

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 86/07; Petition 680-05
Session: Hundred Thirtieth Regular Session (8 – 19 October 2007)
Title/Style of Cause: Elias Elint Lopez Pita and Luis Alberto Shinin Laso v. Ecuador
Doc. Type: Decision
Decided by: President: Florentin Melendez;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez Trejo.
Dated: 17 October 2007
Citation: Lopez Pita v. Ecuador, Petition 680-05, Inter-Am. C.H.R., Report No. 86/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: Gino Cevallos
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I. SUMMARY

1. On February 13, 2001, the Ecumenical Commission on Human Rights (hereinafter “CEDHU”), Carmen Imelda Velastegui Ramos, wife of the alleged victim, and attorney Gino Cevallos (“the petitioners”), lodged a complaint before the Inter-American Commission on Human Rights (“the Inter-American Commission” or IACHR) alleging violations of the rights established in Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (“the American Convention”), to the prejudice of Elías Elínt López Pita and Luís Alberto Shinín Laso, who disappeared, respectively, on November 6 and 18, 2000 in the city of Ambato, Ecuador, allegedly at the hands of a special commando unit led by Major Víctor Manuel Hernández Aguas and other police officers. The petitioners also requested precautionary measures on behalf of Mrs. Carmen Imelda Velastegui Ramos (spouse of Elías López Pita), and her children Valeria, Santiago, and Eliana López Velastegui, the witnesses who last saw Elías López Pita in police custody, and the witnesses of the abduction of Luís Alberto Shinín Laso.

2. The petitioners allege that the State did not act promptly to protect the rights of Elías Elínt López Pita and Luís Alberto Shinín Laso when they were illegally arrested; nor did it respond promptly to the threats against the family members of the victims during the judicial proceedings. They consider that, although criminal trials were held after a six-year delay, yielding the convictions of the agents responsible, the State has not fulfilled its duty to clarify the fate of the victims, nor has it honored their right to truth and justice, or made reparations for the violations of human rights.

3. In a communication dated August 14, 2007, the State asked the IACHR to find the petition inadmissible since the judgment handed down by the Supreme Court on September 21,

2006 in the judicial proceedings over the disappearance of Elías Elínt López Pita had made reparations for the violations committed, and had effectively punished the guilty parties. The State argues that these trials have served their purpose, and that the matters denounced have been resolved.

4. Without prejudice as to the merits of the petition, the IACHR concludes in this report that the case is admissible because it meets the requirements established in Articles 46 and 47 of the American Convention. Therefore, the Commission has decided to notify the parties of its decision, and to continue its analysis of the merits regarding alleged violations of Articles 5, 7, 8(1), and 25 of the American Convention, in connection with Article 1(1) of that instrument. The Commission finds that, in light of the judgments rendered in 2006, as well as the petitioners' briefs which show that they do not dispute those judgments, the petition is not admissible with regard to Articles 4 (right to life) and 7 (right to personal liberty) of the American Convention on Human Rights. It further decides to notify the parties of its decision and publish it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The petition was submitted by CEDHU on February 13, 2001. The Commission assigned it number 12.365 and transmitted the pertinent parts of the petition to the State on May 15, 2001, establishing a two-month deadline for it to present its observations.

6. On February 13, 2001 the petitioners requested precautionary measures, which were granted by the IACHR on July 24, 2001. During a working visit to Ecuador in August 2001, a delegation of the IACHR met with General Hugo Unda Aguirre and representatives of the Attorney General's Office to discuss implementation of the precautionary measures. On July 25 and September 13, 2001 the petitioners sent new information related to the precautionary measures.

7. On October 3, 2001, the IACHR asked the State to submit all reports on the matter within 30 days. On October 29, 2001, the Ecuadorian State requested an extension, which was granted by the IACHR in a message dated October 31, 2001.

8. On November 12, 2001, the petitioners sent a message to the IACHR regarding the failure to implement the precautionary measures. On November 28, 2001, the IACHR reiterated to the State its request for information regarding the precautionary measures. On January 2 and 18, 2002, the petitioners sent additional messages to the Commission reporting on the continued failure to implement the precautionary measures, as well as serious new developments which led to a request for provisional measures before the Inter-American Court of Human Rights. In a message dated February 28, 2002, the petitioners once again reported on the failure to adopt the precautionary measures. A hearing was held on March 4, 2002, during the 114th regular period of sessions of the IACHR, on compliance with the precautionary measures granted in this case.

9. In a message received in the IACHR on March 19, 2003, the petitioners sent updated information on the petition, indicating that the State had unilaterally lifted the protective measures. The IACHR then sent a message to the Government of Ecuador on April 29, 2003

extending the duration of the precautionary measures. On July 1 and September 15, 2003, respectively, the IACHR received information from the Government of Ecuador on implementation of the precautionary measures. This information was forwarded to the petitioners on April 30, 2004, with a 30-day deadline to submit its observations.

10. Later, on July 7, 2005, the Commission acknowledged receipt of the petition lodged by Carmen Imelda Velastegui, dated April 4, 2005 July 5, 2005, which was assigned the number P-752-05. The two petitions were joined on April 24, 2006 into petition P-680-05 and transmitted to the State on that date with a deadline of two months to present observations. Based on Article 29(d) of the Rules of Procedure of the Commission, the Commission decided to join petitions P-12,365 and P-680/05 into P-12,365 in this report, because they involve the same facts.

11. On May 12, 2006 the Commission received a petition from the petitioners dated April 11, 2006 which was transmitted to the State on June 23, 2006, with a deadline of one month to submit observations. On June 2, 2006, the State requested an extension for the presentation of its observations, and a one-month extension was granted by the IACHR on July 18, 2006. On October 10, 2006 and November 17, 2006, the IACHR received two messages from the petitioners dated September 25 and October 31, 2006, respectively. The Commission transmitted the message dated October 31, 2006 to the State on March 9, 2007, with a one-month deadline to submit observations.

12. The Ecuadorian State sent its observations on August 14, 2007, which were transmitted to the petitioners on August 23, 2007, with a deadline of one month to present observations. These were received in the IACHR on September 26, 2007 and forwarded to the State as information on October 4, 2007..

III. POSITIONS OF THE PARTIES

A. The petitioners

13. The petitioners indicate that Elías Elínt López Pita, who was the father of three children, was a businessman who brought shellfish in from the coast to sell it at the “Casa del Cangrejo” (Crab House) market on his property in the city of Ambato. As was his habit, on Monday, November 6, 2000, Elías López Pita went to the city of Esmeraldas by bus No. 50 of the CITA Transportation Cooperative at 9:45pm with \$170 to buy merchandise.

14. Elías Elínt López Pita also routinely called his spouse when he arrived, but did not do so that day. Therefore, Carmen Velastegui phoned the CITA cooperative agency in Esmeraldas on November 7, 2007. There, the bus driver informed her that at a police checkpoint on the northern Pan American Highway, near the exit for Ambato. He added that the police had arrested Elías Elínt López Pita, and then ordered the driver to continue on his journey.

15. The petitioners indicate that Mrs. Carmen Velastegui immediately went to the Ambato Police Station, where they denied having arrested her husband. After that response, she went to the Provisional Detention Center (“CDP”), which is under the control of the same police force and there she found detainee Luís Alberto Shinín Laso. Mr. Shinin Laso told her that on

November 7, 2000 he was detained by the Judicial Police at a place known as “the classroom,” where he saw Elías López Pita, who had been beaten. With this information, Carmen Velastegui lodged a complaint with Colonel Juan Ávila Hidalgo, Provincial Police Commander, and with Lieutenant Colonel Mario Ramírez, Chief of the Judicial Police, who designated three agents to launch the respective investigations.

16. When Mrs. Velastegui obtained no results from these complaints, on November 10, 2000 she went to the prosecutor’s office, where Prosecutor Fernando Fabara was designated to investigate the facts. This prosecutor went to the CDP, where Luís Alberto Shinín confirmed in writing that on Tuesday, November 7, 2000, while he was detained by the Judicial Police in “the classroom,” at around 12:00 hours he saw the person in question. According to the declaration of Mr. Shinin Laso, that person’s head was covered with a white cloth, he was wearing a black leather jacket, and he gave him the phone number of his brother Arturo from the Central Market to call him for help. Elías López Pita told him that he had been arrested at the police checkpoint, and that he had been beaten all night long because they accused him of being a thief. Luis Alberto Shinín also indicated that other detainees who had been there had also seen him.[FN1]

[FN1] Communication from the petitioners dated April 29, 2005, with attached Investigate Report No. 2001-001-IGPN-DAI, from Police Lieutenant Patricio Naranjo Estrada, Investigating Officer: on November 7, 2000 four people entered “the classroom” to be investigated at 12:30 hours, including Luís Alberto Shinín, the minor Blanca Ana Mastha Manobanda, and Enrique Pilacuan, who spoke with Elías López.

17. According to the petitioners, through steps taken by the prosecutor of the 4th Ambato Criminal District, on November 14, 2000, Luís Alberto Shinín Laso was released around 5:00pm. While he was waiting for a bus to take him home, he was forced to enter a green Vitara automobile, and later was thrown into a ravine at the road from Echeandía to Guaranda, where he was found with several gunshots. The petitioners indicate that Luís Alberto Shinín Laso was rescued the next day by the Red Cross, the police, and the Provincial Health Department and immediately transferred to the Guaranda Hospital where he underwent surgery and remained in intensive care.[FN2]

[FN2] Communication from the petitioners dated April 29, 2005, with attached Police Report No. 2001-001-IGPN-DAI, prepared by Police Lieutenant Patricio Naranjo Estrada.

18. The petitioners indicate that the hospital staff told them that on November 18, 2000, several hooded and heavily armed people dressed in camouflage police uniforms entered the hospital. These persons immediately tied up the staff members they encountered, took weapons away from the guards, and took Luís Alberto Shinín Laso from the hospital. They carried him away in a Vitara automobile, and his whereabouts have been unknown ever since.[FN3] With respect to those events, Guaranda Police Captain Marcelo Vaca Roldán prepared a police report on December 6, 2000, which indicated that the abduction of Luís Alberto Shinín was a settling of

accounts among criminals, and that no police personnel—much less those of Guaranda—were involved.[FN4] The petitioners maintain that the police officers who participated in this investigation, Thomas Livino Freire and Yolanda Ortega, were later accused of arresting, torturing, and disappearing Elías Elint López Pita and and Luis Alberto Shinín Laso. The petitioners allege that Mr. Lopez Pita’s widow did not agree with the conclusions of that report, so she decided to file several complaints with national human rights offices, as well as with Amnesty International. Later, another investigation was initiated inside the police.

[FN3] Communication from the petitioners dated April 29, 2005. In Police Report No. 2001-001-IGPN-DAI, it is indicated that the social worker, out of a desire to help, communicated with the police of Ambato on Friday, November 17, to ask them to help her locate Mr. Shinín’s next-of-kin.

[FN4] Communication from the petitioners dated April 29, 2005, attached Police Report 2319-PJT-CP9-2000 dated November 21, 2000.

19. The report of the Office of the Inspector General of Police dated January 2, 2001 indicates that on Monday, November 6, 2000 at approximately 9:30pm, police officers Luis Criollo, Álvaro Sánchez, and another unnamed individual, arrived at the police checkpoint in northern Ambato city and asked Officer Vinicio Trujillo, a traffic policeman, to help them stop bus No. 50 of the CITA Cooperative as they were going to make an arrest. At around 10:10pm, Sergeant Luis Criollo saw that the bus was not coming and went to the bus terminal to verify its departure. Twenty minutes later, Officer Álvaro Sánchez indicated that the bus was coming and Sergeant Trujillo proceeded to stop it. The officers entered the bus and took Mr. López Pita out with his head covered by his own t-shirt. Next they searched him, put him in the checkpoint, and had him take a seat. Once he was arrested, Elías Elint López Pita was taken to a place known as “the classroom” and his arrest was never recorded. According to the petitioners, at “the classroom” other detainees and police officers saw Elías López on November 7th blindfolded, handcuffed, and beaten Police Officer Sailema, who was on guard duty, saw him there as well. His whereabouts are unknown since that date.

20. The petitioners indicate that based on this first report from the Office of the Inspector General of Police, a high level group was formed to clarify the facts, chaired by the National Director of Investigations of the National Police. The group submitted its report on January 16, 2001.[FN5] The conclusions of this report confirm the results of investigations conducted by the Department of Internal Affairs of the Office of the Inspector General of Police, which established that a special commando unit, which had been formed 10 months earlier without authorization from their superiors and led by Major Víctor Manuel Hernández Aguas, included Officers Tomás Livino Freire Gómez, Luís Geovanny López Guachi, Luis Abelardo Criollo Puma, Yolanda Jimena Ortega Guzmán, Edison Rafael Quinga Pilataxi, Alvaro Alfonso Sánchez López, William Renso Chango Colina, and Holger Leonardo Salazar Cepeda. The report concluded that these individuals were responsible for the illegal arrests, torture, and disappearances of Elías López and Luís Shinín.

[FN5] Communication from the petitioners dated April 29, 2005, attached Report N.- 2001-001 – DNPJ.

21. According to the petitioners, the report insinuates that the disappeared persons were executed on the San Martín Bridge in the city of Baños, since that is where shells were found from bullets fired from the gun of one of the implicated police officers. Several evidentiary examinations were positive for the existence of blood at the site.

22. The police reports of January 2 and 16, 2001 paved the way for the opening of three criminal cases: one in the city of Ambato for the disappearance of Elías Elint López Pita; a second in the Court of the Second Police District (city of Riobamba) for the disappearance of Elías Elint López Pita and Luis Alberto Shinín Laso, which was later joined with the case being processed in Ambato; and a third one in the city of Guaranda for the disappearance of Luís Alberto Shinín Laso.

23. In the criminal trial over the disappearance of Elías Elint López Pita, the disappeared man's wife, Carmen Velastegui, and sister, Teresa López, filed charges as private citizens before the First Criminal Court Judge of Tungurahua. On December 5, 2000 this Court took cognizance of the matter and drew up an indictment in case 441-00. Several witnesses appeared before the judge and confirmed that Mr. López Pita had been arrested by police officers and that they had seen him after he had been tortured in the Ambato police command in the place known as "the classroom." The First Criminal Court Judge of Tungurahua then disqualified himself from continuing with the case on March 12, 2001, because Colonel Juan Ávila had a right to the jurisdiction of the Superior Court. He thus remitted the file to the President of the Ambato Superior Court, who took cognizance of the case on March 27, 2001.

24. The Police Judge for the Second District, headquartered in Riobamba, opened a separate trial over the disappearances of Elías Elint López and Luis Shinín Laso. On December 12, 2000 he ordered that the accused police officers be placed in preventive detention because he felt that there was evidence that the Tungurahua Provincial Police Commander and Major Víctor Hernández were responsible. Since these two individuals fell under special court jurisdiction, on March 15, 2001 the judge disqualified himself and remitted the case to the First District Police Court based in Quito for continued processing of the trial. The District Court took cognizance of the case and ordered the proceedings to continue.

25. The President of the Ambato Superior Court decided to take cognizance of the case and notified this to the President of the First Police Court. In a writ dated April 2, 2001, the Police Court indicated that it did in fact have jurisdiction to preside over the proceedings since the defendants were police officers who had allegedly committed these acts in the line of duty, which would put them under special jurisdiction. For this reason, on April 6, 2001, he sent the file to the First Criminal Courtroom of the Supreme Court to settle the conflict of jurisdiction between the two courts. On June 11, 2001, the First Criminal Courtroom of the Supreme Court determined that the trial could go forward in an ordinary court because it is not the duty of the National Police to illegally detain, torture, and murder people, and that these were common crimes even though the defendants were high ranking officers in the National Police.

26. Therefore, the President of the Ambato Superior Court continued to hear the trial and ordered that the proceedings which had taken place under police jurisdiction be incorporated into the file. He also ordered that a copy of the trial be remitted to the criminal court of Guaranda, so that it could investigate the events surrounding the main witness, Luís Shinín, in terms of his arrest, abduction, and disappearance within the Guaranda territorial jurisdiction.

27. Once the indictment was issued on the disappearance of Elías Elínt López Pita on September 19, 2001, the prosecutor's decision was issued on October 24, 2001, and the charges filed by the private parties were formalized. On November 6, 2001 the President of the Ambato Court issued a summons to full trial for ten defendants (two supervisory police officers and ten rank-and-file police officers). He dismissed the case against the chief of the Judicial Police because he found that there was not enough evidence to establish his responsibility since it had been shown that the special commando unit did not answer to the Judicial Police, but rather to Major Hernández, who reported directly to Colonel Ávila as Provincial Police Commander. This decision was appealed before the Second Courtroom of the Ambato Superior Court, which, on November 30, 2001, affirmed the decision of the President of the Ambato Superior Court. Thus the oral phase of the trial continued and a conviction was handed down on February 8, 2002 for the crime of manslaughter. A maximum sentence of six years of medium-term imprisonment was imposed on the perpetrators of the crime (Álvaro Alfonso Sánchez López, Luís Abelardo Criollo Puma, Tomás Livino Freire Gómez, Yolanda Jimena Ortega Guzmán, and William Renso Chango Colina), three years of medium-term imprisonment was imposed on their accomplices (Edison Rafael Quinga Pilataxi and Luís Geovany López Guachi), and 18 months of light-security imprisonment for those who concealed the crime (Holger Leonardo Salazar Cepeda, Police Major Víctor Manuel Hernández Aguas, and Police Colonel Juan Aníbal Ávila Hidalgo).

28. This verdict was appealed by the family of Elías Elínt López Pita in the Second Courtroom of the Ambato Superior Court because the judge himself, in the explanation of the decision, established that it had been proven on the record that Elías López was tortured by the police during the investigation, and that he died from those injuries, which scared the police officers and led them to fling his corpse into a river in the city of Baños. According to the petitioners, these acts do not constitute manslaughter, but rather homicide under torture, which carries a maximum sentence of 16 years of imprisonment.

29. According to the petitioners, the magistrates in the Second Courtroom of Ambato Superior Court excused themselves from hearing the appeal on April 23, 2002. They remitted the case to their associate judges, who on May 15, 2002, excused themselves and returned the file to the regular judges, who on June 10, 2002 did not accept the excusal and returned the file to the First Criminal Courtroom of the Supreme Court for it to settle the jurisdictional dispute which had arisen between the regular judges and the associate judges in the Second Courtroom. On August 27, 2002 the Supreme Court ruled that the associate judges of the Second Courtroom of Ambato Superior Court should hear the appeal of the verdict.

30. The petitioners allege that after the Supreme Court's ruling, the associate judges did some illegal acts and two of them resigned from their posts. According to the petitioners, this delayed the case; the panel to hear the appeal was not formed until January 15, 2003. Finally, on

September 15, 2003, the Second Courtroom of Ambato Superior Court handed down a conviction of four police officers for the illegal arrest of Elías Elínt López Pita (two as principals and two as accessories), and acquitted the rest of the police officers. In the judgment, the magistrates maintain that it had been proven that Elías López was illegally arrested and transferred to the police station, and that he had been disappeared since that date and for this reason the defendants could not be accused of murder.

31. Despite the fact that ten police officers had been convicted by the trial court, only the rank-and-file or lower ranking police officers were in custody while the Second Courtroom of Associate Judges of Ambato Superior Court were hearing the appeal. The two commanding officers (a colonel and a major) were never placed in custody, under the argument that the verdict was being appealed. The petitioners allege that one police officer was released upon being called to trial under charges of concealing a crime, and the other seven remained in jail until December 5, 2002. The petitioners state that later the judge ordered the release of police officer Luís López Guachi because he had already served three years' detention, which was half of the sentence imposed by the Court. The other five police officers, including those who had been sentenced to six years of imprisonment, were released upon the order of the prison director who said he had never been notified of the judgment. The petitioners maintain that this is false, since the director must have had the judgment in order to reduce the sentence of police officer Luís López Guachi. The last police officer to be released left the jail on September 23, 2003, when the Second Courtroom of Ambato Superior Court convicted the police officers of making an illegal arrest, and rejected the charges of torture and disappearance.

32. The petitioners responded to this ruling by filing a motion for cassation, which was admitted on October 24, 2003. On December 12, 2003 the case was brought before the First Criminal Courtroom of the Supreme Court, which took cognizance of the matter on April 12, 2004, with an order that the appellants establish the basis for the motion. Once the basis for the motion was established, the case was sent to the General Public Ministry, which in a ruling dated July 5, 2004, asked that the motion be denied.

33. The Supreme Court ruled on the motion for cassation on September 21, 2006 by convicting police officers Álvaro Sánchez, Luís Criollo, Tomás Freire, Yolanda Ortega, and William Renso of the crimes of illegal and arbitrary arrest, bodily torture, and murder of Elías López Pita and sentenced them to 16 years of imprisonment; Edison Quinga and Luís López were sentenced to 8 years in prison as accessories; and Holger Salazar, Víctor Manuel Hernández, and Juan Ávila were convicted to two years in prison for concealment of a crime. The decision of the Supreme Court was sent to the Tungurahua Superior Court, so that it could issue arrest warrants on the police officers. The petitioners maintain that they have continuously asked the National Police to proceed to arrest the convicted parties, and have even gone to the Ministry of Government to demand that it arrest all of the individuals involved so that they can serve their sentences. However, to date, only one of them is in jail.

34. As to the disappearance of Luís Alberto Shinín Laso, the trial over the illegal arrest and abduction ending in death was started in the Guaranda First Criminal Court. On March 5, 2002, a court order was given to start the full trial, which was challenged by the defendants who filed an appeal for annulment and a motion for appeal. The Guaranda Superior Court denied the appeal

for annulment on September 9, 2002, and the motion for appeal on November 11, 2002, reaffirming the order to start the full trial. The defendants requested further clarification of the order, which was denied in a writ to determine procedural matters dated November 21, 2002. Finally, the Bolívar Criminal Court, based in Guaranda, handed down a verdict on April 28, 2003[FN6] convicting the three police officers who appeared for trial; according to the petitioners, the others failed to appear thanks to the complicity of the director who had released them from jail. The convicted police officers filed a motion for cassation, which was admitted by the Supreme Court; this Court in turn asked the Attorney General for an opinion, who ruled that the appeal should be denied and the conviction upheld.

[FN6] According to a press clipping (El Comercio, Monday, May 12, 2003) sent by the State in its message dated June 30, 2003, police officers Álvaro Alfonso Sánchez López, William Renso Chango Colina, and Luís Geovanny López were convicted: the first of being a principal and sentenced to 16-years long-term imprisonment; the other two of being accessories and sentenced to 8 years longer-term imprisonment.

35. The petitioners indicate that the arrest and disappearance of Elías Elínt López Pita occurred in the city of Ambato on November 6, 2000 and that the sentence of cassation was issued on September 21, 2006. They consider that the five years and ten months of duration of the trial constitutes a violation of the family's right to a trial within a reasonable time as established in Article 8(1) of the American Convention. The petitioners also allege that this delay allowed the defendants to be released, such that they are now all fugitives from justice with the exception of one who is in jail. Thus the conviction and sentence of the Supreme Court cannot be carried out, allowing the crime to go unpunished, in violation of Article 25 of the American Convention which orders States to ensure that the competent authorities enforce the decisions of their domestic courts.

36. The petitioners allege that during the trial proceedings, police agents made death threats against the family members of Elías Elint López Pita if they persisted in their accusations; they also allege that that Mr. Gino Cevallos the attorney of the family members, as well as some of the witnesses, were also threatened. Accordingly, on February 13, 2001 the petitioners requested precautionary measures from the Inter-American Commission. The petitioners later sent new information about the precarious situation of these individuals, including the fact that Officer Trujillo (who had confirmed the arrest of Elías López) was wounded by unknown individuals, and reiterated their request for protection. The petitioners maintain that although the Commission had granted precautionary measures as requested on July 24, 2001, and ordered the State to urgently adopt measures to preserve the life and physical integrity of the beneficiaries of those measures, on November 15, 2001 the Ministry of Defense refused to deploy military personnel to protect the victims.[FN7]

[FN7] Communication No. 011340-MS-7-2 from the Ministry of Defense dated November 15, 2001.

37. The petitioners allege that the threats reached such an extreme that on December 5, 2001 a bomb exploded in the lower levels of Ambato Superior Court, the place where criminal proceedings were being processed over the disappearance of Elías Elínt López Pita and where the summons to appear for a full trial had been issued to ten police officers on November 6, 2001.

38. The petitioners maintain that the precautionary measures were not fully complied with. While at the beginning protection was granted to several potential victims, this protection was later withdrawn and the attorney for the accusers, Gino Cevallos, suffered a physical assault. Also, the home of Mrs. Teresa López, the alleged victim's sister, was fired upon on January 22, 2003, and to date the Public Ministry has not yet responded. The vehicle owned by Mrs. López disappeared for almost two years, and was later returned by the police without any explanation. As a result of these threats, Mrs. Carmen Velastegui, widow of Elías Elínt López Pita, moved her residence to the city of Puyo in the eastern region of Ecuador and later went to live in the United States. Elías Elínt López Pita's three children (Valeria Elizabeth, age 16; Santiago Damian, 13; and Jennifer Eliana Lopez Velástegui, 9) remained in Ecuador, one in the home of a maternal aunt and two in the home of their aunt Teresa López Pita. Ms. Velastegui mentioned that during the six years of duration of the proceedings, due to her role as accuser, she has been and still is subjected to insults, acts of aggression and personal and telephone threats by the persons who were convicted but are currently free, as well as by their relatives.

39. In concluding, the petitioners argue that all of the above facts show that the Ecuadorian State has breached its duty to guarantee the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection (Articles 4, 5, 7, 8, and 25 in connection with Article 1.1) established in the American Convention. The petitioners indicate that forced disappearance is not a crime described in the Ecuadorian Penal Code, although it is recognized in the current Constitution.[FN8] The petitioners further allege that although Ecuador signed the Inter-American Convention on the Forced Disappearance of Persons on February 8, 2000,[FN9] the Penal Code subsumes disappearance of persons under the crime of kidnapping. Furthermore, as Ecuador is a signatory to the Convention on the Forced Disappearance of Persons, it is obliged by the Vienna Convention of 1969 on the Law of Treaties not to frustrate, according to Article 18, the object and purpose of that Convention.

[FN8] Article 23 (2) of the 1998 Constitution of Ecuador establishes that: "Without prejudice to the rights established in this Constitution and in the international instruments in force, the State recognizes and guarantees to all persons the following: 2. ... Actions and sentences for genocide, torture, forced disappearance of persons, kidnapping, and homicide for political reasons or reasons of conscience, shall be imprescriptible. Such crimes shall not be subject to pardon or amnesty. In these cases, obeying orders from above does not exempt one from responsibility."

[FN9] Ecuador ratified the Inter-American Convention on the Forced Disappearance of Persons on July 7, 2006 and deposited its instrument of ratification on July 27, 2006.

40. The petitioners affirm that they do not disagree with the judgment handed down by the Supreme Court, since that ruling corrected serious errors committed by the lower court judges and culminated in convicting the police officers of the crime of murder. The petitioners assert that their complaint is based on the extreme delay of justice which occurred in resolving the case, which allowed the defendants to be released and for some of them to even leave the country. According to the petitioners, this excessive delay of the trial constitutes a violation of the right to truth and justice. In addition, they indicate that the State has taken no steps to make reparations.

B. The State

41. Regarding the precautionary measures granted by the Commission on July 24, 2001, during a visit by a delegation of the IACHR to Ecuador in August of 2001, General Hugo Unda Aguirre and two staff members from the Attorney General's Office undertook to provide the soldiers needed to protect the life and integrity of the beneficiaries of the measures.

42. On June 31, 2003, the State sent a press clipping to the Commission which indicated that the Bolívar Criminal Court had convicted three police officers of the disappearance of Luís Alberto Shinín: Álvaro Sánchez López, sentenced to 16 years in prison for perpetrating the crime; and William Chango Colina and Luís Geovanny López Guachi sentenced to 8 years in prison as accessories to the crime. [FN10] The news report indicated that "The decision by the Bolívar Criminal Court also accused five more police officers who are fugitives from justice. Their trial is suspended until their arrests."

[FN10] Communication from the State received in the Commission on July 1, 2003; Annex, El Comercio, Monday, May 12, 2003: "López Pita: Three Police Officers Sent to Prison."

43. Later, in a message dated September 10, 2003, the State sent an investigative report[FN11] prepared by the police regarding the suspension of precautionary measures for the López Pita family. The message indicated that on May 23, 2003 the police confirmed that Mrs. Carmen Velastegui, wife of the disappeared man Elías López, no longer lived in her usual residence but had moved to another city in November of 2002. The State also transmitted the "Report Submitted to the Provincial Chief of the Judicial Police of Esmeraldas" dated May 29, 2003, which indicated the steps taken to investigate the various anonymous telephone calls received by Mrs. Teresa López, the disappeared man's sister.

[FN11] Investigative Report No. 2003-055-UAI-CP-9, by the Police Lieutenant and Chief of the UAI of CP-9 (Tungurahua).

44. In its reply dated August 14, 2007, the State alleges that the Commission lacks competence to hear this complaint since the violations committed have already been redressed. The State maintains that both the motion for cassation and the Judicial Police's willingness to locate and capture the convicted criminals,[FN12] as well as the fact that the police officers

implicated in the disappearance of Elías López Pita have been dismissed from the force,[FN13] are the appropriate and effective remedies to redress the violations of these rights, and that the State has thus fulfilled its duty to make reparations.

[FN12] The State indicates that the National Police, through the National Department of the Judicial Police and Investigations, ordered the location and capture of the citizens convicted by the Second Specialized Criminal Courtroom of the Supreme Court, which yielded the capture of former First Police Sergeant Luis Geovanny López Guachi.

[FN13] The State indicates that through General Order No. 033 of the National Police General Command dated February 15, 2007, Executive Decree No. 87 was published which, effective September 25, 2006, dismisses the following officers from the police force: Police Colonel E. M. Juan Aníbal Ávila Hidalgo and Police Major Víctor Manuel Hernández Aguas. This is the result of the conviction handed down by the Second Specialized Criminal Courtroom of the Supreme Court in Criminal Trial No. 444-2006-MV. The rank-and-file police officers were dismissed from the institution on August 6, 2001.

45. Regarding the criminal trial over the disappearance of Elías Elínt López Pita, the State also alleges that the conviction handed down by the Supreme Court on September 21, 2006 corrected the errors of law made by the Court of Appeals. It convicted co-defendants Álvaro Alfonso Sánchez López, Luis Abelardo Criollo Puma, Tomás Livino Freire Gómez, Yolanda Jimena Ortega Guzmán, and William Renso Chango Colina of the crimes of illegal and arbitrary arrest, bodily torture, and murder. It convicted Edison Quinga and Luís López Guachi of being accessories to those crimes, and Holger Leonardo Salazar Cepeda, Major Víctor Manuel Hernández Aguas, and Colonel Juan Aníbal Hidalgo of concealment of the crimes. The State maintains that in this ruling, the Supreme Court accepted the charges filed as a private party by Mrs. Carmen Velastegui Ramos and Mrs. Teresa López Pita, and ordered that they be paid compensation for damages and losses, and that the convicted parties pay for court costs.

IV. ADMISSIBILITY

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

46. The petitioners are entitled, under Article 44 of the American Convention, to lodge petitions before the Commission. The petition indicates that the victims are individuals whose rights established in the American Convention the Ecuadorian State had undertaken to respect and guarantee. As for the State, the Commission notes 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 has competence *ratione personae* to study the petition.

47. The Commission also has competence *ratione loci* to hear the petition, because it alleges that rights protected by the American Convention were violated within the territory of Ecuador, a State Party to said treaty. The Commission has competence *ratione temporis* because the obligation to respect and guarantee the rights protected by the Convention was in effect for the

State on the dates when the facts alleged in the petition occurred. Finally, the Commission has competence *ratione materiae*, because the petition reports potential violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

48. Article 46(1) of the American Convention establishes that for a petition to be admissible, “the remedies under domestic law (must) have been pursued and exhausted in accordance with generally recognized principles of international law.”[FN14] Both the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) and the IACHR have repeatedly maintained that “(...) according to the generally recognized principles of international law and international practice, the rule demanding prior exhaustion of domestic remedies is conceived in the interest of the State, because it seeks to save it from responding to accusations against it before an international body before it has had the opportunity to remediate them, if appropriate, by its own means.”[FN15] However, the Convention itself provides that this requirement does not apply when the domestic remedies are not available for reasons of fact or law.

[FN14] See I/A Court H.R., Exceptions to Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para 17.

[FN15] See I/A Court H.R., Viviana Gallardo et al. Judgment of November 13, 1981, Series A N° 101/81, para. 26.

49. Also pursuant to principles of international law reflected in the jurisprudence of the IACHR and the Inter-American Court, first of all, the State may waive expressly or tacitly the application of that rule.[FN16] Secondly, the exception of lack of exhaustion of domestic remedies, to be timely, must be invoked in the first stages of the proceedings before the Inter-American Commission or it will be presumed that the State in question tacitly waived its right to do so. [FN17] In the third place, according to the burden of proof applicable to the matter, the State that invokes the exception must point to the internal resources to be exhausted and supply evidence of their effectiveness.[FN18]

[FN16] IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13 2005, para. 42; I/A Court H.R., Case of Ximenes Lopes. Preliminary Objections. Judgment of November 30 2005. Series C No. 139, para. 5; I/A Court H.R., Case of the Moiwana Community. 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., Case of Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court

H.R., Case of the Moiwana Community. 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 de noviembre de 2004. Series C No. 118, para. 135.

[FN17] I/A Court H.R., Case of the Mayagna (Sumo) Community Awas Tingni. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; Case of Castillo Petruzzi et al. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Case of Loayza Tamayo. Preliminary Objections. Judgment of January 31 1996. Series C No. 25, para. 40. The Commission and the Court have established that the expression “the first stages of the proceedings” must be understood to mean “the admissibility stage before the Commission, that is, before any consideration on the merits [...]”. See, for example, IACHR, Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13 2005, which quotes I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN18] IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, supra note 3, para. 53; Case of Durand and Ugarte. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Case of Cantoral Benavides. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

50. In the instant case, the State has not invoked the exception of non-exhaustion of domestic remedies. In its letter of July 31, 2007, it mentions that “in this case, the jurisdictional apparatus solved the violations that were committed and effectively punished those responsible”.

51. The petitioners point out that Ms. Carmen Velastegui lodged a complaint with the prosecutor’s office on November 10, 2000 three days after the disappearance of her husband. Later, a police report was issued on November 21, 2000, which concludes that the kidnapping of Luis Alberto Shinin Laso was a settling of accounts among thieves. Due to the complaints of Ms. Velastegui with respect to this report, the Office of the General Inspector of the Police issued a second report on December 6, 2000, and later a report amplifying the previous one, which led to the opening of three criminal trials (two in the regular jurisdictions of Ambato and Guaranda, and one in police jurisdiction) for the disappearance of Lopez Pita and Shinin Laso.[FN19] The criminal trials in the regular jurisdiction were the only ones to ultimately go forward, since the Ambato Superior Court ordered the Second District Police Judge, based in Riobamba, to allow the police trial to be incorporated into the file being handled by the Ambato Court. Carmen Velastegui and Teresa López Pita became individual accusers in the proceedings carried out in the Ambato Court.

[FN19] Police Report dated December 6, 2000; Police Report 2319-PJT-CP9-2000 of November 21, 2000, and Report N.- 2001-001- DNPJ.

52. In this process, the first instance judgment was issued on February 8, 2002, which resulted in the conviction of 5 policemen for the manslaughter of Elias Elint López Pita, to the maximum sentence of six years of prison, 3 years to the accomplices (2 policemen) and 18 months for those responsible of the cover-up (Police Major Victor Manuel Hernández Aguas and Police Colonel Juan Aníbal Ávila Hidalgo). Among the grounds for the decision, the judge found that the evidence in the case file proved that Elías López had been tortured by the police during the investigation, and that he died as a result of the torture, and consequently the policemen were scared and threw his cadaver in a river in the City of Baños. According to the petitioners, these facts constitute homicide under torture, punished with 16 years in prison and not manslaughter. This judgment was appealed by the family of Elías Lopez before the Second Courtroom of the Superior Court of Ambato.

53. The petitioners point out that while the appeal was pending, most of the 8 low-ranking policemen who had been arrested since December 3, 2001 and in preventive detention were released on December 5, 2002 by virtue of Article 24.8 of the Constitution of Ecuador[FN20]. They further state that on April 23, 2002 the judges of the Second Courtroom of Ambato Superior Court excused themselves from intervening in the appeal and submitted the proceedings to their substitutes; these magistrates, in turn, excused themselves on May 15, 2002 and sent the case file again to the regular judges. On June 10, 2002 the regular judges decided not to accept the excuse presented and sent the case file to the First Criminal Courtroom of the Supreme Court to decide on the conflict of competence. This Courtroom resolved on August 27, 2002 that the appeal should be decided by the substitute judges of Second Courtroom of Ambato Superior Court.

[FN20] Article 24.8 of the Constitution of Ecuador states: “Preventive detention shall not exceed six months in cases punished with prison, or a year, in cases of internment. If such deadlines were to be exceeded, the preventive detention order would be nullified, under the responsibility of the judge charged with the case”.

54. Finally, the Second Courtroom of Ambato Superior Court ruled on the appeal on September 15, 2003, convicting four policemen for the illegal detention of Elías López Pita (two as direct perpetrators and two as accomplices) and absolved the rest of the policemen. The petitioners point out that the last imprisoned policemen was released from prison on September 3, 2003. In an attempt to revert the judgment, the petitioners filed a motion for cassation which was not admitted, and another appeal which was admitted on October 24, 2003 and remitted to the First Criminal Courtroom of the Supreme Court on December 12, 2003. The Supreme Court took cognizance of the case on April 12, 2004 and ordered the appellants to establish the basis for the motion, which they did. The Supreme Court then sent the case to the General Public Ministry for its opinion, which was issued on July 5, 2004. Finally, a decision was made on the motion and the disputed verdict was annulled on September 21, 2006, resulting in the conviction of policemen Álvaro Sánchez, Luis Criollo, Tomás Freire, Yolanda Ortega and William Renso to 16 years in prison as joint perpetrators of the crimes of illegal and arbitrary detention, bodily torment, and murder to the prejudice of Elías López Pita; Edison Quinga y Luis López, were convicted as accomplices to 8 years in prison; and Hólger Salazar, Víctor Manuel Hernández and

Juan Ávila were convicted to two years as accessories to the crime. The judgment also convicts the aforementioned persons to “payment of the damages caused by the crimes mentioned in the judgment and the payment of court costs, establishing the fees of the attorneys of the accusers at one thousand dollars each”.

55. In the trial before the First Criminal Court of Guaranda for the illegal arrest and abduction which led to the death of Luís Alberto Shinín, on March 5, 2002 issued the order to open the full trial. The order to trial was challenged by the defendants, who filed an appeal for annulment and a motion for appeal. The Guaranda Superior Court denied the appeal for annulment on September 9, 2002, and the motion for appeal on November 11, 2002, reaffirming the order to start the full trial. The defendants requested further clarification of the order, which was denied in a writ to determine procedural matters dated November 21, 2002. Finally, according to the petitioners, the Bolívar Criminal Court, based in Guaranda, handed down a verdict on April 28, 2003[FN21] convicting the three police officers who appeared for trial, since the rest had been released on December 5, 2002 and did not appear before the Court. The convicted police officers filed a motion for cassation, which was ruled on by the Supreme Court in 2006. The Supreme Court affirmed the decision of the Bolívar Criminal Court which had convicted Officer Álvaro Alfonso Sánchez López as a principal, sentencing him to 16 years in prison, and Officers William Renso Chango Colina and Luis Geovanny López Guachi as accessories to the crime, sentencing them to 8 years in prison.

[FN21] According to a press clipping (El Comercio, Monday, May 12, 2003) sent by the State in its message dated June 30, 2003, police officers Álvaro Alfonso Sánchez López, William Renso Chango Colina, and Luis Geovanny López were convicted: the first of being a principal and sentenced to 16-years long-term imprisonment; the other two of being accessories and sentenced to 8 years longer-term imprisonment.

56. The petitioners allege that they have constantly been requesting the National Police to capture those responsible for the events mentioned in this case, and that they even went to the Ministry of Government to achieve the detention of all those involved in these disappearances, so that the judgment would be complied with. However, after the motion for cassation was resolved in 2006, nine of the ten convicted policemen are still at large, and only one of them is serving his conviction as an accessory.

57. In light of the foregoing, the Commission observes that in the trials for the disappearance of Elías Elínt López Pita and Luis Alberto Shinín currently ten and three policemen, respectively, are convicted and only one of them is serving his sentence; however, to date the whereabouts of the two alleged victims has not been established and their relatives have not been received reparations. Accordingly, the IACHR concludes that the instant case falls within the exception to exhaustion of domestic remedies set forth in Article 46(2)(b) of the American Convention, since the petitioners in this case did not have access to domestic remedies, or were prevented from exhausting them.

2. Time limit for lodging the petition

58. Article 46(1)(b) of the American Convention establishes that in order for a petition to be admitted, it must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment in domestic jurisdiction. However, according to Article 46(2) of the Convention and 32(2) of the Rules of Procedure of the IACHR “this rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision [...] Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis”.^[FN22]

[FN22] 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.

59. The Commission concludes that in the instant case, the requirement established in Article 46(1)(b) does not apply due to the lack of effectiveness of the remedies filed by the petitioners in order to get the authorities to capture the persons convicted for the disappearance of Elias Elint Lopez Pita and Luis Alberto Shinín, the determination of their whereabouts and the reparations to the relatives for the damages suffered. The IACHR considers that the petition was filed within a reasonable time period pursuant to paragraph 2 of Article 32 of the Commission’s Rules of Procedure.

3. Duplication of proceedings

60. Article 46(1)(c) of the American Convention requires that the subject of the petition not be pending before another international proceeding for settlement, and Article 47(d) stipulates that the petition must not be substantially the same as one previously studied by the Commission or by another international organization, in order to be admitted by the Commission. In the instant case, the parties have not alleged that either of those two conditions exists, nor can this be deduced from the files.

4. Characterization of the alleged facts

61. The Commission does not deem it appropriate at this stage of the proceedings to establish whether there has been a violation of the American Convention. For purposes of admissibility, the IACHR must decide whether facts have been presented that tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless or obviously out of order,” as stated in clause “c” of that Article.

62. The parameters for judgment on these grounds are different from the requirements for ruling on the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, and not whether a violation actually occurred. This review is a summary analysis, which does not imply prejudice or advance an opinion on the

merits of the case. The Commission's own Rules of Procedure, which clearly establish two separate phases of admissibility and merits, reflects the distinction between the evaluation which the Commission must conduct to determine whether a petition is admissible, and the one it must conduct to establish a violation of human rights.

63. In the instant case, the State asked that the petition be declared inadmissible based on the results of the criminal trials. However, according to the petitioners, those trials have only resolved the criminal liability of the convicted persons, but left pending such issues as clarification of the truth, unwarranted delay, and reparations.

64. The Inter-American Commission notes that in the proceedings opened to investigate the disappearance of Elías Elínt López Pita and Luís Alberto Shinín, respectively, ten and three police officers are convicted. However, such sentence has not resulted in the punishment of those responsible for both disappearances, since most of them are currently at large; the whereabouts of Elías Elínt López Pita and Luís Alberto Shinín Laso have not been determined; nor have their relatives been indemnified. Therefore, the petitioners' allegations regarding the lack of an exhaustive investigation about the final fate of the victims in this case;^[FN23] the lack of effectiveness in carrying out the arrest warrants;^[FN24] and the absence of economic reparations^[FN25], if they were established in the merits stage, could constitute violations of the rights guaranteed in Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8(1) (fair trial) and 25 (judicial protection) of the American Convention, in connection with article 1(1) of the same instrument. At the merits stage, the IACHR shall examine the petitioners' allegations with respect to the presumptive violation of the right to justice and to the truth in Light or Articles 8(1) and 25 of the American Convention.

[FN23] The Inter-American Court has held that: "the power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin that everything possible be done to know the truth of what happened and that the possible responsible parties be punished." Case of the Miguel Castro-Castro Prison. Judgment of November 25, 2006. Serie C. No. 160, para.382; Case of the La Rochela Massacre. Judgment of May 11, 2007, Serie C., No. 163, para. 146.

[FN24] "The investigation into the events must be conducted using all available legal means, in order to determine the truth of what occurred and in order to pursue, capture, prosecute, and convict all the material and immaterial authors, particularly when State agents are or could be involved." Case of Almonacid Arellano et al., Chile, Judgment of September 26, 2006, Series C No. 154, para.111; Case of the Rochela Massacre. Judgment of May 11, 2007, Series C, No.163, para. 148.

[FN25] United Nations, General Assembly Resolution 60/147 of 16 December 2005, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

65. The Commission finds that the allegations of the petitioners regarding delays in concluding the criminal trials over the disappearances of Elías Elínt López Pita and Luís Alberto

Shinín, the failure to elucidate the ultimate fate of the disappeared persons,[FN26] the failure to execute the arrest warrants, and the failure to pay reparations, if proven, may constitute violations of the rights guaranteed in Articles 8(1) (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1(1) therein. The Commission shall review the allegations of the petitioners regarding the alleged violations of the right to justice and truth in light of Articles 8(1) and 25 of the Convention.

[FN26] The Inter-American Court of Human Rights has indicated that: : “the right to access to justice must ensure, within a reasonable time, the right of the alleged victims or their relatives to do everything necessary to know the truth about what happened and to see that those found to be responsible can be punished.” Case of the Miguel Castro-Castro Prison. Judgment of November 25, 2006. Series C. No. 160, para. 382; Case of the La Rochela Massacre. Judgment of May 11, 2007, Series C., No. 163, para. 146.

66. During the merits stage the Commission shall also consider whether the response of the State to the family members of the victim throughout the criminal trial and regarding the risks that they reported facing, may constitute a violation of Article 5 of the American Convention in connection with Article 1(1).

67. Thus the IACHR does not find that the petition is manifestly groundless or obviously out of order. Based on all of the foregoing, the Commission finds that the requirements established in Article 47(b) and c of the American Convention have been satisfied.

V. CONCLUSIONS

68. The Inter-American Commission concludes that it has competence to examine the merits of this case and that the petition is admissible according to Articles 46 and 47 of the American Convention. Based on the arguments of facts and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to the alleged violations of the rights protected under Articles 3, 4, 5, 7, 8(1) and 25 of the American Convention, in connection with Article 1(1) of that instrument.
2. To notify the parties of this decision
3. To proceed to review the merits of the case, and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

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Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2007.
(Signed): Florentín Meléndez, President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and
Freddy Gutiérrez Trejo, Commissioners.