sucumbíos, Monsignor Gonzalo López Marañón, in his capacity as representative of Messrs. Juan Clímaco Cuéllar, Carlos Cuéllar, Alejandro Aguinda, Leonel Aguinda, Demetrio Pianda, Henry Machoa, Carmen Bolaños, Josué Bastidas, José Chicangana, Froilán Cuéllar, and Harold Paz, whose identities are attested to by the copies of their respective citizen ID cards, who for the purpose of this Agreement shall be referred to as the "peasants of Putumayo." Monsignors Gonzalo López Marañón's power-of-attorney is attached as a qualifying document to this friendly settlement agreement.

The Attorney General, Mr. Milton Alava Ormaza, is appearing under Article 139 of the Constitution of Ecuador, and pursuant to Article 3 of the Organic Law of the Office of the Attorney General, published in the Registro Oficial N° 335 of June 9, 1998.

FIRST - BACKGROUND

On December 16, 1993, in the sector called Peña Colorado, canton of Putumayo, province of Sucumbíos, members of a combined patrol of the Ecuadorian Army and Police were ambushed by unidentified persons; 11 members of the Ecuadorian forces were killed.

As a result of this attack, the peasants from Putumayo whose names are indicated were detained.

Concomitant with these detentions, which were without a written order from a competent authority, without an indictment, and with incommunicado detention for more than 24 hours, the detainees were subjected to a series of violations of human rights, such as physical, sexual, and psychological torture, in this way requiring them to make spurious statements which were the basis for a criminal trial substantiated in the various judicial entities. Finally, however, the charges were dismissed with prejudice in the cases of Demetrio Panda, Alejandro Aguinda, Leonel Aguinda, and Josué Bastidas, a measure that was affirmed by the Fourth Chamber of the Superior Court of Justice of Quito; and the motion for cassation brought by the persons convicted was accepted, and so on August 28, 1996, Messrs. Juan Clímaco Cuéllar, Carlos Cuéllar, Henry Machoa, Carmen Bolaños, José Chicangana, Froilán Cuéllar, and Harold Paz were absolved by the First Chamber for Criminal Matters of the Supreme Court of Justice on August 28, 1996.

Based on these judicial pronouncements in the court of last resort, the peasants who were unjustly detained and convicted presented a property-related claim to the President of the Republic, based on the provisions of Article 23 of the Constitution and Articles 130 to 134 of the Administrative Legal Regime of the Executive Function, but they received no response. They filed a personal appeal before the Contentious-Administrative Court, which to date has not been resolved.

The final judgment that declared the innocence of the peasants from Putumayo, and the forensic studies done by the experts from the National Council for the Control of Narcotic and Psychotropic Substances (CONSEP), designated by the Ninth Criminal Law Judge of Pichincha, as well as the psychological and psychosocial exams performed on the victims, are all clear and convincing evidence of the illegal and arbitrary detentions, and of the physical, sexual, and psychological torture to which they were subjected.

The acts carried out by the agents of the Ecuadorian State violated the constitutional and statutory provisions of Ecuadorian law; Articles 1, 5, 7, 8, and 11 of the American Convention on Human Rights; and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

In addition, there were violations of Articles 19, 20, and 22(1), 22(19)(g) and 22(19)(h) of the Constitution of Ecuador.

On November 8, 1994, the peasants of Putumayo submitted a complaint against the Ecuadorian State to the Inter-American Commission on Human Rights for illegal and arbitrary detention, incommunicado detention, torture, and violation of the presumption of innocence, incorporating abundant documentary and testimonial evidence to justify the allegations.

On May 4, 1995, the Inter-American Commission on Human Rights admitted the case for processing, and assigned it case number 11.478, as it considered the claim to meet the jurisdictional requirements of the American Convention on Human Rights.

SECOND - STATE RESPONSIBILITY

The domestic judicial proceeding was characterized by unjustified delays, highly technical arguments, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained and tortured the peasants from Putumayo, and held them incommunicado, nor could it refute that those actions were at odds with the Constitution, the legal framework of the Ecuadorian State, and the international standards that protect human rights.

THIRD - RECOGNITION OF RESPONSIBILITY AND ACCEPTANCE OF THE ECUADORIAN STATE

In this context, the Ecuadorian State recognizes its culpability in the facts narrated before the Inter-American Commission on Human Rights, and is undertaking to adopt reparative measures by recurring to the institution of friendly settlement provided for in Article 45 of the Regulations of the Inter-American Commission on Human Rights.

FOURTH - COMPENSATION

In view of the foregoing, the Ecuadorian State, represented by the Office of the Attorney General, makes a one-time payment of US\$ 100,000 (one hundred thousand U.S. dollars) each, or its equivalent in national currency, to Juan Clímaco Cuéllar, Carlos Cuéllar, Alejandro Aguinda, Leonel Aguinda, Demetrio Pianda, Henry Machoa, Carmen Bolaños, Josué Bastidas, José Chicangana, Froilán Cuéllar, and Harold Paz. This sum is related to that demanded by them, and is compensation for the delay in paying them since they formulated their claim on December 17, 1996, to the President of the Republic.

This compensation covers the consequential damages, loss of income, and moral damages suffered by the peasants of Putumayo, and shall be paid to them pursuant to the domestic law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Finance for it to carry out this obligation within 90 days of the signing of this document.

FIFTH - COMPENSATION FROM GUILTY PERSONS

This friendly settlement agreement does not include such compensation as the peasants of the Putumayo have the right to claim the persons responsible for their unlawful and arbitrary detention, torture, and incommunicado detention, under Articles 52 and 67 of the Ecuadorian Criminal Code, but it renders without effect the claim filed against the Ecuadorian State before the Contentious-Administrative Court.

SIXTH - RELIEF

The Office of the Attorney General, in representation of the Ecuadorian State, states for the record that the peasants of Putumayo were victims of illegal and arbitrary detention, breaking

and entering, torture, incommunicado detention, and violation of the presumption of innocence, based on unfounded accusations. The Office of the Attorney urges the Armed Forces of Ecuador and the National Police, in carrying out their mission of exercising vigilance along the border with Colombia, to observe the guarantees of due process to which all persons who are accused of criminal infractions have a right.

SEVENTH - PUNISHMENT

The Ecuadorian State, through the Office of the Attorney General, pledges to encourage the State Attorney General and the competent judicial organs, to bring criminal charges against those persons who are considered to have participated in the facts alleged, and to encourage the public or private organs with competence to contribute legally supported information that makes it possible to bring those persons to trial.

This trial shall be carried out subject to the constitutional and statutory order of the Ecuadorian State, and in the event that the offenses attributable to them have not legally prescribed.

EIGHTH - REPORTING

The Ecuadorian State, through the Office of the Attorney General, agrees to report every three months to the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights on compliance with the obligations assumed by the State in this friendly settlement agreement.

NINTH - LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to the peasants of Putumayo are provided for in Articles 23 and 25 of the Constitution of the Republic of Ecuador for violations of the individual rights and guarantees and of the provisions of the American Convention on Human Rights, of which Ecuador is a signatory country.

TENTH - NOTIFICATION

The peasants of Putumayo specifically authorize the Attorney General to notify the Inter-American Commission on Human Rights of this friendly settlement agreement, so that the Commission may confirm and ratify it in its entirety.

ELEVENTH - ACCEPTANCE

The parties, in their respective capacities, freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that this ends case N° 11.478 before the Inter-American Commission on Human Rights, and that in the future they will have no claims to file over this case.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The Commission determined that the settlement agreement transcribed above is compatible with the terms of Article 48(1)(f) of the American Convention.

12. The petitioner informed the IACtHR in February 2001 that the State proceeded to pay the compensation agreed upon in the friendly settlement agreement. Similarly, the petitioner reported that the case, after lengthy problems of jurisdiction in Quito, went to the courts in the province of Sucumbíos, where it suffered the same fate. Finally, jurisdiction was found to lie in the First Criminal Law Judge of Sucumbíos in December 2000, without it advancing beyond the investigative phase as of that date. On March 7, 2001, the State informed the Commission that criminal proceedings had been instituted to determine the sanctions and responsibility of the persons implicated in the violations alleged.

VI. CONCLUSIONS

13. The Commission reiterates its recognition of the Ecuadorian State for its decision to resolve this case by adopting measures of reparation, including those necessary to punish the persons responsible for the violations alleged. The IACtHR also reiterates its recognition of the petitioner for accepting the terms of the agreement.

14. The IACtHR will continue to monitor compliance with the ongoing commitment assumed by Ecuador with regard to the trial of the persons presumed responsible for the facts alleged.

15. The IACtHR ratifies that the possibility of friendly settlement provided for in the American Convention makes it possible to conclude the individual cases in a non-contentious manner, and has proven, in cases from several countries, to offer an important vehicle for solving alleged violations that can be used by both parties (petitioner and State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To acknowledge that the State has made payment of US\$ 100,000 as compensation to each of the victims of the situations alleged, and to note the lack of compliance with respect to the punishment of the persons responsible for the violation alleged, and with respect to the payment of interest for the delay in payment of the above-noted sum.

2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACtHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

4. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., February 20, 2001. (Signed): Claudio Grossman, Chairman; Juan

Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairman; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.