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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 65/03; Petition 12.394
Session:	Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause:	Joaquin Hernandez Alvarado, Marlon Loor Argote and Hugo Lara Pinos v. Ecuador
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioner: Robert K. Goldman. Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case in compliance with Article 17 of the Commission's Rules of Procedure.
Dated:	10 October 2003
Citation:	Hernandez Alvarado v. Ecuador, Petition 12.394, Inter-Am. C.H.R., Report No. 65/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: Ronald Game Intriago
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I. SUMMARY

1. On May 7, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by the lawyer Ronald Game Intriago (hereinafter “the petitioner”) alleging that the Republic of Ecuador (hereinafter “the State” or “Ecuador”) had violated Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention”), all in conjunction with Article 1(1) thereof, with respect to Dr. Joaquín Hernández Alvarado, Mr. Marlon Loor Argote, and Mr. Hugo Lara Pinos.

2. The petitioner claimed that on May 22, 1999, Messrs. Hernández Alvarado, Loor Argote, and Lara Pinos were attacked by officers of the National Police, and he underscored the Ecuadorian courts’ delay in prosecuting and punishing the perpetrators. The State claimed that domestic remedies had not been exhausted.

3. At its 114th regular session, the Commission adopted Admissibility Report N° 11/02 (February 27, 2002), in which it declared this case admissible as regards the alleged violation of Articles 5, 8, 25, and 1 of the Convention, ruling that the case met the requirements set forth in Articles 46 and 47 of the American Convention. Marlon Loor and Hugo Lara Pinos reached friendly settlement agreements with the State on November 26, 2002, and Joaquín Hernández Alvarado and the State struck a third agreement on December 16, 2002. This report

contains a brief description of the facts and the text of the settlement reached (which is the same in all three agreements) in compliance with Article 49 of the Convention.

II. FACTS OF THE CASE

4. According to the complaint received by the Commission, on May 22, 1999, at approximately 8:00 p.m., Messrs. Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos were shot at by a group of National Police officers while driving through the city of Guayaquil. Mr. Marlon Loor Argote, the head of public relations with the office of the Comptroller General of the State, at that time serving as a parliamentary advisor to the National Congress and an Ecuadorian national, was the owner of the 1998 Daewoo Cielo in which they were traveling. The attack lasted some ten minutes, during which time two of the three men were wounded. Dr. Hernández Alvarado, a doctor in pure philosophy, the director of the graduate school at the Catholic University of Santiago in Guayaquil, and a columnist for the newspaper Hoy, is a Salvadorian national who has been a resident of Ecuador for many years; he received a gunshot wound in his back as he got out of the vehicle. Mr. Hugo Lara Pinos, an Ecuadorian national of adult age and at that time a student, was wounded while still inside the car. They were then thrown onto the ground, handcuffed, and subjected to physical and verbal abuse and then taken to the city's police headquarters, where the abuse, kicks, and insults continued for almost three hours.

5. They point out that the police subsequently apologized, explaining that the attack occurred as a result of an error in an operation led by 2nd Lt. Freddy Osorio. Col. Abraham Correa Loachamin, at that time the Chief of Police in Guayas province, appeared in the news media 48 hours after the incident to acknowledge that what had happened was a "police error," explaining that it was due to "confusion" on the part of the officers involved. In a later press release, police headquarters acknowledged the "police error" and explained that it was caused by a false stolen vehicle report. The Guayas police admitted their "error in opening fire on and arresting the occupants of the Daewoo." Among those who apologized to Mr. Hernández were the Minister of the Interior, the Chief of Police, the Governor of Guayas province, and the then President of the Republic, Jamil Mahuad.

III. Processing by the Commission

6. On May 7, 2001, Messrs. Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos sent a petition to the Inter-American Commission. The pertinent parts of this petition were forwarded to the State on July 3, 2001, with a request that the State respond within a period of 60 days. The State did not reply to the letter; however, after the Commission restated its request, the State sent a reply on November 28, 2001. This was forwarded to the petitioner, whose comments were submitted on January 5, 2002.

7. On February 27, 2002, upon conclusion of the relevant procedures, the Commission issued Admissibility Report No. 11/02. In letters to the petitioner and the State dated March 27, 2002, the Commission made itself available to the parties with a view to reaching a friendly settlement of the matter based on upholding the human rights recognized in the Convention. In a letter of April 1, 2002, the petitioner stated his willingness to work toward such an agreement

and, on May 22, 2002, sent additional comments to the Commission. On July 2, 2002, the Commission sent the State the relevant parts of the petitioner's additional comments and, in compliance with Article 38(1) of the Rules of Procedure, gave it a period of two months in which to submit its observations on the merits.

8. As stated by the petitioner in his letter of July 22, 2002, during that same month the parties held direct negotiations and proposed a draft friendly settlement agreement. All the items contained in the draft were accepted by the Ecuadorian State, with disagreement surrounding just one major point, that of the amount of compensation to be paid. In light of their inability to reach a decision, the petitioner asked the Commission to continue with its analysis of the merits of the case and to be granted a hearing before the Commission. The Commission held a working meeting, attended by both parties, on October 15, 2002, during its 116th session.

9. At that working meeting, Ecuador acknowledged the facts alleged by the petitioner and also accepted the legal consequences arising therefrom. The State also fully accepted its international responsibility in this case.

10. During a July 2003 visit to Ecuador, representatives of the Office of the State's Attorney General informed the President of the Commission, Dr. Marta Altolaguirre, that they had reached a friendly settlement with Messrs. Joaquín Hernández Alvarado, Marlon Iván Loor Argote, and Hugo Lara Pinos. The three agreements were signed with the State on November 26 and December 16, 2002, and the three victims received their compensation in March 2003. The parties requested the Commission to ratify all parts of this friendly settlement and to oversee its implementation. In the interests of procedural economy the three agreements will be dealt with in a single report, using brackets to indicate textual variations corresponding to the second victim (Mr. Loor) and to the third victim (Mr. Lara).

IV. FRIENDLY SETTLEMENT REACHED

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

I. BACKGROUND

The Ecuadorian State, through the office of the Attorney General, with a view to promoting and protecting human rights, and recognizing that the unreserved respect for human rights is currently of great importance for the international image of our country, as the foundation of a just, worthy, democratic and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Attorney General's office has initiated conversations with all the 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 acquired upon signing the American Convention on Human Rights and other human rights 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 Mr. Joaquín Hernández Alvarado [Mr. Marlon Iván Loor Argote] [Mr. Hugo Jhoe Lara Pinos] have agreed to reach a friendly settlement pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. PARTIES TO THE AGREEMENT

The following persons were present at the signing of this Friendly Settlement Agreement:

- a) Dr. Ramón Jiménez, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached hereto as qualifying documents.
- b) Mr. Joaquín Hernández Alvarado, a Salvadorian national, with citizenship document No. 1703265866, [Mr. Marlon Iván Loor Argote, an Ecuadorian national, with citizenship document No. 090766661-4], [Mr. Hugo Jhoe Lara Pinos, an Ecuadorian national, with citizenship document No. 020161760-2], attached hereto as a qualifying document.

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State recognizes its international responsibility for having violated the human rights of Mr. Joaquín Hernández Alvarado [of Mr. Marlon Iván Loor Argote] [of Mr. Hugo Jhoe Lara Pinos] as enshrined in Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), and Article 25 (Judicial Protection) of the American Convention on Human Rights, in conjunction with the general obligation contained in Article 1(1) thereof, and in other international instruments, since the violations were committed by State agents and could not be disproved by the State, thus giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 12.394 now before the Inter-American Commission on Human Rights and agrees to undertake the necessary reparatory 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, according to Article 215 of the Constitution of Ecuador, promulgated in Official Register No. 1, and in force since August 11, 1998, is awarding Mr. Joaquín Hernández Alvarado, citizenship document No. 1703265866 [Mr. Marlon Iván Loor Argote, citizenship document No. 090766661-4] [Mr. Hugo Jhoe Lara Pinos, citizenship document No. 020161760-2] lump sum compensatory damages of one hundred thousand [three hundred thousand] [fifty thousand] United States dollars (USD \$100,000.00) [(USD \$300,000.00)] [(USD \$50,000.00)], to be paid from the National Budget.

This compensation is in settlement of all material damages, loss of income, and moral damages suffered by Mr. Joaquín Hernández Alvarado [by Mr. Marlon Loor Argote] [by Mr. Hugo Jhoe Lara Pinos] as well as any other claims that Mr. Joaquín Hernández Alvarado [Mr. Marlon Loor

Argote] [Mr. Hugo Jhoe Lara Pinos] or his relatives might entertain regarding the matter of this agreement, in accordance with domestic and international law, payable from the National Budget, for which purpose the Attorney General will notify the Minister of Economy and Finance so that the obligation may be fulfilled.

V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or the exercise of public power, are presumed to have participated in the reported violations.

The office of the Attorney General undertakes to encourage the Public Prosecutor of the State, the competent judicial organs, and the competent public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework 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 Ecuador, from those persons found guilty of human rights violations in a final judgment handed down by an Ecuadorian court, or when administrative liability has been determined, in accordance with Article 8 of the American Convention on Human Rights.

VII. TAX-EXEMPT PAYMENTS

The disbursement made by the Ecuadorian State to the beneficiary of this friendly settlement agreement shall be free from all existing or future taxation.

VIII. INFORMATION

The Ecuadorian State, through the office of the Attorney General, undertakes to report every three months to the Inter-American Commission on Human Rights on its fulfillment of the obligations assumed under 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. SPECIAL JURISDICTION

The Ecuadorian State, to the extent that is legally possible, shall pursue all the steps necessary to comply with Temporary Provision No. 26 of the Constitution of the Republic, so that those magistrates and judges currently under the aegis of the executive branch are transferred to the judiciary.

X. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Joaquín Hernández Alvarado [to Mr. Marlon Iván Loor Argote] [to Mr. Hugo Jhoe Lara Pinos] are provided for in Articles 22 and 24 of the Constitution of the Republic, for violations of the Constitution, of other national laws, and of the norms in the American Convention on Human Rights and other international human rights instruments.

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

XI. NOTIFICATION AND APPROVAL

Mr. Joaquín Hernández Alvarado [Mr. Marlon Iván Loor Argote] [Mr. Hugo Jhoe Lara Pinos] expressly authorizes the Attorney General to bring this friendly settlement to the attention of the Inter-American Commission on Human Rights, so that the Commission may confirm and ratify all portions thereof.

XII. ACCEPTANCE

The parties signing this agreement freely and voluntarily express their conformity with and acceptance of the contents of the preceding clauses, and they state for the record that they hereby bring to a close the dispute before the Inter-American Commission on Human Rights regarding the international responsibility of the Ecuadorian State for violating the rights of Mr. Joaquín Hernández Alvarado [of Mr. Marlon Iván Loor Argote] [of Mr. Hugo Jhoe Lara Pinos].

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. The Commission has found the three friendly settlement agreements transcribed above to be compatible with Article 48(1)(f) of the American Convention.

VI. CONCLUSIONS

13. The Commission welcomes the signing of the friendly settlements between the State and the petitioners, under the terms of the American Convention.

14. The Commission will continue to monitor compliance of the commitment assumed by Ecuador with respect to the prosecution of the persons involved in the alleged acts.

15. The IACHR again notes that the friendly settlement procedure provided for in the American Convention offers the possibility of concluding individual cases without resort to litigation, and that in cases involving various countries, it has been proven to be an important procedure for resolving alleged violations, one that can be used by both parties (petitioner and State).

The Inter-American Commission on Human Rights,

Decides:

1. To certify the State's compliance with its commitment to make compensation payments in the amounts of US \$100,000.00 to Mr. Hernández, US \$300,000.00 to Mr. Loor, and US \$50,000.00 to Mr. Lara.
2. To remind the State that it must comply fully with the friendly settlement agreements by initiating judicial proceedings against the persons involved in the alleged violations.
3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlements; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the Commission on compliance with the obligations assumed by the State under these friendly settlements.
4. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 10th day of October 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman, Commissioner.