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File Number(s):	Report No. 51/07; Petition 288-03
Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Marco Javier Zambrano and Javier Jose Rada v. Ecuador
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated:	24 July 2007
Citation:	Javier Zambrano v. Ecuador, Petition 288-03, Inter-Am. C.H.R., Report No. 51/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the “Permanent Committee for the Defense of Human Rights”
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## I. SUMMARY

1. On April 16, 2003, the “Permanent Committee for the Defense of Human Rights” and Segundo Zambrano Hernández, father of one of the alleged victims (hereinafter “the petitioners”), lodged a complaint with the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) for violation of rights recognized under Articles 4 (right to life), 5 (right to personal integrity), 8 (right to a fair trial), 25 (right to judicial protection), 8, 13, 1(1) (right to the truth), and 19 (rights of the child) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), to the detriment of the minor children Marco Javier Zambrano and Javier José Rada (hereinafter “the victims”), aged 16 and 17 years, respectively, who died on December 13 and 14 of 1991 at the Vicente Rocafuerte National High School (hereinafter the “High School”) in the City of Guayaquil. To date the circumstances of their deaths have not been made clear nor have those responsible been punished.

2. The State asked the Commission to declare the petition inadmissible based on failure to comply with the requirement with respect to prior exhaustion of domestic remedies as provided under Article 46(1)(a) of the American Convention.

3. Without prejudging the merits of the case, the IACHR concludes in its report that the case is admissible because it satisfies the requirements established under Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission decides to inform the parties of its decision and continue analysis of the merits with respect to the alleged violation of Articles 4 (right to life), 5 (right to personal integrity), 8 (right to a fair trial), 25 (right to an effective

remedy), and 19 (rights of the child) of the American Convention, as they relate to Article 1(1) of the Convention. In addition, the Commission decides to inform the parties of its decision and to publish it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

4. The petition was filed on April 16, 2003, through a communication sent by the “Permanent Committee for the Defense of Human Rights” (CDH). After the initial processing review, the Commission sent the relevant sections of the petition to the State on May 18, 2004 in accordance with Article 30 (2) of its Rules of Procedure, allowing the State a period of two months to submit its observations.

5. The State sent its observations on December 20, 2004. This information was forwarded to the petitioners on January 5, 2005, allowing a period of one month for them to submit their observations, which were received on February 4, 2005. The Commission sent the petitioners’ observations to the State on July 15, 2005, allowing it a period of one month to present its observations in writing. The Commission received various communications from the petitioners on January 18, March 15, and April 4, 2006.

6. On April 26, 2007, the Commission forwarded to the State the petitioners’ communication dated April 4, allowing the State one month to submit its observations. As of the date this report was prepared, the State had provided no responses to the communications of July 15, 2005, February 4, 2005, and April 26, 2007.

## III. POSITIONS OF THE PARTIES

### A. Petitioners

7. The petitioners allege that at 1:00 p.m. on Friday, December 13, 1991, Marco Javier Zambrano and José Javier Rada, aged 16 and 15, respectively, both students at the Vicente Rocafuerte National High School”[FN1] (hereinafter the “High School”) left their homes to attend class. At 3:30 p.m., Segundo Zambrano Hernández, father of the first boy, was informed by students from the High School that his son had drowned in the pool at the High School. When he went to the infirmary at the Vicente Rocafuerte High School, Mr. Zambrano found the lifeless body of his son “soiled with mud and flint, with evidence of blows to the temple and stomach and a mark that looked like a puncture wound from a ballpoint pen in the left eyelid.”[FN2]

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[FN1] The Vicente Rocafuerte High School is a public high school.

[FN2] Communication from the petitioner dated April 16, 2003.

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8. On that same day, Javier José Rada’s father, noting that his son had not returned home, went looking for him at the High School, where he was informed that Marco Javier Zambrano, his son’s friend, had drowned in the high school pool and that his son Javier José had accompanied his friend to the infirmary. Javier José Rada was seen at school until 6:00 p.m.

9. The petitioners state that because Javier José Rada did not return home that night, his father returned to the High School at 6:00 p.m. on the following day, Saturday, December 14, and searched the high school pool without finding any trace of the boy. On that same day, December 14, 1991, near midnight, police officers arrived at his home and one of them was carrying the lifeless body of Javier José Rada, who was supposedly found lifeless in the high school pool at 6:30 P.M., with hematomas in his eyes and a bleeding nose.

10. The petitioners state that on December 18, 1991, the date when the order to investigate the alleged crime was issued by the Sixth Police Precinct, a judicial proceeding was initiated regarding the unintentional homicide[FN3] of the minor children. According to the police report submitted by the Minors' Brigade of Guayas on December 26, 1991, Marco Zambrano was assaulted by an unknown person and his friend, Javier José Rada, was seen still alive until after he had taken his friend to the Medical Center (also known as the infirmary). The petitioners allege that, based on testimony from eye witnesses to the event, the boys' parents maintained throughout the judicial proceeding that Marco Zambrano was murdered in the high school pool by group of gang members (also students at the school) and Carlos Tamayo Acosta[FN4] (all members of the "Los Contrás" gang) instigated by the guard Jacinto Arámbulo, who was very angry because the victims were swimming in the pool when they weren't supposed to and ignored him when he told them to get out (as the victims attended classes in the afternoon, they could only use the pool during morning hours). According to eye witnesses, the guard, Jacinto Arámbulo, ordered the gang members to throw out the disobedient boys. Witness Alejandro Ponce Mera stated that Carlos Eduardo Tamayo jumped on him, leaving him half unconscious, and then attacked Marco Zambrano, beating him so much that he lost consciousness and died. Javier José Rada was later kidnapped and killed because he saw who his friend's killers were. The petitioners allege that the authorities did not take the necessary steps to guarantee the students' lives.

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[FN3] The decision issued by the Fourth Chamber of Justice of Guayaquil on July 2, 2002, declaring action to prosecute the crime to be time-barred, indicates that "on October 16, 2001 the lower court judge issued an order to proceed with the full trial against Carlos Tamayo Acosta because it considered him responsible as the perpetrator of the crime defined and punished under Article 455(1) of the Penal Code." Art. 455 (1): "When the wounds or blows, inflicted voluntarily but without the intent to cause death, do cause death, the criminal shall be punished with three to six years of medium-term imprisonment."

[FN4] Carlos Eduardo Tamayo Acosta was an adult and did not belong to the school. The petitioners maintain that before and after December 1991, the date on which the two students died violently, the school had widespread problems with gangs inside the school.  
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11. The petitioners state that officials at the Vicente Rocafuerte National High School maintained from the start that the deaths of both students had been accidental. According to their hypothesis, Marco Zambrano jumped from the pool ramp and smashed into José Rada, causing his death. José Rada's body did not float to the surface until the next day and thus was not discovered sooner. According to the petitioners, officials at the high school also failed to

cooperate with justice in that they failed to comply with a court order ordering the students who witnessed the crime to make statements and provide their home addresses. The petitioners maintain that while the judicial proceeding lasted ten years, in the final months the parents' version was confirmed when witnesses to the crimes who were now adults and had been friends of the victims made statements.

12. The petitioners assign responsibility to the State, among other reasons because of irregularities and inconsistencies in the investigation of the facts relating to the deaths of Marco Javier Zambrano Carriel and Javier José Rada Murillo and because it did not provide adequate protection for the life and safety of the two boys while at a public educational facility. Carlos Eduardo Tamayo Acosta acted directly under the orders of Jacinto Arámbulo, an official at the school. Thus, the State is responsible for violations of the rights to life and personal integrity of Marco Zambrano. Regarding the younger child, Javier José Rada, the petitioners allege that the eye witnesses agree that the younger boy was still alive when his friend Marco Zambrano was brought to the infirmary. However, he turned up dead the next day in the same pool with blows to his face. Thus, the State is responsible for not having secured his integrity and his life. In addition, the petitioners believe that the State had the fundamental obligation to investigate, clear up, and punish the violent actions committed against the humanity of the boys, and thus to act in a manner consistent with its domestic legal system and international instruments ratified in the area of human rights.

13. The petitioners allege that, despite the fact that more than ten years have passed since the events, weak judicial investigations have made it impossible to discover the truth regarding the circumstances of both deaths and those responsible for them have not been identified. With respect to the process followed regarding the death of both students, the petitioners state that the case began on January 14, 1992 when serious signs that a homicide had been committed were established, and after testimony was gathered from some students, guards, and school officials. On that date, the judge in charge of the proceeding ordered the appearance of witnesses and the accused (students, school officials, the physicians who conducted the autopsies, and police investigators). However, only the school officials and one of the coroners appeared in 1995. Based on this testimony, the Prosecutor's Opinion was issued in April 1996 and the decision on final dismissal of the charges against the accused was issued on August 12, 1996.

14. The petitioners state that they appealed this ruling before the Court of Justice of Guayaquil, which decided to reopen the summary proceeding on June 10, 1997. Finally, and at the urging of the victims' parents (since the judicial authorities never sent them notices), statements were provided by Oscar Samuel Ronquillo Mejía and Aurelio Ramos Cabrera, students who witnessed the death of Marco Zambrano and maintained that the deaths of both boys were crimes. The judge ordered closing of the summary proceeding in February 1998, reopening it in August 1999, by ordering new procedural steps. On August 17, 1999, after numerous calls, the police officer who investigated the case submitted his testimony. In August and September 2000, former students and eyewitnesses to the crime, Alejandro Ponce Mera and Ronald Xavier Toledo García, appeared. Based on the preceding, an order to open the full trial against Eduardo Tamayo Acosta for the crime of homicide was issued on October 16, 2001. This was appealed in October 2001. The Fourth Chamber of Justice of Guayaquil resolved this appeal

on July 2, 2002 (i.e., nine months later), declaring that action to prosecute the crime was time-barred under Article 110 of the Penal Code because ten years had passed.

15. The petitioners allege that the Ecuadoran State has not adequately and effectively investigated, tried, or punished those responsible for the events that took place in the pool at the Vicente Rocafuerte National High School. They assert that the absence of an adequate and effective judicial investigation allowed those who participated in these deaths to remain at large and their actions to go unpunished, involving a violation of Articles 8 and 25 of the Convention.

16. The petitioners state that their right to know the truth about the facts has also been affected given the uncertainty experienced by the parents of the alleged victims for more than ten years, until it was possible to determine that the death of Marco Zambrano had not been the result of an accident. With respect to Javier José Rada, the circumstances of his death have not been determined to date.

17. Consequently, the petitioners asked that the State be declared responsible for having violated Articles 4 (right to life), 5 (right to personal integrity), 8 (due process guarantees), 8, 13, 1(1) (right to the truth), 25 (right to judicial protection), and 1(1) of the American Convention, to the detriment of Marco Javier Zambrano and José Rada Parrilla as well as their families, and for having violated Article 19 of the American Convention with respect to victims who are minors.

18. In response to the State's claims regarding the failure to exhaust domestic remedies, the petitioners state that, given the order issued by the Appeals Chamber declaring the criminal case to be time-barred, there was no applicable legal remedy. They add that the delay in the case was so obvious that it was recognized by the Human Rights Commission of the National Judiciary Council, which admonished the Fifth Criminal Judge of Guayas on September 13, 2000 for delaying the handling of this case. The petitioners allege that this fact demonstrates that the Ecuadoran State failed to substantiate the case within a reasonable period of time.

19. Regarding the State's allegation that the petitioners had free access to domestic remedies, the petitioners state that the victims' parents used those remedies for more than ten years without being able to uncover the circumstances under which the boys died or to secure punishment for those responsible.

20. Finally, the petitioners allege that the events described in the petition occurred against a backdrop of a justice system that has not overcome the shortcomings that the Commission recognized in its Report on the Human Rights Situation in Ecuador published in 1997. This involves situations in which justice is denied and the absence of access to domestic remedies in order to protect one's rights.

## B. The State

21. In its response to the initial petition, the State alleges that domestic remedies have not been exhausted as required by Article 46(1) of the American Convention.

22. The State believes that the petitioners had the opportunity to file a petition challenging the decision the Superior Court of Guayaquil issued declaring the proceeding to be time-barred pursuant to Art. 293[FN5] of the Code of Civil Procedure, in an appeal to the same court. It states that this would be the appropriate route for resolving the petitioners' situation.

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[FN5] Art. 293.- Orders and decrees may be clarified, expanded, amended, or revoked by the same judge who issued them when requested by any of the parties within the period established in Art. 285.

Art. 285.- The judge who issued the decision cannot revoke it or change its meaning in any case, but he may clarify it if requested by one of the parties within three days.  
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23. The State adds that the above-mentioned remedy was fully available to the families if they felt that the Superior Court's decision was not consistent with the merits of the proceeding. The State indicates that this would have been the appropriate route for resolving the petitioner's situation.

24. Based on the above, and given that at no time were the petitioners prevented from exercising their right to be heard under equitable conditions by the competent bodies, the State asks the Commission to declare this petition inadmissible and proceed to archive it immediately.

25. Regarding the reasonableness of the timeframe for rendering the decision in judicial appeals, the State asserts that the timeframe must be assessed in its proper and specific context in that the State is handling the case in a timeframe consistent with the type of case involved and within the limits of its abilities and thus cannot be accused of having violated the guarantee established in Article 8(1).

26. The State also points out that the petitioners' free access to the court apparatus indicates that throughout the proceeding the petitioners have been guaranteed the free and full exercise of judicial guarantees. In summary, the State requests that this petition be declared inadmissible and archived.

#### IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

27. The petitioners are authorized under Article 44 of the American Convention to lodge petitions with the Commission. The petition indicates as victims individuals whose rights under the American Convention the Ecuadoran State undertook to respect and guarantee. With respect to the State, the Commission points out that Ecuador has been a State Party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

28. The Commission is also competent *ratione loci* to hear the petition because it alleges violations of rights protected by the American Convention, which violations occurred within the territory of Ecuador, a State Party to the Convention. The Commission is competent *ratione temporis* because the obligation to respect and guarantee the rights protected under the American Convention was already in effect for the State on the date when the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae* because the petition reported possible violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies and deadline for submitting the petition

29. Article 46(1) of the Convention establishes as a requirement for the admissibility of a petition “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”[FN6] Both the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) and the IACHR have repeatedly maintained that “(...) under the generally recognized principles of international and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means.”[FN7]

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[FN6] See I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a, and 46.2.b of the American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A, No. 11, paragraph 17.

[FN7] See I/A Court H.R., Decision in the Matter of Viviana Gallardo et al., November 13, 1981, Series A, No. 101/81, paragraph 26.

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30. However, the same Convention stipulates that this provision does not apply when the domestic remedies are not available for *de facto* or *de jure* reasons. More specifically, Article 46.2 establishes exceptions to the general principle of exhausting domestic remedies when: (a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law; (c) or there has been unwarranted delay in rendering a final judgment on the matter. Adequate remedies means:

those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN8]

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[FN8] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 28, 1988. Series C, No. 4, paragraph 64.

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31. The inference drawn from the principles of international law as reflected in precedents established by the Commission is, first, that the State that is the subject of the petition may expressly or tacitly waive the opportunity to invoke this rule.[FN9] Secondly, in order to be timely, the objection arguing a failure to exhaust domestic remedies must be made in the early stages of the proceeding before the Commission, in the absence of which the interested State is presumed to have waived that objection.[FN10] Thirdly, depending on the burden of proof applicable in the case, a State that claims a failure to exhaust domestic remedies must indicate what domestic remedies should be exhausted and provide evidence as to their effectiveness.[FN11]

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[FN9] IACHR, Report N° 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objection. Judgment of November 30, 2005. Series C, No. 139, para. 5; I/A Court H.R., I/A Court H.R., Moiwana Community Case. Judgment of June 15, 2005. Series C, No. 124, para. 49; and I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections, Judgment of November 23, 2004. Series C, No. 118, para. 135. IACHR, Report N° 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objection. Judgment of November 30, 2005. Series C, No. 139, para. 5; I/A Court H.R., Moiwana Community Case. Judgment of June 15, 2005. Series C, No. 124, para. 49; and I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C, No. 118, para. 135.

[FN10] I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C, No. 66, para. 53; Castillo Petruzzi et al. Case. Preliminary Objections. Judgment of September 4, 1998. Series C, No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C, No. 25, para. 40. The Commission and the Court have established that “the early stages of the procedure” must be understood to mean “the admissibility stage of the procedure before the Commission, in other words, before any consideration of the merits [...]” See, for example, IACHR, Report N° 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, citing the I/A Court H.R. in the Case of Herrera Ulloa. Judgment of July 2, 2004. Series C, No. 107, para. 81.

[FN11] IACHR, Report N° 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons Living with HIV/AIDS,) Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra note 3, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C, No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C, No. 40, para. 31.

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32. In this petition, the State alleges that the petitioners did not exhaust the domestic remedies as required under Article 46(1) (a) of the Convention, since they could have filed a

“petition challenging” the order the Fourth Chamber of Justice of Guayaquil issued declaring the case to be time-barred, in an appeal to the same court, and did not do so.[FN12] The petitioners claim that the State did not expedite the proceeding, nor did it comply within a reasonable amount of time with procedural orders issued by different judges.

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[FN12] The State alleges that pursuant to Article 293 of the Code of Civil Procedure: “Orders and decrees may be clarified, expanded, amended, or revoked by the same judge who issued them when requested by any of the parties within the period established in Art. 285.”

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33. The Commission notes that in the instant case the State is alleging a failure to exhaust domestic remedies with respect to an order declaring the matter time-barred that was issued within a investigation proceeding initiated eleven years ago, due to the death of the two minors in a public educational facility. The Commission emphasizes that in accordance with its case law,

...whenever a crime is committed that can be prosecuted at the State’s own initiative, it is the State that has the obligation to set the criminal law process in motion and pursue it to its end[FN13] and in such cases, this is the proper avenue for investigating the facts, prosecuting those responsible, and punishing them in accordance with the law, and for making possible other forms of pecuniary reparations. The Commission considers that the facts alleged in this case involve the alleged violation of such fundamental rights as the right life and the right to humane treatment. As these are indictable offenses under domestic law, it is the State itself that must investigate and prosecute them.[FN14]

...In the case of crimes of public action, and even in those which may be prosecuted by a private actor, it is not valid to demand exhaustion of domestic remedies of the victim or the victim’s relatives, for the state has a duty to maintain public order, and therefore it has an obligation to set the criminal law system into motion and to process the matter until the end.[FN15]

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[FN13] Report N° 52/97, Case 11.218, Arges Cerqueira Mangas, Annual Report of the IACHR 1997, paragraphs 96 and 97. See also Report N° 55/97, paragraph 392.

[FN14] See. Report N° 75/03, Petition 42-02, José Milton Canas Cano et al., paragraph 27.

[FN15] Report N° 52/97, paragraph 96.

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34. In view of the above considerations, and given that the State has not provided an explanation justifying the excessive amount of time taken in the investigation phase relating to the events that led to this petition, the Commission concludes that the excessive duration of the summary proceeding phase initiated due to the deaths of the minors Marco Javier Zambrano Carriel and Javier José Rada Murillo would fall within the framework for the exception to the rule of exhausting domestic remedies as provided under Article 46(2)(c) of the Convention, in that there was unwarranted delay in resolving the matter.

2. Deadline for submitting the petition

35. Article 46(1)(b) of the Convention establishes that in order to be declared admissible all petitions must be submitted within a period of six months from the date on which the complainant was notified of the final decision at the national level. However, in accordance with Article 46 (2) of the Convention and Article 32(2) of the IACHR Rules of Procedure, this rule does not apply when the domestic remedies could not be exhausted due to a lack of due process, denial of access to the remedies, or unwarranted delays in rendering a final judgment [...]. Further, the rule does not apply “where the allegations concern a continuing situation—where the rights of the victim are allegedly affected on an ongoing basis.”[FN16]

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[FN16] See IACHR, Report N° 72/03 (Admissibility), Petition 12.159, Gabriel Egisto Santillán, para. 60; Report N° 33/99 (Admissibility), Case 11.763, Plan de Sánchez Massacre, Guatemala, April 16, 1999, paras. 29 and 30.  
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36. The Commission concludes that the requirement under Article 46(1)(b) does not apply to this case given unwarranted delay in rendering a final judgment. The Commission considers that the petition was submitted within a reasonable amount of time as established in Article 32(2) of the Commission’s Rules of Procedure.

3. Duplication of international proceedings and res judicata

37. The petition file contains no information that could lead to a determination that the current case is pending another proceeding in the international system or has been previously decided by the Inter-American Commission. Therefore, the IACHR concludes that the objections established under Articles 46(1)(d) and 47(d) of the American Convention do not apply.

4. Characterization of the alleged facts

38. Article 47(b) of the American Convention establishes that allegations that do not state facts tending to demonstrate a violation of human rights are inadmissible.

39. The Commission’s review of the matter at this stage of the proceeding is not intended to establish whether a violation of rights was committed but rather to establish whether the facts reported, if proven, could tend to demonstrate the violation of a protected right. This is of necessity a preliminary or prima facie analysis and does not imply any prejudgment as to the merits of the case.

40. The Commission recalls that the Inter-American Court of Human Rights has repeatedly established as follows:

Based on Article 1(1) of the American Convention...the State is obliged to respect the rights and freedoms recognized in it and to organize the public authorities in order to ensure to all persons subject to its jurisdiction the free and full exercise of human rights. According to the legal norms

on state international responsibility applicable under international human rights law, the act or omission of any public authority, whatsoever its rank, constitutes an act which may be attributed to the State and engages its responsibility in terms of the American Convention.[FN17] That general obligation imposes on the States Party the duty to guarantee the exercise and enjoyment of the rights of individuals with respect to the power of the State but also with respect to actions by third parties.[FN18] By the same token, and for the purposes of this Advisory Opinion, the States Party to the American Convention are under the obligation, pursuant to Articles 19 (Rights of the Child) and 17 (Rights of the Family), in combination with Article 1 (1) of this Convention, to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities.[FN19]

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[FN17] Cf. I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C, No. 79, para. 134; *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C, No. 74, para. 168; and *Constitutional Court Case*. Judgment of January 31, 2001. Series C, No. 71, para. 109; *Bámaca Velásquez Case*, supra note 10, para. 210; and *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C, No. 22, para. 125.

[FN18] Cf. *Provisional Measures, Peace Community of San José de Apartadó*, Order of the Court of June 18, 2002, Whereas Clause 11.

[FN19] I/A Court H.R., *Advisory Opinion OC-17/2002* of August 28, 2002, paragraph 87.

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41. In the instant case, the petitioners allege that minors Marco Javier Zambrano and Javier Jose Rada were found dead in a public school, with signs of violence. These facts, in the Commission's view, could characterize violations of Articles 4 (right to life), 5 (right to physical integrity) and 19 (rights of the child) guaranteed by the American Convention, in connection with Article 1(1) of that international instrument. The Commission also notes that until the date of adoption of this report the circumstances surrounding the death of both minors remain have not been clarified, allegedly due to the lack of diligence of the Ecuadorian authorities. This situation could characterize the additional violation of Articles 8(1) (due process) and 25 (judicial protection) in connection with Article 1(1) of that international instrument, a matter that must be analyzed in the merits stage.

42. The petitioners allege that their right to learn the truth regarding these events has also been affected, which would constitute a violation of Articles 8 (due process) and 13 (freedom of expression) as they relate to Article 1(1) of the Convention. In this regard, the Commission recalls that according to the jurisprudence of the Inter-American Court, "the right to the truth [is] subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibility from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention." [FN20]

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[FN20] I/A Court H.R., *Almonacid Arellano Case*, Judgment of September 26, 2006. Series C., Nº 154, paragraph 148; I/A Court H. R., *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, paragraph. 62; *Case of Gómez Palomino*. Judgment of November

22, 2005, Series C., N° 136, paragraph. 78; La Rochela Massacre Case. Judgment of May 11, 2007, Series C., N° 163, paragraph. 147.

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## V. CONCLUSIONS

43. The Inter-American Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the de facto and de jure arguments expressed above, and without prejudging the merits of the question,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to alleged violations of rights protected under Articles 4, 5, 8, 19, and 25 of the American Convention, as they relate to Article 1(1) of the Convention;
2. To declare this petition inadmissible with respect to Article 13 of the Convention;
3. To notify the parties of this decision;
4. To continue with analysis of the merits of the case; and
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24th day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.