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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 45/06; Petition 12.207
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Lizandro Ramiro Montero Masache 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, Paolo G. Carozza, Victor E Abramovich.
Dated:	15 March 2006
Citation:	Montero Masache v. Ecuador, Petition 12.207, Inter-Am. C.H.R., Report No. 45/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANT: the Ecumenical Committee on Human Rights
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I. SUMMARY

1. This report covers the friendly solution between the parties involved in the dispute related to petition 12.207. On August 18, 1999, the Inter-American Commission on Human Rights (“the Commission” or “the IACHR”) received a petition lodged by the Ecumenical Committee on Human Rights (Comisión Ecuménica de Derechos Humanos, or CEDHU) on behalf of Lizandro Ramiro Montero Masache (“the petitioners”), accusing the Republic of Ecuador (“Ecuador” or “the State”) of violating the following human rights enshrined in the American Convention on Human Rights (“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 equal protection (Article 24) and the right to judicial protection (Article 25). The petitioners also allege violation of the general obligation to respect and protect rights as established in Article 1.1 of the American Convention.

2. On September 20, 2005, the parties signed a friendly settlement in the city of San Francisco de Quito. 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, this report summarizes the alleged violations, outlines the friendly settlement reached, and announces publication of this report.

II. THE FACTS

3. On June 19, 1992, Mr. Lizandro Ramiro Montero Masache was arrested without an arrest warrant having been issued by any competent authority. He was then interned in the prison of

what is now Quito Regiment No. 2, where he was held incommunicado until July 23 of the same year. When taking over the case, the President of the Supreme Court issued three indictments against Mr. Montero Masache, on the basis of the police report: acting as a front for illegal activities (November 18, 1992), for which he was ordered held in prison; illegal enrichment (November 30, 1992) and laundering of assets (November 30, 1992). In 1998 and 1999, respectively, all three cases against Mr. Montero Masache were dismissed.

4. The petitioners report that the alleged victim lodged several appeals requesting release during the time of his detention. These included appeals of amparo lodged with the President of the Supreme Court on May 8, 1995 and November 17, 1997, neither one of which was accepted or denied, and a writ of habeas corpus filed with the mayor of Quito on August 8, 1997, which was denied. This latter decision was confirmed on September 12, 1997 by the First Chamber of the Constitutional Court. The writ was re-filed with the mayor on April 8, 1998, and was again denied on April 14, 1998. On this occasion, however, the Constitutional Court reversed the mayor's decision and ordered the immediate release of the detainee on June 4, 1998, on the basis of Law 04, since Mr. Montero Masache had by then served more than one-third of the maximum penalty established by the Law on Drugs.

III. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission received the petition submitted by the CEDHU on August 9, 1998. After an initial examination of the proceeding to be followed, it was passed on to the State on September 17, 1999.

6. On October 27, 1999, the Inter-American Commission sent a letter to both parties putting itself at their disposal with a view to reaching a friendly settlement. On January 10, 2000, the Commission received the State's response. In a letter received on January 12, 2000, the petitioners declared their willingness to seek a friendly settlement, and that information was relayed to the State. On April 4, 2004, the Commission was informed by the State that the two parties had initiated talks with the purpose of reaching a friendly settlement.

7. On May 16 and June 3, 2002, the petitioners announced their decision to withdraw from talks on a friendly settlement as it had not been possible to reach an agreement, especially in regard to the amount of compensation. They requested that proceedings in the case be resumed in accordance with Article 50 of the Convention. This request was repeated by the petitioners in their letter of September 23, 2003.

8. On October 20, 2005, the IACHR received a certified copy of the registration of a friendly settlement agreement and other documents, authorized by the Office of the Attorney General and Mrs. Ana Mireya Albarracin[FN1], legal representative of Mr. Lizandro Ramiro Montero Masache. A transcription of the agreement forms the next section of this report.

[FN1] According to a copy of her identification document her full name is Montero Albarracin Ana Mireya.

IV. FRIENDLY SETTLEMENT

9. The agreement entered into by the parties on September 20, 2005 reads 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. Lizandro Ramiro Montero Masache, 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) Mrs. Ana Mireya Montero Albarracin, holder of citizenship document number 17639664-1, in representation of Mr. Lizandro Ramiro Montero Masache, in accordance with the special power of attorney dated September 8, 2005, a copy of which is attached as a qualifying document.

III: RESPONSIBILITY OF THE STATE

Ecuador accepts responsibility for violating the human rights of Mr. Lizandro Ramiro Montero Masache, 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 7 (Right to Personal Liberty), 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 12.207, 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. Mr. Lizandro Ramiro Montero Masache with a lump sum payment of sixty thousand US dollars (US \$60,000), to be paid from the National Budget.

This compensation is in settlement of all material damages, loss of income, and moral damages suffered by Mr. Lizandro Ramiro Montero Masache, as well as for any other claims that Mr. Lizandro Ramiro Montero Masache 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 taken on 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. Lizandro Ramiro Montero Masache 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. Lizandro Ramiro Montero Masache 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 Mr. Lizandro Ramiro Montero Masache.

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 171639664-1 of Mrs. Ana Mireya Albarracin.
- d) Copy of the special power of attorney granted by Mr. Lizandro Ramiro Montero Masache to Mrs. Ana Mireya Albarracin.

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. "HOMOLOGACIÓN" AND RATIFICATION

10. The Commission deems the terms of the above-detailed settlement compatible with Article 48.1.f of the American Convention on Human Rights and thus confirms it.

11. 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

12. 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. Lizandro Ramiro Montero Masache.

13. The Commission will continue to monitor compliance of the commitments assumed by Ecuador with respect to punishment of any responsible parties, as well as compliance with any other reparations stipulated.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the friendly settlement agreement signed by the parties on September 20, 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 15th 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, Paolo G. Carozza and Víctor E Abramovich Commissioners.