

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 104/01; Case 11.441
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Title/Style of Cause:	Rodrigo Elicio Munoz Arcos, Luis Artemio Munoz Arcos, Jose Vicente Morales Rivera and Segundo Hilarion Morales Bolanos v. Ecuador
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan Mendez; Second Vice-President: 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 17 of the Commission's Rules of Procedure.
Dated:	11 October 2001
Citation:	Munoz Arcos v. Ecuador, Case 11.441, Inter-Am. C.H.R., Report No. 104/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Comision Ecumenica de Derechos Humanos
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I. SUMMARY

1. On November 9, 1994, the Comisión Ecuménica de Derechos Humanos (“CEDHU”) (hereinafter “the petitioner”) submitted 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 alleged 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), the right to private property (Article 21), and the right to judicial protection (Article 25), in violation of the obligations set forth in Article 1(1) to the detriment of Messrs. Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Vicente Morales Rivera, and Segundo Hilarión Morales Bolaños, all of Colombian nationality.

2. The parties reached four friendly settlement agreements in this case on August 15, 2001. This report consolidates, in a brief presentation, the facts and the text of the settlements reached in the four agreements, in keeping with Article 49 of the Convention.

II. FACTS

3. The Comisión Ecuémica de Derechos Humanos (“CEDHU”) submitted the complaint regarding the detention of four Colombian citizens, Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Morales Rivera, and Segundo Morales Bolaños, who were suspected of the crimes of robbery, attempted kidnapping, and homicide, by the members of the Ecuadorian police in the area of Tulcán on August 26, 1993. It was learned that the aforementioned persons were detained and taken to the central office of the Office of Criminal Investigation (OID: Oficina de Investigación del Delito), where they were held incommunicado for 13 days; several thousand pesos and sucres were taken from them. It is also alleged that they were tortured by members of the OID. The medical certificates for these persons indicate that they presented excoriations, hematomas, pains, and a fracture of the lower jaw as a result of being beaten, suspended, and kicked about various parts of the body. The detainees were transferred to the Tulcán jail on September 7, 1993. The alleged perpetrators are members of the National Police, Carchi Command No. 10: Lt. Col. Carlos Antonio Lozada Aldas, Corporal José Luis Cando Pérez, and Dr. Edgar Pacheco Mena, who signed the statements made by the persons tortured.

4. In the pertinent respects, the medical certificates of the Dirección Nacional de Rehabilitación Social (National Bureau for Social Rehabilitation), dated October 13, 1993, indicate as follows as regards the diagnosis of each detainee: (a) Luis Artemio Muñoz Arcos: multiple traumas and fracture of the lower jaw; (b) Rodrigo Muñoz Arcos: trauma to the thorax; (c) Segundo Hilarión Morales Baños: slight trauma to the left eye; (d) José Vicente Morales Rivera: apparently healthy patient. (On September 16, 1993, he underwent a private medical examination in which he was diagnosed as follows: intense pain in the right temporal region, pain in the sternal apex, which is fractured, excoriations in the anterior right and left tibia, scarred excoriations to the wrists. The lesions were caused by the traumatic action of a hard blunt object, such as a fist, a kick, or a stick.)

III. PROCESSING BEFORE THE COMMISSION

5. On July 10, 1995, the Commission sent the complaint concerning Rodrigo Muñoz Arcos et al. to the Government of Ecuador. On August 3, 1995, the Government of Ecuador answered the complaint. The procedure for responding to petitions set out in the rules of procedure was followed.

6. On February 9, 1999, the Commission placed itself at the disposal of the parties to pursue a friendly settlement, which was signed on August 15, 2001, in the presence of Marta Altolaguirre, member of the IACHR and Rapporteur for Ecuador, who traveled to Quito to facilitate the agreement. The parties asked the Commission to ratify this agreement in every respect and supervise compliance with it.

IV. FRIENDLY SETTLEMENT AGREEMENT

7. The friendly settlement agreements signed by the parties state as follows:

I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it assumed upon ratifying the American Convention on Human Rights and other international human rights law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Therefore the Office of the Attorney General and [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños], have reached a friendly settlement, pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. THE PARTIES

The following persons were present at the signing of this friendly settlement agreement:

- a. For the first party, Dr. Ramón Jiménez Carbo, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached as qualifying documents;
- b. For the second party [Miss Doris Elizabeth Posso Moran, of Colombian nationality, with citizen identification number 37,009,466, on behalf and in representation of Mr. Rodrigo Elicio Muñoz Arcos, as appears from the special power of attorney executed before the First Notary of the circuit of San Juan de Pasto, and legalized by the Consul General in Ipiales, Colombia, a copy of which is attached hereto as a qualifying document] [Mr. Luis Artemio Muñoz Arcos, of Colombian nationality, with citizen identification number 5,209,254, which is attached hereto as a qualifying document] [Mr. José Vicente Morales Rivera, of Colombian nationality, with citizen identification number 5,210,006, which is attached hereto as a qualifying document] [Mr. Segundo Hilarión Morales Bolaños, of Colombian nationality, with citizen identification number 5,211,202, which is attached hereto as a qualifying document].

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños], enshrined in Article 5 (right to humane treatment), Article 8 (fair trial), Article 21 (private property), Article 7 (personal liberty), and Article 25 (judicial protection), and at the same time the general obligation contained in Article 1(1) of the American Convention on Human Rights and other international instruments,

considering that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case 11.441 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims, or their successors, for the damages caused by those violations.

IV. COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register N° 1 and in force since August 11, 1998, is awarding [Rodrigo Elicio Muñoz Arcos, through his representative Miss Doris Elizabeth Posso Moran, a one-time compensatory payment in the amount of ten thousand US dollars (US\$ 10,000), to be paid from the National Budget] [Luis Artemio Muñoz Arcos, a one-time compensatory payment in the amount of ten thousand US dollars (US\$ 10,000), to be paid from the National Budget], [José Vicente Morales Rivera, a one-time compensatory payment in the amount of ten thousand US dollars (US\$ 10,000), to be paid from the National Budget], [Segundo Hilarión Morales Bolaños, a one-time compensatory payment in the amount of ten thousand US dollars (US\$ 10,000), to be paid from the National Budget].

This compensation covers the consequential damages, loss of income, and moral damages suffered by [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños], as well as any other claims that [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños] may have, regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Economy and Finance, for it to carry out this obligation.

V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

VI. RIGHT TO SEEK INDEMNITY

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when

administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

VII. TAX EXEMPTION

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes.

VIII. 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 on compliance with the obligations assumed by the State in this friendly settlement agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this agreement.

IX. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños] are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the constitution, other national laws, and the standards in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights.

X. NOTIFICATION AND CONFIRMATION

Mr. [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños] specifically authorizes 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.

XI. ACCEPTANCE

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mr. [Rodrigo Elicio Muñoz Arcos], [Luis Artemio Muñoz Arcos], [José Vicente Morales Rivera], [Segundo Hilarión Morales Bolaños].

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

VI. CONCLUSIONS

9. The Commission values the signing of a friendly settlement agreement in the terms of the American Convention, by both the State and the petitioners.

10. The IACHR shall continue to monitor compliance with the commitments assumed by Ecuador regarding the criminal prosecution of the persons implicated in the facts alleged.

11. The IACHR verifies that the friendly settlement provisions of the American Convention make it possible to conclude individual cases in a non-contentious manner, and has proved, in cases regarding several countries, to be an important means of resolving alleged human rights violations that can be used by both parties (petitioner and state).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To certify that the State has complied with the commitment to pay US\$ 10,000 to each victim in this case, as compensation.
2. To remind the State that it must comply fully with the friendly settlement agreement by instituting judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreements, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to compliance with the obligations assumed by the State under these friendly settlements.
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., October 11, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.