

Institution:	Inter-American Commission on Human Rights
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Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Fausto Fabricio Mendoza Giler and Diogenes Monserrate Mendoza Bravo v. Ecuador
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Paolo Carozza, Victor E. Abramovich.
Dated:	15 March 2006
Citation:	Mendoza Giler v. Ecuador, Petition 533-01, Inter-Am. C.H.R., Report No. 47/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANT: the Standing Committee for the Defense of Human Rights
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I. SUMMARY

1. On July 23, 2001, the Inter-American Commission on Human Rights (“the Commission” or “the IACHR”) received a petition lodged by the Standing Committee for the Defense of Human Rights and María Leonor Giler Esmeraldas (“the petitioners”), alleging violation by the Republic of Ecuador (“Ecuador,” “the State” or “the Ecuadorian State”) of the rights to life and integrity of Fausto Fabricio Mendoza Giler (16 years of age) and to the integrity and personal liberty of Mr. Diógenes Monserrate Mendoza Bravo, rights enshrined in Articles 4, 5 and 7 of the American Convention on Human Rights (“the Convention” or “the American Convention”), in conjunction with Article 1(1) of the Convention. The petitioners claim that delays in the administration of justice due to the crime remaining unsolved, and the subsequent lack of any punishment of those responsible for the death of Fausto Fabricio Mendoza also constitute a violation of the rights to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the Convention, in conjunction with Article 1(1) of the same. The alleged violations are related to the detention on March 19, 2000, of the 16 year old Fausto Fabricio Mendoza and his father Diógenes Mendoza by members of the police force’s Special Operations Group (Grupo de Operaciones Especiales or GOE). At the time of detention, Fausto Fabricio Mendoza was beaten, resulting in his death.

2. In this report on the Friendly Settlement undertaken in accordance with Article 49 of the American Convention and Article 41(5) of the Rules of Procedure of the Inter-American Commission on Human Rights (“the Rules of Procedure”), the IACHR summarizes the alleged

violations, outlines the agreement reached by the parties, and announces publication of this report.

II. PROCEEDINGS BEFORE THE COMMISSION

3. On July 23, 2001, The Commission received the petition submitted by Maria Leonor Giler Esmeraldas and the Standing Committee for the Defense of Human Rights and assigned it number 0533/2001. On August 30, 2001, it transmitted the pertinent parts of said petition to the State, setting a period of 2 months for response to the Commission.

4. On November 28, 2001, the State responded to the Commission's request for information. On December 19, 2001, the pertinent parts of that submission were transmitted to the petitioners who were given 30 days to comment. After this both parties submitted additional information on the case on several occasions. On July 3, 2003, Mr. Diógenes Mendoza Bravo requested that the Commission allow the Ecumenical Committee on Human Rights (Comisión Ecuémica de Derechos Humanos, or CEDHU) be allowed to participate in the case as a co-petitioner. Said request was granted with the petitioners being informed of the same on August 18, 2003.

5. On December 10, 2004, the Commission placed itself at the disposal of the parties for the purpose of trying to reach a friendly settlement in accordance with Article 41(1) of its Rules of Procedure. The Commission repeated its offer on January 5, 2005, giving the State a period of one month to consider and respond to the offer. The petitioners informed the Commission, in a letter received on January 10, 2005, that they were willing to enter into talks with the State with a view to reaching a friendly settlement of the matter.

6. On August 2, 2005, the petitioners informed the Commission that they had reached a friendly settlement with the State, and said agreement was signed on September 20, 2005.

III. THE FACTS

7. Mr. Diógenes Monserrate Mendoza Bravo reported that on March 19, 2000, he was traveling with his son, Fausto Fabricio Mendoza Giler (16 years of age) in a Mazda pickup truck. Around 1:30 AM, in the vicinity of a place known as "Rancho Texas." they stopped for two women requesting a ride to the neighborhood of Florida Norte. According to the petitioner and apparently due to the state of inebriation of the person in question, one of the women tried to open the door of the vehicle, making it necessary for him to bring the vehicle to a stop, at which time the two women got out and started running and a GOE patrol car arrived on the scene. The police opened fire on Mr. Mendoza's vehicle with Mr. Mendoza being hit. Mr. Mendoza adds that his son, frightened by the shots, grabbed a firearm present in the pick up and fired a shot into the air. The police then immediately arrested Mr. Diógenes Mendoza and Fausto Fabricio Mendoza, both of whom were brutally beaten on the way to the station of the National Police. As a result of the beating, Mr. Mendoza's son was in critical condition and was transported to the Luis Vernaza Hospital.

8. Doctors at the hospital confirmed the death of Fausto Fabricio Mendoza as a result of serious injuries to his head, arms and legs, all of which were duly detailed in the medical report. During this period, Mr. Diógenes Mendoza was being held in a police cell where he remained until March 28, 2000, date on which the mayor of Guayaquil ruled in favor of the writ of habeas corpus that had been filed.

9. Mr. Diógenes Mendoza reported that he filed charges in the Seventh Criminal Court of Guayas against the police officers that murdered his son. On June 28, 2000, the Tenth Justice of said Court, in substitution of the judge previously handling the case, ruled that he was incompetent to hear the case, citing that the defendants enjoyed police jurisdiction and referring the case to the Command of National Police District Number Four. On July 20, 2000, the Second Court of National Police District Number Four issued a very general indictment without bringing any formal charges against the police officers in question, in spite of the fact that they had been clearly identified.

10. The Commission was informed by Ecuador that as of March 17, 2004, nearly four years after the events described, the violations remained unpunished.

IV. FRIENDLY SETTLEMENT

11. The State and the petitioners have signed a friendly settlement agreement, the text of which provides as follows:

I: BACKGROUND

In order to promote and protect human rights and in recognition of the great impact full respect for human rights has on the international image of our country, since such respect is the very foundation of a fair, democratic and representative society, the State of Ecuador, through the Office of the Attorney General, has committed itself to new initiatives in the development of human rights in Ecuador.

The Office of the Attorney General has entered into talks with all victims of human rights violations with a view to reaching friendly settlements that provide reparation of the wrong done.

In strict compliance with the obligations undertaken with ratification of the American Convention on Human Rights and of other international human rights instruments, and conscious that any violation of an international obligation resulting in damages or injury carries with it the duty to make adequate reparation, and that monetary compensation and criminal sanction of the perpetrators are the most just and equitable forms of reparation, Ecuador, through the Office of the Attorney General, and Mr. Diógenes Mendoza Bravo, on his own behalf, have agreed to a friendly settlement in accordance with Articles 48(1)(f) and 49 of the American Convention and Article 45 of the IACHR Rules of Procedure.

II: PERSONS PRESENT

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

- a) Dr. José María Borja Gallegos, Attorney General of Ecuador, as indicated in his appointment and certificate of office, which are attached as qualifying documents.
- b) Mr. Diógenes Mendoza Bravo, holder of citizenship document number 1304152612, a copy of which is attached to this report.

III: RESPONSIBILITY OF THE STATE

Ecuador accepts responsibility for violating the human rights of the minor Fausto Mendoza Giler and of Mr. Diógenes Mendoza Bravo, rights emanating from the general obligations of Article 1(1) of the American Convention and other international instruments, and that are specifically enshrined in Articles 4 (Right to Life), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention. These violations were committed by agents of the State and have not been refuted by the State, which thus must bear responsibility for them before society.

The Ecuadorian State thus agrees to accept the facts outlined in Petition P 533-01, currently being examined by the IACHR, and to take any reparatory measures necessary to assuring compensation of the damages suffered by the victim.

IV: COMPENSATION

The Ecuadorian State, through its Attorney General, the sole legal representative of the State according to Article 215 of the Constitution of the Republic of Ecuador, promulgated in Official Register No. 1 and in force since August 11, 1998, will compensate Mr. Diógenes Mendoza Bravo with a lump sum payment of three hundred thousand United States dollars (US \$300,000), to be paid from the National Budget.

This compensation is in settlement of all material damages, loss of income, and moral damages suffered by both Mr. Diógenes Mendoza Bravo and the minor Fausto Mendoza Giler, as well as for any other claims that Mr. Diógenes Mendoza Bravo or his relatives may have regarding the subject of this agreement, under domestic and international law.

V: PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State will undertake, 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 by taking advantage of their position, are presumed to have participated in the alleged violation.

The Office of the Attorney General will make available to the Public Prosecutor all documentation needed to initiate investigations that could lead to the punishment of the parties responsible for the violations in question. Likewise, it will encourage the competent judicial organs and other public or private entities to provide any legal evidence that may contribute to establishing responsibility for the violations. Any prosecution that may ensue will be carried out in accordance with the constitutional and legal framework of Ecuador.

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 responsible for human rights violations through 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

Monies paid by the Ecuadorian State to the beneficiary of this Friendly Settlement agreement shall not be subject to any existing or future taxation.

VIII: INFORMATION

The Ecuadorian State, through the Office of the Attorney General, pledges to report to the Inter-American Commission on Human Rights on its fulfillment of the obligations assumed by virtue of this Friendly Settlement Agreement.

In keeping with its consistent practice and its 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. Diógenes Mendoza Bravo 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 provisions 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 State of Ecuador to respect and protect human rights, in conformity with Articles 16 and 17 of the Constitution of the Republic of Ecuador.

X: NOTIFICATION AND APPROVAL

Mr. Diógenes Mendoza Bravo 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 it in its entirety.

XI: ACCEPTANCE

The parties signing this agreement freely and voluntarily express their conformity with and acceptance of the contents of the preceding clauses, and state for the record that they hereby bring to a close the dispute before the Inter-American Commission on Human Rights over the

responsibility of the Ecuadorian State for violation of the rights of the minor Fausto Mendoza Giler.

XII: QUALIFYING DOCUMENTS

The following qualifying documents are attached to this report:

- a) Copy of the citizenship document of Dr. José María Borja Gallegos, Attorney General of Ecuador.
- b) Copies of the appointment and certificate of office of the Attorney General.
- c) Copy of citizenship document number 1304152612 belonging to Mr. Diógenes Mendoza Bravo.

To indicate their acceptance and agreement the parties have attached their signatures in the city of San Francisco de Quito on September 20, 2005.

V. CONFIRMATION AND RATIFICATION

12. The Commission deems the terms of the above-detailed settlement compatible with the obligations established by the American Convention on Human Rights and thus confirms it. The Commission also reaffirms its own jurisprudence establishing that lack of independence and impartiality make military or police jurisdictions incompetent to hear cases on human rights violations.

13. The Commission ratifies and considers positive the signing of a friendly settlement under the terms of the Convention. Friendly settlement as contemplated in the American Convention allows for individual cases to be concluded without resort to litigation and has proven itself to be an effective procedure for all parties.

VI. CONCLUSIONS

14. The IACHR has closely followed the developments leading to a friendly settlement in this case. Further information provided indicates that the State has made the stipulated compensatory payment to Mr. Diógenes Mendoza Bravo.

15. The Commission will continue to monitor compliance of the commitments assumed by Ecuador with respect to the prosecution and punishment of any responsible parties before a competent, independent and impartial court, as well as compliance with any other reparations stipulated.

16. Based on the above-mentioned findings of fact and law:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement signed by the parties on October 10, 2005.
2. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement; and, in this context, to remind the parties of their obligation to inform the IACHR of compliance with this friendly settlement.
3. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich Commissioners.