

**REPORT No. 3/10**  
PETITION 12.088  
ADMISSIBILITY  
SEGUNDO NORBERTO CONTRERAS CONTRERAS  
ECUADOR  
March 15, 2010

**I. SUMMARY**

1. On August 19, 1998 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by José Leonardo Obando Laaz (hereinafter “the petitioner”) alleging the responsibility of agents of the Republic of Ecuador (hereinafter “the State”, “the State of Ecuador”, or “Ecuador”) for illegal and arbitrary detention, excessive preventive detention, the lack of judicial guarantees and torture allegedly committed by agents of the State against Segundo Norberto Contreras Contreras, starting on September 24, 1995, during the investigations and criminal procedure initiated against him.

2. The petitioner maintained that the State was responsible for the violation of the rights to humane treatment, personal liberty, judicial protection and judicial guarantees of Segundo Norberto Contreras Contreras and his next of kin, laid down in Articles 5, 7, 8 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) as well as the general obligation to respect and guarantee the rights protected by the Treaty, envisaged in Article 1.1 and the prohibition on the admission of evidence obtained under torture, established in Article 10 of the Inter-American Convention to Prevent and Punish Torture. For its part, the State alleged that the petitioner’s claims were inadmissible for non-compliance with the requirement of the exhaustion of domestic remedies set out in Article 46.1.a of the American Convention and that to consider them admissible the Commission would be acting as an international fourth instance.

3. After analyzing the parties’ positions and the fulfillment of the requirements set out in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible in order to examine the alleged violation of Articles 5, 7, 8 and 25 in conjunction with Article 1.1 of the American Convention and Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture. It also decided to transmit the report to the parties and include it in its annual report.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. The Commission registered the petition under number 12.088, and on January 25, 1999 proceeded to send a copy of the relevant parts to the State, with a time limit of 90 days in which to present information, in conformity with Article 34.2 of its Rules in force until April 30, 2001. In February and April of 1999, the petitioner presented additional information that was sent to the State for its observations. On August 24, 1999, the IACHR also sent the State additional information and repeated its request for information.

5. The State presented its response on October 6, 1999, and this was then sent to the petitioner for observations. On November 9, 1999, the State presented additional information that was sent to the petitioner for observations. On January 4, 2000 the petitioner presented his reply that was sent to the State for observations. The IACHR also sent the petitioner the State’s response received on April 4, 2000 for observations. On October 2, 2000, the petitioner presented a response, which was sent to the State for observations. The IACHR sent the petitioner the State’s response of October 27, 2000 for observations.

6. On April 5 and May 21 of 2001, the State and the petitioner presented their respective responses which were sent to the other party for observations. On April 16, 2009, the IACHR requested updated information from both parties. On August 5, 2009, the petitioner presented its response that was

sent to the State for observations. On September 29, 2009, the State requested an extension to present its response that was granted by the IACHR. The State presented its response on December 1, 2009.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioner

7. The petitioner alleges that in the early hours of September 25, 1995, Segundo Norberto Contreras Contreras' home was violently raided by a group of police heavily armed with revolvers and machine guns, who then arrested him without a warrant and without informing him of the grounds for his arrest. He alleges that Segundo Norberto Contreras Contreras was then taken to the Ventanas Police headquarters in the Los Rios Province. The petitioner alleges that the sub-lieutenant in charge reprehended the policemen for not having killed Norberto Contreras. At the headquarters he was allegedly tortured by being repeatedly stamped on, dragged by the arms, bound and dragged by his testicles, dragged on the ground and his head forced into a water tank on several occasions until he was left unconscious.

8. The petitioner alleges that on the same day, Contreras was led unconscious and blindfolded to a place where four months previously an unidentified body had been found. He indicates that when the blindfold was removed, Contreras saw the detainee, Sergio Temístocles Pincay Cedeño, who, when asked "who had killed", pointed to Norberto Contreras. He alleges that Norberto Contreras was hit again and that the sub-lieutenant in charge wanted to make him admit he was the murderer, something he refused to do. It indicates that immediately thereafter the sub-lieutenant fired four shots beside his ears after which Norberto Contreras begged not to be killed. In response, the sub-lieutenant hit him on the head with a stick leaving him unconscious. He indicates that Norberto Contreras regained consciousness in the "bed of a pick up truck" with a spare wheel on top of his head; and in order that they would see him as a criminal the sub-lieutenant ordered a policeman to cut off one side of his moustache and smear his face with chicken excrement, which the policeman did.

9. The petitioner alleges that in Milagro city, Norberto Contreras was taken to the police headquarters, where they "bound his arms and dislocated them", plunged his head in a pool of water to drown him, staged a mock "hanging", hit him on his testicles, took him tied up down a flight of stairs while "beating and kicking him". It indicates that after having been forced into a confession without the presence of a lawyer, the sub-lieutenant took him up twice to a terrace where he was tortured.

10. The petitioner indicates that on September 26, 1995 an official medical examination was performed on him at a cell in a roadblock of the Milagro rural police. The examination found "Gashes... An area of bruising... Multiple scratches and lacerations of the skin on the scrotum, swollen left testicle...time for recovery 21 days."<sup>1</sup>

11. The petitioner alleges that Norberto Contreras was groundlessly accused of the robbery and murder of the driver Fabián Angulo Pineda. He alleges that the criminal indictment against Norberto Contreras was issued without evidence, in violation of the principle of the presumption of innocence and of Ecuadorian legislation. The petitioner indicates that Contreras was held incommunicado and without access to a judge until September 28, 1995, when the arrest warrant was issued. According to the case file Norberto Contreras denounced the torture in his investigatory statements and that on July 21, 1997 the Public Prosecutor indicated that Norberto Contreras could not be charged with murder, only with robbery, given that the death of victim had not been legally proved.

12. Regarding the exhaustion of domestic remedies, the petitioner points out that in July 1997, he filed an appeal before the Fourth Chamber of the Superior Court of Justice of Guayaquil on the grounds of the "non-existence of the commission of the offence". He indicates that on June 22, 1998, he

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<sup>1</sup> Medical certificate issued by Sixto Rivera MD and Doina E. Loga MD on September 26, 1995, enclosed with the initial petition, of August 19, 1998.

insisted on the appeal and complained about the acts of torture. He indicates that one year later, on August 26, 1998, the Court ruled that Norberto Contreras Could not be charged with a specific offence because there was no indication which would determine whether or not the body found matched that of the alleged victim, and ordered that an exhumation of the unidentified body --found three years and six months after-- be carried out.

13. The petitioner indicates that he filed a petition for *habeas corpus* before the Mayor of Milagro and that on July 21, 1998 he filed another petition for *habeas corpus* before the Mayor of Santiago, which was denied. He indicates that on July 31, 1998, he appealed this decision before the Constitutional Court. The appeal was dismissed on the grounds that the *habeas corpus* ought to have been brought before the Mayor. On August 24, October 5, and November 11, 1998, he also filed claims before the 11<sup>th</sup> Criminal Judge of Guayas challenging the duration of preventive detention. On January 14, 1999, he also filed a petition for release before the Constitutional Court and a complaint on the commission of acts of torture.

14. On June 14, 1999 he recused the 11<sup>th</sup> Criminal Judge of Guayas for undue delay in the summary proceedings on account of non-fulfillment of procedural time limits; for not issuing a decision within 60 days as provided by law; for not completing the exhumation within 10 days as required; and for not having ruled within a reasonable period of time. He indicates that the petition was admitted and that the recused judge was summoned on June 30, 1999. On that day, the recused judge issued a resolution referring the proceedings to the jurisdiction of the Fifth Criminal Court of Guayas.<sup>2</sup>

15. The petitioner alleges that on August 20, 1999, the Fourth Chamber of the Superior Court of Justice ordered Norberto Contreras' immediate release and that the 11<sup>th</sup> Criminal Judge failed to comply on the ground that the case was under the jurisdiction of the Fifth Criminal Court of Guayas. On August 25, 1999, the latter declared null and void all proceedings carried out as from the June 30, 1999 resolution and referred the matter to the 11<sup>th</sup> Court. On September 2, 1999, the 11<sup>th</sup> Judge tried to refer the matter back but it was not accepted because of the nullity decree. The petitioner requested the removal of the 11<sup>th</sup> Judge before the National Council of the Judiciary on the grounds of criminal conduct, undue delay of proceedings and denial of liberty.

16. According to the petition, on August 10, 11 and 12, 1999, the petitioner filed requests for release based on the expiration of the preventive detention before the Fourth Chamber of the Superior Court of Guayaquil; on August 11 and 12, 1999 before the Fifth Criminal Court of Guayas and on September 8, 1999 before the 11<sup>th</sup> Criminal Judge of Guayas in accordance with Article 24.8 of the Constitution of Ecuador.<sup>3</sup> On September 2, 1999, he also presented a petition for release before the Superior Court of Justice of Guayaquil.

17. In this regard, the petitioner alleges that the State has violated Norberto Contreras' right to be judged within a reasonable time given the undue delay in the administration of justice, which implicates a breach of the right to judicial protection. He also alleges that Norberto Contreras was subjected to excessive preventive detention.

18. The petitioner indicates that Norberto Contreras was murdered in May 2009, without providing further details on the circumstance of his death.<sup>4</sup>

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<sup>2</sup> The petitioner indicates that the resolution was not served due to the lack of legal domicile and that the notification paragraph was later altered with an indication that service had taken place on July 5, 1999. Request for removal filed with the National Council of the Judiciary, enclosed with the petitioner's brief of September 23, 1999.

<sup>3</sup> Article 24.8 of the Political Constitution of the Republic of Ecuador of 1998: "Preventative detention shall not exceed six months, in cases of crimes punishable with imprisonment, nor exceed one year in cases of crimes punishable with reclusion. If these time limits are exceeded, the preventative detention order shall be left without effect, under the responsibility of the judge in charge of the case."

<sup>4</sup> Petitioner's brief received on August 5, 2009.

19. Based on the foregoing, the petitioner alleges that the State has violated the right to humane treatment, personal liberty, judicial protection and due process guarantees against Norberto Contreras and his next of kin. In addition, he alleges the violation of Article 10 of the Inter-American Convention to Prevent and Punish Torture.

## **B. Position of the State**

20. With regard to the facts, the State alleges that Norberto Contreras was one of five members of a criminal gang who, on June 29, 1995, attacked and beat the driver of a goods truck, kidnapped and murdered him and burnt his remains. It indicates that the proceedings started with an indictment issued on July 12, 1995, by the 11<sup>th</sup> Criminal Judge of Milagro, Province of Guayas, for the crime of assault with a deadly weapon against the perpetrators, accomplices and accessories. It indicates that the 11<sup>th</sup> Judge of the Criminal Court of Guayas issued detention warrants for Sergio Pincay and Norberto Contreras on September 22, 1995, in accordance with Article 172 of the Code of Criminal Procedure in force at the time, which requires the "existence of serious indications of criminal responsibility against whoever is subject to the precautionary measure."<sup>5</sup>

21. The State indicates that in the course of the investigations undertaken by the National Police Criminal Investigations Office, the owner of the merchandise stolen from the truck provided information leading to the arrest of Sergio Pincay. It alleges that on September 24, 1995, Pincay lead members of the police to the Ventanas district where "he made them arrest" Norberto Contreras. It indicates that the police surprised Norberto Contreras, who tried to flee through the window of his home, due to which he suffered a very visible fall and was detained after a fierce struggle. It indicates that, when captured, Norberto Contreras was carrying a revolver and a bulletproof vest. It indicates that the police then moved the detainees to a country house where they had taken the stolen truck in order to unload the tons of sugar, dismantle it and sell the parts.

22. It indicates that on September 25, 1995, the 11<sup>th</sup> Criminal Judge of Guayas ordered the extraprocedural preventive detention to the effects of the investigations of Norberto Contreras and of Sergio Pincay, since the others had fled. It indicates that in the voluntary statement rendered before the Public Prosecutor, he stated that he had participated in the assault and robbery of the truck. It indicates that on September 28, 1995, the indictment was extended to include Norberto Contreras. It indicates that on March 21, 1996, the indictment was closed and its reopening was requested by the prosecution on November 30, 1996.

23. The State indicates that on August 29, 1997, a resolution was issued and later appealed. In response the Fourth Chamber of the Superior Court of Justice of Guayaquil requested the reopening of the summary and the exhumation of the body.

24. It indicates that on June 30, 1999, the plenary phase of the proceedings against Norberto Contreras was opened. On August 9, 1999, he filed a petition for release on the basis of Article 24.8 of the 1998 Constitution for having spent more than three years in preventive detention. On September 15, 1999, he obtained his release by order of the Fifth Criminal Tribunal of Guayas.

25. The State requests that the petition be declared inadmissible on the basis that on the date of the filing of the petition with the Commission domestic remedies had not been exhausted, and that the petition for the release of Norberto Contreras was resolved by the local courts. It indicates that in its initial petition before the IACHR, the petitioner failed to raise the issue of the expiration of the time limit for the preventive detention of Contreras who had been detained for more than a year without a sentence. The State considers that the issue was raised after the presentation of the petition before the IACHR, and that the favorable outcome in the internal justice system demonstrates that the available judicial remedies were adequate to address his claim.

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<sup>5</sup> General Command of the National Police, Communication No. 2009-325-AJE-CG, page 6. Enclosed with Note No. 10557 of the *Procuraduría General del Estado* of the Republic of Ecuador of November 24, 2009.

26. The State also alleges that by virtue of the "fourth instance" formula, the Commission cannot review decisions adopted by national courts within their sphere of competence and in accordance with judicial guarantees. It alleges that the IACHR cannot act as an appeal court to examine supposed errors of law or of fact which may have been made by national courts. In its view, the petitioner's disagreement with the outcome of relevant judicial decisions does not lend support to the Commission for its revision.

27. On the other hand, the State submits that in accordance with the legislation of Ecuador, preventive detention is subject to the following requirements: (i) sufficient evidence of the commission of a crime subject to public prosecution; (ii) clear and precise evidence that the person under investigation is a perpetrator complicit in the crime and (iii) that the criminal conduct is punishable with a prison sentence of more than one year<sup>6</sup>. It indicates that in the case of Norberto Contreras there was a clear indication in the testimony of those under investigation and in the evidence collected by the National Police, and the crime was punishable with up to 16 years in prison.<sup>7</sup>

28. The State also maintains that Norberto Contreras' right to a defense was preserved given that the latter had at his disposal all the remedies afforded by Ecuadorian law, and that he even appealed the initiation of the plenary phase of his trial. It alleges that due process guarantees were fully respected and that the right to be heard in conditions of equality by the competent authorities was not impeded.

29. It alleges that the petitioner seeks to have the State sanctioned on the basis of charges of a criminal nature for the alleged commission of crimes of prevarication, forgery of a public instrument, the prolongation of the detention of persons, among others, crimes punished by the Penal Code of Ecuador. The State alleges that these allegations should be examined pursuant to the corresponding criminal proceedings. It maintains that States do not appear before the Inter-American system as subjects of criminal procedure and that the international law of human rights does not have as its object the imposition of penalties on individuals, but the protection of victims and the determination of reparations. These require, first, a judicial determination of responsibility at the internal level, given the subsidiary nature of the system.<sup>8</sup> Consequently, in its view, the State cannot be held responsible for a lack of effective judicial remedies whenever the petitioner has failed to invoke such remedies.

30. In 2000, the State alleged that a final decision had not been reached because of several factors such as the lack of participation of the parties in the corresponding judicial steps and the filing of a number of remedies to delay the proceedings and to "confuse the high ranking levels."

31. The State analyzes the criteria to determine the reasonableness of the time period, i.e. the complexity of the matter, the procedural activity of the person concerned and the proceedings of the judicial authorities in the specific case. In this respect, it considers that the case is a complex one and that there has been a lack of cooperation on the part of the accused and that the deliberate obstacles found have given rise to delays that are not attributable to the State.<sup>9</sup>

32. As regards the proceedings of the judicial authorities, the State alleges that the criminal process started on July 12, 1995, with the attribution of criminal conduct to Norberto Contreras, and that

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<sup>6</sup> The State mentions Article 167 of the Criminal Code of Ecuador. Note 10557 of the Procuraduría General del Estado of the Republic of Ecuador, of November 24, 2009, page 5.

<sup>7</sup> The State mentions Articles 423 et seq. of the Criminal Procedural Code of Ecuador. Note 10557 of the Procuraduría General del Estado of the Republic of Ecuador, of November 24, 2009, page 5.

<sup>8</sup> In support of this argument the State quotes I/A Court H.R., *Fairén Garbi and Solís Corrales vs. Honduras Case. Preliminary Objection. Judgment of June 26, 1987.* Series C No. 2; *Suárez Rosero vs. Ecuador Case. Judgment of November 12, 1997.* Series C No. 35; *Castillo Petruzzi et al. vs. Peru Case. Judgment of May 30, 1999.* Series C No. 52. Note 11220 of the Procuraduría General del Estado of the Republic of Ecuador, of March 17, 2000.

<sup>9</sup> In support of this argument the State quotes IACHR Report12/96, Case 11.245, Argentina, March 1, 1996, paragraph 103. Note 14739 of the Procuraduría General del Estado of the Republic of Ecuador, of October 11, 2000.

on August 29, 1997, after two years, the Judge issued a resolution opening the penal phase. The State alleges that the delay is attributable to the "excessive invocation of remedies with the purpose of intentionally delaying the proceedings" and that such conduct is not attributable to the State.<sup>10</sup> It adds that a "temporary delay in the proceedings of a court does not affect the international responsibility of the State."<sup>11</sup> It maintains that in the present case the State has reached a resolution within a period of time adequate for the particular process and within the possibilities of its reach and therefore no responsibility under Article 8.1 can be attributable to the State.

33. As far as the allegations of torture are concerned, the State considers that the reports issued by the Superior Court of Guayaquil show that there are no procedural indications of inhumane treatment against Norberto Contreras. It alleges that domestic courts can base their judgments upon indirect evidence, such as circumstantial evidence, indicia and assumptions whenever they are coherent, coincident and lead to infer solid conclusions on the facts under examination.<sup>12</sup> It alleges that in the present petition "there are no consistent indicia or assumptions leading to the conclusion that Norberto Contreras suffered torture or inhumane treatment". It indicates that the wounds in the limbs and genitalia referred to by the petitioner as acts of torture committed by the police at the time of his detention "could never be proved since the medical certificates did not specify the cause of the wounds due to lack of clear evidence."

34. In view of the above the State considers that the petition must be declared inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

35. Under Article 44 of the American Convention, the petitioner is, in principle, entitled to lodge complaints with the IACHR. The petition names as the alleged victim an individual in respect of whom Ecuador undertook to respect and guarantee the rights recognized in the American Convention. As far as the State is concerned, the Commission notes that Ecuador has been a State party to the American Convention since December 8, 1977 and has been a party to the Inter-American Convention for the Prevention and Punishment of Torture since November 9, 1999, dates on which their instruments of ratification were deposited, respectively. Therefore the Commission has competence *ratione personae* to examine the petition. The Commission also has competence *ratione loci* to examine the petition, insofar as it concerns rights protected by the American Convention that are alleged to have been violated within the territory of a State party to the Convention.

36. The Commission has competence *ratione temporis* regarding the obligation to respect and guarantee the rights protected in the American Convention as they were in force for the State on the date on which the actions alleged in the petition would have occurred. The Commission does not have competence *ratione temporis* respecting the Inter-American Convention to Prevent and Punish Torture for those events occurring before its entry into force for the State concerned, as the acts of torture alleged

<sup>10</sup> It indicates that the IACHR has considered that despite the fact that Ecuadorian legislation provides for short time limits for each judicial phase, these are mere guidelines assisting in the determination of a reasonable time. The State quotes IACHR Report 38/04, Ecuador, March 12, 2004. Note 10557 of the Procuraduría General del Estado of the Republic of Ecuador, of November 24, 2009, page 5.

<sup>11</sup> In support of its position the State quotes Eur Court HR *Deumeland Case*, Judgment of May 29, 1986, paragraph 82. The State refers to cases where the European Court of Human Rights found a State responsible for exceeding a reasonable time limit, i.e. *Erkner and Hofauer Case* (16 years), *Baggeta Case* (more than 14 years), *Capuano Case* (more than ten years) and *Lechner and Hess Case* (more than eight years) of procedural delay. Note 14739 of the Procuraduría General del Estado of the Republic of Ecuador, of October 11, 2000.

<sup>12</sup> In support of its position the State quotes I/A Court H.R., *The "Street Children" (Villagrán Morales et al.) vs. Guatemala Case*. Judgment of November 19, 1999. Series C No. 63, paragraph 69; *Castillo Petruzzi et al. vs. Peru Case*. Judgment of May 30, 1999, Series C No. 52, paragraph 62; *Case of the "White Van" (Paniagua Morales et al.) vs. Guatemala*. Judgment of March 8, 1998, Series C No. 37, paragraph 72; *Case of Gangaram Panday vs. Suriname*. Judgment of January 21, 1994. Series C No. 16, paragraph 49. Note 14739 of the Procuraduría General del Estado of the Republic of Ecuador, of October 11, 2000.

were committed in September 1995. However, the Commission has competence with respect to the aforementioned Convention for facts alleged to have occurred after its entry into force. Lastly, the Commission is competent *ratione materiae*, because the petition complains of violations of human rights that are protected by the American Convention.

## **B. Admissibility Requirements**

### **1. Exhaustion of Domestic Remedies**

37. Article 46.1.a of the American Convention requires the prior exhaustion of domestic remedies within the internal jurisdiction according to generally recognized principles of international law, in order to admit claims on the alleged violation of the American Convention.

38. In this case, the State alleges that the petitioner's complaint does not satisfy the requirement for prior exhaustion of domestic judicial remedies, as provided for in Article 46.1 of the American Convention as the petitioner did not exhaust available remedies. The petitioner alleges the application of the exception provided for in Article 46.2.c in view of the undue delay in the adoption of a decision on the remedies pursued.

39. As established in the IACHR's Rules, whenever a State alleges the failure by the petitioner to exhaust domestic remedies, it bears the burden to show that the remedies that have not been exhausted are "adequate" to resolve the alleged violation, i.e., that the function of those remedies within the domestic legal system is adequate to address the infringement of a legal right.<sup>13</sup>

40. It is necessary to clarify which are the domestic remedies that must be exhausted in the present case. The Inter-American Court has underlined that only those remedies suitable to redress the violations allegedly committed require exhaustion. Suitable remedies mean that

the function of those remedies within the domestic legal system is adequate 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.<sup>14</sup>

41. In the first place, according to the allegations of the parties, the criminal proceedings against Norberto Contreras were initiated on September 28, 1995 with an indictment. In July 1997, the petitioner lodged an appeal before the Superior Court of Justice of Guayaquil on the grounds of "non-existence of the commission of the offence" and on June 22, 1998, he insisted on a resolution of the appeal. On August 26, 1998, the Court decided the appeal and ruled that Norberto Contreras could not be accused because the victim's body had not been identified and ordered an exhumation to be carried out. It is maintained that on June 14, 1999, the petitioner recused the 11<sup>th</sup> Criminal Judge of Guayas for undue delay, on account of not having resolved the issue within a reasonable time, and of other due process violations. The IACHR understands that in May 2009, around the time Norberto Contreras died, the final decision was still pending. Therefore, in view of the undue delay, the exception laid down in Article 46.2.a of the American Convention applies to this aspect of the claim.

42. In the second place, regarding the excessive preventive detention of Norberto Contreras, the petitioner indicates that he repeatedly requested his release before the 11<sup>th</sup> Criminal Judge of Guayas and before the Constitutional Court, and that as from August 24, 1998, he lodged a number of requests for his release pursuant to Article 24.8 of the 1998 Constitution, in view of the expiration of the time limit for preventive detention. He indicates that on September 2, 1999, he filed a request for release (*amparo de libertad*) before the Superior Court of Justice of Guayaquil. The State, for its part, maintains that on

<sup>13</sup> IA Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, paragraph 64.

<sup>14</sup> IA Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, paragraph 63.

August 9, 1999, the petitioner lodged a request for release due to the expiration of the preventive detention time limit. The parties concur that this was the adequate remedy to address the claim. Therefore the Commission considers that the petitioner fulfilled the requirement of prior exhaustion of domestic remedies regarding this aspect of the petition.

43. In the third place, the petitioner indicates that Norberto Contreras denounced the alleged acts of torture in the investigatory statement rendered in September, 1995. He maintains that a petition for *habeas corpus* was filed before the Mayor of Milagro and was rejected; and that on July 21, 1998, another petition for *habeas corpus* was filed before the Mayor of Santiago de Guayaquil, and was also rejected. He indicates that on July 31, 1998, an appeal was filed before the Constitutional Court which was dismissed. He filed various complaints before the Criminal Judge of Guayas, denouncing the acts of torture. The Commission understands that the petitioner tried to exhaust remedies to address the alleged commission of acts of torture and that the State, for its part, has failed to indicate whether an investigation or specific proceedings are under way in that regard. Therefore, the Commission considers that the petitioner has fulfilled the requirement of prior exhaustion of domestic remedies regarding this aspect of the claim.

44. Consequently, in view of the characteristics of the present case, in particular the fact that the petitioner invoked remedies alleging the violations of Norberto Contreras' rights to personal liberty, humane treatment, judicial protection and due process guarantees, the Commission finds that the petitioner has satisfied the requirement of prior exhaustion of domestic remedies, established in Article 46.1 of the American Convention.

45. The invocation of exceptions to the rule of the exhaustion of domestic remedies provided for in Article 46.2 of the Convention is inextricably linked to the determination of possible violations of certain rights enshrined therein, such as due process guarantees and judicial protection. However, Article 46.2, due to its nature and purpose, is an autonomous provision *vis-à-vis* the substantive norms of the Convention. Therefore the determination as to whether the exceptions to the rule on the exhaustion of domestic remedies apply, should be handled prior to, and separately from, the analysis of the merits of the matter, since it requires a different standard from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

## **2. Timeliness of the Petition**

46. The American Convention establishes that in order for a petition to be admissible it must be filed within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies. Also, Article 32 of the Commission's Rules sets forth that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission.

47. As established, *supra*, by the Commission, the exception to the requirement of prior exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable in the present claim. In order to establish whether the petition has been filed within a reasonable time pursuant to Article 32 of the Commission's Rules, the Commission must consider the date on which the alleged violations took place and the circumstances of each case.

48. According to the petition, Norberto Contreras was detained on September 24, 1995, and complaints on the alleged torture and due process violations were filed as from September, 1995. The Commission received the petition on August 19, 1998. The various proceedings referred to by the parties were then pending and remained pending during several years thereafter. In view of the circumstances surrounding the present case, the Commission considers that the petition was filed within a reasonable time and that the requirement on timeliness must be considered satisfied.

### 3. Duplication of Procedures

49. There is no information on the record indicating that the subject of this petition is pending settlement in another international procedure, or that the case essentially duplicates a petition pending or already examined and settled by the Commission or another international governmental organization. The Commission therefore finds that the requirements provided for under Articles 46.1.b and 47 of the Convention have been satisfied.

### 4. Characterization of the alleged facts

50. In view of the information presented by the parties and the nature of the matter brought before it, the Commission is satisfied that the petitioner's claims concerning violations of the right to humane treatment, personal liberty, judicial protection and due process guarantees, if true, would tend to characterize possible violations of Articles 5, 7, 8 and 25 of the American Convention against Norberto Contreras, and of Articles 5, 8 and 25 against his next of kin. All of these in conjunction with the violation of Article 1.1.

51. Also, the Commission is satisfied that the petitioner's claims concerning the alleged violation of the prohibition to admit in a legal proceeding a statement obtained through torture, if true, would tend to characterize a possible violation of Article 10 of the Inter-American Convention to Prevent and Punish Torture, given that the alleged evidence may have been used in proceedings even after November 9, 1999, the date of entry into force of that Convention.

52. Finally, in accordance with the principle of *iura novit curia*, the Commission finds that the allegations in the petition regarding the lack of investigation of acts of torture, if true, could characterize possible violations of the obligation of the State to carry out a judicial investigation and criminal proceedings according to Article 8 of the Inter-American Convention to Prevent and Punish Torture, as a consequence of the alleged lack of investigation after the date of entry into force of that Treaty. In view of the fact that there is no evidence supporting the inadmissibility of these claims, the Commission finds that they satisfy the requirements in Article 47.b and c of the American Convention.

## V. CONCLUSIONS

53. The Commission concludes that it has the competence to examine the claims filed by the petitioner on the alleged violation of Articles 5, 7, 8 and 25 in conjunction with Article 1.1 of the American Convention and Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture and that these are admissible pursuant to Articles 46 and 47 of the American Convention.

54. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### DECIDES:

1. To declare the present case admissible with respect to the alleged violations of Articles 5, 7, 8 and 25 in conjunction with Article 1.1 of the American Convention and Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of this decision to the State of Ecuador and to the petitioner.

3. To continue with the analysis of the merits of the case.

4. To make this report public, and publish it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15<sup>th</sup> day of the month of March 2010.  
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Sílvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).