

REPORT No. 119/10
CASE 12.004
ADMISSIBILITY AND MERITS
MARCO BIENVENIDO PALMA MENDOZA *ET. AL.*
ECUADOR
October 22, 2010

I. SUMMARY

1. On September 24 1997, the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the IAHCR") received a petition presented by the Ecumenical Human Rights Commission "CEDHU" (hereinafter "the petitioners") charging the Republic of Ecuador (hereinafter "the State" or "the Ecuadorian State") with lack of due diligence in the investigation, trial, and punishment of those responsible for the detention, disappearance, and subsequent murder of Marco Bienvenido Palma Mendoza (hereinafter "Mr. Palma"), which occurred on May 16, 1997, in the district (*cantón*) of Manta, in the province of Manabí.

2. The petitioners argue that the State is responsible for violating the rights to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") all in accordance with the general obligation to respect and guarantee the rights envisaged in Article 1(1) of this instrument. They maintain that the case is admissible in view of the fact that domestic remedies have been exhausted in accordance with Article 46(1) (a) of the American Convention.

3. The State declares that the investigations carried out by judicial authorities in relation to the events described by the petitioners led to the punishment of the responsible parties, who were in no way linked to the State. Because of this, and in accordance with Article 47(b) of the Convention, the State maintains that the petitioners have not demonstrated facts that imply a violation of the provisions of the aforementioned international instrument and, therefore, argues that the case should be declared inadmissible. It also argues that internal jurisdiction remedies have not been exhausted.

4. After analyzing the available information, substantiating the procedures, and applying Article 36(3) of the current Rules of Procedure for deferring the decision on admissibility, the Commission determined that the admissibility requirements established in Articles 46 and 47 of the American Convention had been met and concluded that the State is responsible for having violated the right to humane treatment enshrined in Article 5; and its obligation to guarantee a fair trial and provide judicial protection in relationship to the right to life, as enshrined in Articles 8(1) and 25(1) and in relation to Article 4(1) of the American Convention, all in connection with Articles 1(1) and 2 of the instrument in question.¹

II. PROCESSING BY THE COMMISSION

5. The IACHR received the initial petition on September 24, 1997 and registered the petition under the number 12.004, according to the practices in effect at the time. On May 1, 1998, the Commission forwarded the petition to the State and gave it a period of 90 days to present its observations. Likewise, via communication dated May 1, 1998, the Commission asked the State to send, within a period of 20 days, specific

¹ As established, *infra*, the IACHR determines noncompliance with Article 2 of the Convention based on the principle of *iura novit curiae*.

information regarding about the whereabouts and the situation of Mr. Palma, in order to determine whether the case fit within the suppositions described in Article 29 of the Rules of Procedure of the Commission in effect at the time. Via communication on August 28, 1998, the State of Ecuador presented its response, which was then forwarded to the petitioners in a communication dated September 10, 1998, with a period of 45 days for presenting observations. On December 1, 1998, the State sent additional correspondence with information complementing the information it had presented on August 28, 1998, and this was also sent to the petitioners in a communication dated December 31, 1998, with a period of 30 days for presenting observations.

6. The petitioners presented their observations in communications received on March 15 and June 11, 1999, and these were forwarded to the State on August 23 and 24 respectively with a 40 day period for presenting observations. The State presented its observations to that communication on November 24, 1999 and these were sent to the petitioners on December 8, 1999 with a period of 45 days for presenting their own comments.

7. The petitioners presented their response in a communication dated February 21, 2000, which was sent on to the State on May 18, 2000, with a 30 day period for presenting observations. The State presented its observations through briefs dated August 30 and September 11, 2000, and these were forwarded to the petitioners on March 26 and 27 of 2001 respectively, with a period of 30 days for presenting observations. The IACHR informed the petitioners via a communication on April 11, 2003 that in accordance with Article 37 (3) of the Rules of Procedure in effect at the time, it had deferred the decision on admissibility until there could be further discussion and a decision made on the merits of the case.

8. On August 24, 2005, the IACHR communicated to the petitioners and to the State its decision to defer the decision on admissibility until there had been discussion and a decision on the merits. The Commission then asked the petitioners to present additional observations about the merits of the case within a period of two months, in accordance with the provisions of Article 38(1) of its Rules of Procedure. In a communication dated November 17, 2005, the petitioners presented their additional observations about the merits of the case, which were sent to the State on January 30, 2006 with a period of two months for presenting observations. The State requested an additional 30 days from the Commission in a communication dated March 14, 2006, and this extension was granted on April 20, 2006.

9. The State presented its additional observations on the merits in a communication dated May 30, 2006, which was sent to the petitioners on July 20, 2006 with a deadline of one month for presenting observations. The petitioners presented their observations in a communication dated September 8, 2006 and these were sent to the State on March 26, 2007 with a deadline of one month [for the State to present its observations] but no corresponding reply had been received by the time in which the report was adopted. In a communication dated August 10, 2010, the Commission asked the two parties about their willingness to initiate friendly settlement proceedings that might be of interest to both and gave a period of one month for them to express such interest. On September 24, 2010, the petitioners sent a communication indicating that they were willing to initiate friendly settlement proceedings, and on September 27, 2010, they sent another communication in which they indicated that it was not possible to initiate the proposed friendly settlement proceedings since, in spite of the petitioner's predisposition to initiate such proceedings, the Ecuadorian Attorney General's position regarding that possibility had been a consistent no over the last two years. The IACHR sent both of these communications to the State on October 12, 2010.

III. THE POSITIONS OF THE PARTIES

A. Position of the petitioner

10. The petitioners state that on the morning of May 16, 1997, Mr. Palma was with his 11 year old son in his vehicle in the district of Manta, in the province of Manabí. They say that at approximately 9:30 a.m., Mr. Palma was intercepted by a white pick-up truck and that three armed men dressed in civilian clothing and wearing ski masks got out of the truck. They maintain that Mr. Palma was detained and made to get in the aforementioned vehicle which then drove off in an unknown direction. The petitioners argue that Mr. Palma's son, Luis Palma, after having witnessed these events, ran to the house of his mother, Lidia Guadalupe Bravo, in order to tell her what had happened to Mr. Palma.

11. They state that the event was witnessed by people who were in the area of the Ecuadorian Professional Training Service (hereinafter "SECAP"). The petitioners state that the SECAP security guard did not intervene since the people who were in the white truck showed them identification from the Ecuadorian Armed Forces (hereinafter "FAE") and indicated that it was an official matter. They also maintain that moments before the incident in question took place, these individuals cordially greeted uniformed members of the FAE who were entering the grounds of SECAP.

12. The petitioners assert that on May 17, 1997, Lidia Guadalupe Bravo went to the Eleventh Criminal Court of Manabí and reported that Mr. Palma had been kidnapped. They say that she asked for the corresponding investigations to be initiated to locate her companion since she believed that he was in custody of police or military authorities.

13. The petitioners contend that they presented the proper documents to the Ecuadorian Navy, the Ministry of National Defense, and the Ministry of the Interior, asking them for information about the whereabouts of Mr. Palma. They report, however, that these parties consistently denied that Mr. Palma had been detained by State agents or that he might be held in any of their centers.

14. The petitioners also maintain that on May 30, 1997, they filed a writ of *habeas corpus* for Mr. Palma with the Mayor's Office of the Metropolitan District of Quito. They state that the Mayor's Office communicated with the Head of the Judicial Technical Police, the Director of the Provisional Detention Center, the Director of the Quito Social Rehabilitation Center for Men nº 1, 2, and 3, and the Attorney General saying that any institution that may have detained Mr. Palma must bring him personally to his office on June 6, 1997. However, the petitioners indicate that this did not happen. Finally, they state that on June 13, 1997, the Mayor's Office accepted the writ of *habeas corpus* and, based on Article 28 of the Political Constitution of Ecuador in effect at the time,² it notified the organizations mentioned above that, if Mr. Palma was found detained under their authority, he should be freed.

15. The petitioners report that on May 26, 1997, two dead bodies appeared in the Cañar River located in the district of Naranjal, province of Guayas. They state that three years later, in the year 2000, they discovered that one of these was the body of Mr. Palma. They maintain that the judicial authorities of that district went to the place where the bodies were found and buried them, without carrying out the investigation required to determine the identity of the bodies or look for the people responsible for the two murders and that, because of this, the family members of Mr. Marco Bienvenido Palma Mendoza did not realize that he was dead.

² Article 28 of the Ecuadorian Constitution of 1979: "[...] the Mayor shall authorize immediate liberty of the claimant if the detained person is not presented, if the warrant is not exhibited, if the warrant does not comply with legal requirements, if procedural errors have been committed, or, in sum, if there is justification or basis for the recourse."

16. The petitioners maintain that, early in the year 2000, in the context of another investigation, Mr. Lenin Ordóñez Ortiz, stated that he, along with several other people including Freddy Simón Contreras and Stanley Domínguez Avilés, had participated in the kidnapping and murder of Mr. Palma who they threw into the Cañar River located in the district of Naranjal. The petitioners report that Lenin Ordóñez stated that, after they took Mr. Palma captive, they did not give him anything to eat for five days and that they only gave him water. They say that they then chained his hands and feet, strangled him, and threw him into the Cañar River. They indicate that these acts were ordered by Mr. Medardo Cevallos, since "it had to do with revenge for an alleged robbery of Manabí Motors," a company owned by Mr. Cevallos.

17. The petitioners state that, in order to establish the veracity of the statements made by Mr. Lenin Ordóñez, a court order was issued ordering the exhumation of the bodies found in 1997 in the district of Naranjal and, after that carrying out several expert examinations, on March 2, 2000, it was determined that one of the bodies was that of Marco Bienvenido Palma Mendoza.

18. Given these new facts, the petitioners indicate that they reactivated the case on January 22, 2001, with an order issued by the Judge of the Eleventh Criminal Court of Manabí in which only three material authors of the crime were tried. They report that the Sixth Criminal Court of Manabí issued a guilty verdict on March 19, 2001 against Freddy Simón Contreras, Lenin Ordóñez Ortiz, and Stanley Domínguez Avilés and that they were given 12 years in prison for being the direct perpetrators of the crime of murder. They state that the cases against the five other people involved in the crime were dismissed.

19. The petitioners state that the accused presented a direct appeal to the cassation court in order to get the verdict annulled. They report that this appeal was rejected by the Second Criminal Chamber of the Supreme Court of Justice in a verdict issued June 26, 2002.

20. The petitioners maintain that, even if the detention and murder of Mr. Palma was not carried out by agents of the State, the crime was committed with the State's complicity. They also contend that the judicial investigation did not comply with the standards of international human rights law. The petitioners argue that those sentenced were former members of the FAE and that, moments before the detention and disappearance of Marco Bienvenido Palma Mendoza, these individuals cordially greeted uniformed members of the FAE who were entering SECAP. They assert that the men identified themselves using FAE identification. Finally, they state that, when Mr. Palma's body was found, the corresponding autopsy was not carried out, nor was there any effort made to identify him.

21. In this regard, the petitioners maintain that the Ecuadorian State did not adequately comply with its duty to identify Mr. Palma; identify possible witnesses and obtain their statements; or determine the cause, method, place, and moment of the death, or the circumstances and the corresponding responsibilities.³ They contend that while these are parameters that refer to the investigation of extrajudicial executions, they should also be applied to all investigations of crimes committed by private citizens.⁴ In this sense, they

³ The petitioners cite judgments of the Inter-American Court of Human Rights in the cases of: *The Massacre of Mapiripán Vs. Colombia*. Merits, Reparations, and Costs. Judgment of September 13, 2005. Ser. C. No. 134. para. 224; and *The Moiwana Community Vs. Surinam*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 15, 2005, Ser. C. No. 124. para. 149. They also refer to the United Nations "Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Execution."

⁴ Petitioners cite the judgments of the Inter-American Court of Human Rights, Case of *Ricardo Canese Vs. Paraguay*, Merits Reparations, and Costs. Judgment of August 31, 2004. Ser. C. No. 111. para. 181. They also refer to the decision of the European Court of Human Rights, Case of *Tyler v. United Kingdom*, Application no. 5856/72, Judgment of April 25, 1978, para. 31.

argue that the State did not conduct an effective investigation of Mr. Palma's death, and therefore did not guarantee his right to life.

22. The petitioners state that all of these events were not investigated adequately, and that this generated unnecessary suffering for his family members over a period of more than three years. The family members had gone before judicial and military authorities to ask for information regarding the whereabouts of Mr. Palma, or "that they at least turn over the body so that he could be given a Christian burial." They state that since the disappearance and death of Mr. Palma was not investigated until the truth was uncovered by an event that was not the result of any activity by the State, a violation of Mr. Palma's family's right to mental and moral integrity has occurred.⁵

23. The petitioners argue that the State violated Articles 7(6) and 25(1) of the American Convention due to the fact that, once a writ of *habeas corpus* was presented, the state agencies should have been activated to determine whether Mr. Palma could be found in penitentiary, police, and military establishments. Instead, the family received a negative response from the army in which they told him that Mr. Palma was not in a particular military establishment.

24. In terms of the right to a fair trial, the petitioners point out that more than five years passed between the time that Mr. Palma's dead body was discovered (May 26, 1997) and the time when the guilty verdict was issued by the Supreme Court of Justice (June 26, 2002), and that this is not a reasonable period of time. The petitioners state that the matter was not a complex one in that Mr. Palma's body appeared only a few days after his disappearance. They also argue that his murderers were former members of the FAE and were seen by their colleagues who could have identified them. They state that the conduct of Mr. Palma's family, and especially that of his mother Perfelita Mendoza Aguayo, was that of consistently promoting investigation, while the behavior of the judicial authorities was negligently deficient since they did not conduct an effective investigation. As a result, they maintain that the State violated Article 8(1) of the American Convention.

25. In terms of the requirement established by Article 46(1) of the Convention that all domestic remedies be exhausted, the petitioners indicate that they exhausted domestic remedies in this case. They presented a writ of *habeas corpus*, which was exhausted in the courts of first instance. The petitioners indicate that since *habeas corpus* was the appropriate recourse that had to be exhausted and since there is no Ecuadorian legislation for any other effective recourse for locating a detained or disappeared person, domestic remedies were therefore exhausted.

26. In sum, the petitioners maintain that the State has violated Article 4 in relationship to Article 1(1) of the American Convention, to the detriment of Marco Bienvenido Palma Mendoza, and Articles 5, 7(6), 8(1), and 25(1) in relationship to Article 1(1) of that instrument to the detriment of Mr. Palma's family members. They also maintain that all of the available remedies for internal jurisdiction have been exhausted and that, therefore, the case should be declared admissible. The petitioners are also requesting that the IACHR order the Ecuadorian State to pay appropriate compensation to Mr. Palma's family members and that it order the immediate implementation of an operations manual for investigating murders that would include protocols for autopsies and crime scene investigation, in conformance with the United Nations *Manual for the Effective Prevention and Investigation of Extrajudicial, Arbitrary, and Summary Executions*.

⁵ Petitioners refer to the Inter-American Court of Human Rights decision in *The Massacre of Mapiripán Vs. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005. Ser. C. No. 134. para. 284.

B. Position of the State

27. The State argues that in order for the international justice system to be activated, a violation of human rights must have occurred and that violation must be attributable to a State party of the Organization of American States, which did not occur in this case, since Mr. Palma was disappeared by ordinary citizens. International responsibility cannot be attributed to the Ecuadorian State, therefore, for a crime that was not committed by its agents since that would vitiate the inter-American system for the protection of human rights.

28. The State argues that it launched a serious and effective investigation leading to the discovery of the parties responsible for the crime and that these persons were punished according to the country's domestic legislation. The State indicates that by virtue of the March 19, 2001 judgment issued by the Sixth Criminal Court of Manabi, Freddy Simón Contreras, Lenin Ordóñez Ortiz, and Stanley Domínguez Avilés were sanctioned for the kidnapping and murder of Marco Bienvenido Palma Mendoza. The State contends that the guilty parties appealed the verdict to the cassation court, but that the appeal was rejected. It points out that the sentence was upheld by the Second Criminal Chamber of the Supreme Court of Justice on June 26, 2002.

29. With regards to the petitioners' allegation that there is a civil liability that has not been repaired, the State argues that the Ecuadorian legal system has effective recourse for obtaining indemnity from those liable for civil damages, which is oral summary proceedings (*juicio verbal sumario*).⁶ It contends that such proceedings would be effective recourse in this case in as much as the goal is to indemnify existing patrimonial damages, that is to say, the civil liability for damages allegedly incurred.

30. The State maintains that the petition presented by the petitioners does not comply with the requirement of Article 47(b) of the Convention because no facts have been presented that imply a violation of the provisions contained in that international instrument. For that reason, it asks the IACHR to declare the case inadmissible.

31. The State also argues that it is not the role of the IACHR to act as a quasi-judicial fourth instance and review the decisions of national courts.⁷ It contends that the Commission can only review judgments made by national courts when there is a violation of one of the rights enshrined in the American Convention, a situation that is not present in this case.

32. In relationship to the alleged violation of Articles 4 (right to life), 5 (right to humane treatment), and 7 (right to personal liberty) of the Convention, the State asserts that since the population at first suspected that military intelligence agents had been involved in the kidnapping and execution of Mr. Palma, the Attorney General of the State, on September 27, 1999, asked the Intelligence Division of the Ecuadorian Land Forces, an entity attached to the Ministry of National Defense, for information about Mr. Palma's situation. It asserts that the director of that entity began the pertinent investigations to gather information and, based on this investigation, it was determined that "the Armed Forces of Ecuador did not at any time participate in the detention and/or kidnapping of the citizen Marco Bienvenido Palma Mendoza."

⁶ The State asserts that in accordance with Article 331 of the Criminal Code of Procedure applied to the events of this case: "in the case of a guilty verdict, a suit for damages shall not suspend the execution of the sentence and shall be substantiated before the president of the criminal court, in oral summary proceedings and in a separate log."

⁷ In its written communication received May 31, 2006, the State cites Resolution 29/88 of the Inter-American Commission related to Case 9260, contained in the Annual Report of the IACHR 1987-1988, p. 161. para. 5.

33. The State points out that according to additional information provided by various media sources—information that is in the public domain—Mr. Palma’s death is related to the murder of congressman Jaime Hurtado and directly involves the former Ambassador of Ecuador in the Republic of Mexico, Medardo Cevallos Gómez. The State indicates that according to the statements of prisoner Lenin Ordóñez, Mr. Palma was murdered by order of the son of the former Ambassador in May 1997. It asserts that according to the investigation carried out in June 1998, Lenin Ordóñez participated in the disappearance of Marco Bienvenido Palma Mendoza, who worked for the Cevallo group at the time.

34. The State maintains that based on statements made by Lenin Ordóñez within the proceedings related to the deaths of Mr. Palma and Jhon Mero Parrales, the Tenth Criminal Court Judge of Manabí ordered prison sentences for Medardo Cevallos Pinan and others named in the statements.

35. The State contends that the guilty verdict of March 19, 2001 showed that the participation of State agents has not been demonstrated in the crime perpetrated against Mr. Palma and, therefore, that there is no basis upon which to attribute responsibility to the State. The State asserts that, while the right to life has been violated by private parties in this case, the State has conducted an investigation that led to the punishment of the guilty parties. In this sense, it maintains that the State did not violate Articles 4, 5, and 7 of the American Convention.

36. With respect to the alleged violation of Articles 8.1 and 25.1 of the Convention, the State argues that in this case, the State apparatus undertook a serious and appropriate investigation until the parties responsible for the violation were discovered and punished according to Ecuadorian law, in spite of the complexity that characterizes an investigation of this type. The State argues that this investigation culminated in the judgment issued March 19, 2001 by the Sixth Criminal Court of Manabí against Freddy Simón Contreras, Lenin Oswaldo Ordoñez Ortiz, and Stanley Vicente Domínguez Avilés for the kidnapping and murder of Marco Bienvenido Palma Mendoza and Jhon Mero Parrales. It indicates that the events described by the family members of Mr. Palma did not take place with the support and tolerance of public power structures.⁸

37. The State asserts that Article 47 of the Convention establishes that the Commission shall declare a petition inadmissible when it lacks one of the requirements of Article 46, that is, when remedies under domestic law have not been exhausted or when the petition does not state facts that tend to establish a violation of the rights guaranteed by this Convention. The State contends that in this case, the alleged facts do not characterize a violation of the Convention, and that, furthermore, domestic remedies have not been exhausted. As a result, the State contends that this case should be declared inadmissible and archived in accordance with Article 47 (b) of the American Convention.

⁸ The State cites the judgments of the Inter-American Court of Human Rights case *Velásquez Rodríguez Vs. Honduras* . Merit. Judgment of July 29, 1988. Ser. C. No. 4. para. 173; and the *Godínez Cruz Vs. Honduras* case. Preliminary Objections. Judgment of June 26, 1987. Ser. C. No. 3. para. 183, among others.

IV. ANALYSIS OF ADMISSIBILITY

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

38. The petitioners are empowered, in principle, by Article 44 of the American Convention to lodge petitions before the Commission. The victims named in the petition are individual people whom the Ecuadorian State has committed to respect and to guarantee the rights enshrined in the Convention. The Commission notes that Ecuador has been a State party to the Convention since December 28, 1977, the date in which it ratified the instrument. Therefore, the Commission has *ratio personae* competence to examine the petition.

39. Likewise, the Commission has *ratione loci* competence to examine the petition since this petition alleges violations of rights protected in the American Convention which have taken place within the territory of Ecuador, a State party to the aforementioned treaty. The Commission has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in the Convention was already in effect for the State on the date in which the events alleged in the petition took place. Finally, the Commission has *ratione materiae* competence because the petition reports possible violations of human rights that are protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

40. For a grievance be admitted for a presumed violation of the provisions of the American Convention, it must comply with the requirements established in Article 46(1) of that international instrument. Article 46(1) of the Convention establishes that in order to determine the admissibility of a petition or a communication presented before the IACHR in accordance to Articles 44 or 45 of the Convention, the remedies under domestic law must have been pursued and exhausted, according to generally recognized principles of international law.⁹

41. In this sense, the Inter-American Court of Human Rights (hereinafter “the Court”) has manifested that “[...] according to generally recognized principles of international law and international practice, the rule requiring prior exhaustion of domestic remedies is conceived in the interest of the State, since it seeks to excuse it from responding before an international organization for actions imputed to it, before having had the occasion to remedy the matter with its own means.”¹⁰ In attention to this, the State’s argument that domestic remedies have not been exhausted must be heard in the admissibility phase of the procedures before the Commission.¹¹

42. In this case, the petitioners argue that on May 17, 1997, that is, one day after the kidnapping or disappearance of Mr. Palma, his common-law wife, Lidia Guadalupe Bravo, reported the event at the Eleventh Criminal Court of Manabi. They also maintain that

⁹ Inter-American Court of Human Rights, case of *the Moiwana Community Vs. Suriname*. Preliminary Objections, Merits Reparations, and Costs. Judgment of June 15, 2005. Ser. C. No. 124. para. 48; Case of *Tibi Vs. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Ser. C. No. 114. para. 48; and Case of *Herrera Ulloa Vs. Costa Rica*. Preliminary Objections, Merits Reparations, and Costs. Judgment of July 2, 2004. Ser. C. No. 107. para. 80.

¹⁰ Inter-American Court of Human Rights. *The Matter of Viviana Gallardo et. al.* Ser. A. No. 101. para. 26.

¹¹ Inter-American Court of Human Rights. Case of *Caso Nogueira de Carvalho et.al. Vs. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2005. Ser. C. No. 137. para. 49; and the case of *The Serrano Cruz Sisters Vs. El Salvador*. Preliminary Objections. Judgment of November 23, 2004. Ser. C. No. 118, para. 135.

Mr. Palma's family presented a writ of habeas corpus before the Mayor's Office of the Metropolitan District of Quito on May 30, 1997 since at the time of these events, there was no other remedy in Ecuadorian legislation to locate an illegally detained person and ensure that he or she obtain his freedom or be placed under the orders of a competent judicial authority. They point out that based on the statement given by Mr. Lenin Ordóñez Ortiz in the year 2000, the case involving Mr. Marco Bienvenido Palma Mendoza's disappearance was reopened on January 22, 2001 and that a guilty verdict was issued on March 19, 2001 against three of the direct perpetrators of his kidnapping and murder. They indicate that charges were dismissed against the other people involved in the crime because of deficiencies in the investigation.

43. The State argues that it is not the function of the IACHR to act as a fourth instance and review the decisions of national courts, since in this case there was a serious and effective investigation conducted and a guilty verdict was issued on March 19, 2001 which was upheld by the Second Criminal Chamber of the Supreme Court of Justice on June 26, 2002. Additionally, it argues that the petitioners did not exhaust domestic remedies since it was possible for them to file for oral summary proceedings in order to obtain compensation from those liable for the civil damages and that this recourse would be an effective way to seek reparations for material damages.

44. In this case, the Commission observes that for the purposes of providing an appropriate recourse to remedy the alleged violations of human rights, it is incumbent upon the State, in light of its obligation to take punitive action, to initiate proceedings to identify, prosecute, and punish all those responsible for committing these crimes, diligently pursuing every stage of the proceedings to a conclusion.¹² Because of this, the Commission believes that oral summary proceedings would not constitute an adequate and effective recourse in this case to remedy the violations alleged by the petitioners, and that the remedy was not something that they themselves could exhaust.

45. Therefore, the Commission believes that the writ of *habeas corpus* filed on May 30, 1997 and the judgment of the Second Criminal Chamber of the Supreme Court of Justice of June 26, 2002, have satisfied the requirement that remedies of domestic jurisdiction be exhausted as established in Article 46 (1) of the American Convention.

2. Deadline for lodging the petition with the Commission

46. Article 46(b) of the American Convention establishes that for a petition to be deemed admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

47. For the purposes of establishing whether the petition has been lodged within a reasonable time period in accordance with Article 32 of the Rules of Procedure of the Commission, the IAHCN must consider the date on which the alleged violation of rights occurred and the circumstance of each case.

48. Keeping in mind that Mr. Palma was disappeared on May 16, 1997 and that the petition was received by the IACHR on September 24, 1997, the Commission believes that the petition was presented in a timely fashion and that the requirement for admissibility in terms of the time period for presentation should also be considered satisfied.

3. Duplication of procedures and *cosa juzgada*

¹² IACHR, Report No. 27/99, Case 11.697, Ramón Mauricio García-Prieto Giralte of March 9, 1999, para. 40.

49. The petition file does not contain any information indicating that the present matter may be pending another international proceeding or that it has been previously decided by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions established in Article 46(1)(d) and in Article 47(d) of the American Convention are not applicable.

4. Characterization of the alleged violations

50. Article 47(b) of the Convention establishes that a petition that does not state facts that tend to establish a violation of human rights is not admissible. The Commission's examination of the matter at this stage of the proceedings is not aimed at establishing whether a violation of rights has been committed, but rather at establishing whether the events in question, if proven, could tend to demonstrate the violation of a protected right. This is necessarily a preliminary, or *prima facie*, analysis and does not imply a prejudgment on the merits of the matter.

51. In this case, the petitioners argue that the State did not conduct an effective investigation into the murder of Mr. Palma and that therefore his right to life was not guaranteed. In addition, the insufficient diligence on the part of judicial authorities to clarify the events adequately and the unreasonable time period in which they acted signified hardships in terms of the humane treatment of the family members and was also a violation of the rights to a fair trial and to judicial protections.

52. For its part, the State asserts that the facts of the case do not characterize any infringement of the provisions of the American Convention since the presumed disappearance of Mr. Palma was resolved through the guilty verdict reached on January 19, 2001 and upheld on June 26, 2002 against Freddy Contreras, Lenin Ordóñez, and Stanley Vicente, private actors and the perpetrators of the kidnapping and murder of Mr. Palma.

53. Keeping in mind the foregoing arguments, and the State's argument that the Commission is not a fourth instance court, the Commission observes that while the protection offered by the bodies of the inter-American system of human rights is of a subsidiary or complementary nature, as the very preamble of the American Convention on Human Rights implies,¹³ the Commission does have the competence to declare a petition admissible and make a decision about its merits when the petition refers to a domestic ruling that has allegedly been issued outside of due process or in violation of any other right guaranteed by the Convention.¹⁴

54. The Commission notes, in the present case, that in spite of the fact that a guilty verdict was issued against three people for having been the direct perpetrators of the detention and death of Mr. Palma, there are allegations of deficiencies in terms of the Ecuadorian State's responsibility to investigate, the length of time it took for the investigation to be conducted, and the partial impunity that resulted from the process. As a result, the Commission believes that the facts and allegations presented could characterize a violation of the right to life and person liberty of Marco Bienvenido Palma as well as the family members' rights to humane treatment, a fair trial, and judicial protection and, therefore, concludes that it is competent to examine the grievances presented by the petitioners on the alleged violation of Articles 4(1), 5(1), 7(6), 8(1), and 25(1) of the American Convention, in accordance with Article 1(1) of the same instrument, to the detriment of Mr. Palma and his family.

¹³ IACHR, Report No. 92/08, Petition 12.305, Inadmissibility, *Julio César Recabarren and María Lidia Callejos, Argentina* October 31, 2008, para. 44; and Report No. 122/01, Petition 0015/00, Inadmissibility, *Wilma Rosa Posadas, Argentina*, October 10, 2001, para. 10.

¹⁴ IACHR, Report No. 39/99, Case 11.673, *Santiago Marzióni, Argentina*, March 11, 1999, para. 24.

55. Finally, the IACHR notes that according to the legislation in effect at the time of the crime, Mr. Palma's family members had at their disposition—and in fact used—the *habeas corpus* remedy to try to identify the whereabouts of Marco Bienvenido Palma Mendoza. According to the facts of the case, existing precedents in the Inter-American system, and the principle of *iura novit curiae*, the Commission concludes that it is competent also to examine the issue of non-compliance with Article 2 of the Convention.

56. Therefore, the Commission considers the petition admissible according to the requirements established in Articles 46 and 47 of the American Convention and, in application of Article 36(3) of its Rules of Procedure, proceeds with the analysis of the merits of this case.

V. ANALYSIS OF MERITS

A. Consideration of the facts

57. The arguments and the evidence presented before the Commission show that on May 16, 1997, around 9:30 a.m., Mr. Marco Bienvenido Palma Mendoza, 45 years of age,¹⁵ was in his car with his eleven year old son in the district of Manta, province of Manabí. When he was in the area of the Ecuadorian Professional Training Service (hereinafter SECAP), he was intercepted by a white double cabin pick-up truck without license plates.¹⁶

58. Three heavily armed men dressed in civilian clothing and wearing ski masks got out of the pick-up truck.¹⁷ The men were part of the security team of businessman Medardo Cevallos¹⁸ and were former members of the Ecuadorian Armed Forces (FAE).¹⁹ One of them took Mr. Palma's son out of the car,²⁰ and the son ran to his mother's house to

¹⁵ Marco Palma was born November 3, 1951, as shown by: Birth certificate issued by the General Office of Civil Registry, Identification, and Registration of the Provincial Headquarters of Manabí on March 13, 2000, appendix to the communication from the August 24, 2000 communication from the State; Judgment of March 19, 2001, Criminal Court of Manabí, Criminal Case No. 18-2001. Appendix to petitioners' written communication of November 17, 2005.

¹⁶ Grievance presented by Mrs. Lidia Guadalupe Bravo Bravo, the common-law wife of Mr. Marco Palma Mendoza, before the Criminal Court Judge XXI of Manabí on May 17, 1997. Appendix to the August 24, 2000 communication of the State; Judgment of March 19, 2001, Criminal Court of Manabí, Criminal Case No. 18-2001. Appendix to the November 17, 2005 communication of the petitioners.

¹⁷ Grievance presented by Mrs. Lidia Guadalupe Bravo Bravo, the common-law wife of Mr. Marco Palma Mendoza, before the Criminal Court Judge XXI of Manabí on May 17, 1997. Appendix to the August 24, 2000 communication of the State; Judgment of March 19, 2001, Criminal Court of Manabí, Criminal Case No. 18-2001. Appendix to the November 17, 2005 written communication of the petitioners.

¹⁸ Statement of Lenin Ordóñez in Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the National Police of Ecuador, addressed to the Chief of the Manta Judicial Police. Appendix to the November 17, 2005 communication of the petitioners.

¹⁹ Freddy Contreras worked in the FAE for 13 years in the special forces group. (In: Certification of entry and discharge from the FAE Personnel Office from January 16, 1996, signed by Carlos Pazos, FAE lieutenant, addressed to Freddy Contreras); Stanley Dominguez worked in the FAE for 5 years. (In: Resolution of Ministry of National Defense, July 30, 1998, signed by Edwin Montoya, chief of staff of the National Defense Ministry, addressed to Stanley Dominguez); Freddy Simón Contreras worked in the FAE for 12 years. (In: Certification of entry and discharge, FAE Personnel Office in response to request made by the interested party on January 16, 1996; signed by Carlos Pazos-Raza, Chief of the Administrative Department of the FAE Personnel Office). Appendices to the August 24, 2000 communication of the State.

²⁰ Instructive testimony (*testimonio instructivo*) of Luis Miguel Palma Bravo before the Eleventh Criminal Court of Manabí, of April 5, 2000.

tell her what had happened.²¹ The other men put Mr. Palma inside their pick-up truck and drove off in a direction unknown.²²

59. Moments before these events, Manuel Armijos, SECAP security guard, approached the white pick-up truck, which was parked in front of the SECAP entrance, to find out what they were doing in that place.²³ Before he could get to the pick-up truck, one of the men in the truck approached him and told him not to worry because they belonged to the "intelligence force" and he showed him identification.²⁴

60. The same May 16, 1997, around 10:00 a.m., Mr. Palma's common-law wife, Lidia Guadalupe Bravo, found out from her son that Marco Bienvenido Palma Mendoza had been kidnapped.²⁵ Immediately Mrs. Lidia Bravo mobilized along with family members, friends, and neighbors to look for Mr. Palma in police stations and jails without obtaining any positive response. They also publicized what had happened in local and national media.²⁶

61. On May 17, 1997, Mrs. Lidia Bravo filed a report on the kidnapping of Mr. Palma at the Eleventh Criminal Court of Manabí and requested that the relevant investigations be initiated.²⁷ She also requested that official notice be given to the Criminal Investigations Office (O.I.D) of the Manta Police in order to obtain information about the events she had reported.²⁸ Mrs. Bravo reported that at the place the kidnapping had occurred, a SECAP staff member had indicated to them that the white truck had arrived accompanied by a blue FAE pick-up truck and another car with uniformed military personnel who were in communication with people inside the white pick-up truck and that they were making signs and gesturing to each other.²⁹

²¹ Grievance presented by Mrs. Lidia Guadalupe Bravo Bravo, the common-law wife of Mr. Marco Palma Mendoza, before the Criminal Court Judge XXI of Manabí on May 17, 1997. Appendix to the August 24, 2000 communication of the State.

²² Grievance presented by Mrs. Lidia Guadalupe Bravo Bravo, the common-law wife of Mr. Marco Palma Mendoza, before the Criminal Court Judge XXI of Manabí on May 17, 1997. Appendix to the August 24, 2000 communication of the State; Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix 4 to the written communication of the petitioners received December 7, 2005.

²³ Interview with Manuel Armijos. Police Report No. 97-218-OID-MM-PREL of May 23, 1997, signed by Lino Caicedo, investigator of the Ecuadorian National Police, addressed to the Assistant Chief of Police of the Manta Criminal Investigations Unit. Appendix to the August 24, 2000 communication of the State. Appendix to the petitioners' communication dated November 17, 2005.

²⁴ Police Report No. 97-218-OID-MM-PREL of May 23, 1997, signed by Lino Caicedo, investigator of the Ecuadorian National Police, addressed to Assistant Chief of Police of the Manta Criminal Investigations Unit. Appendix to the August 24, 2000 communication of the State; Appendix to the communication of the petitioners dated November 17, 2005.

²⁵ Report filed by Mrs. Lidia Guadalupe Bravo Bravo, common-law wife of Mr. Marco Palma Mendoza, before Criminal Judge XXI of Manabí on May 17, 1997. Appendix to the communication of the State from August 24, 2000.

²⁶ Report filed by Mrs. Lidia Guadalupe Bravo Bravo, common-law wife of Mr. Marco Palma Mendoza, before Criminal Judge XXI of Manabí on May 17, 1997. Appendix to the communication of the State from August 24, 2000

²⁷ Report filed by Mrs. Lidia Guadalupe Bravo Bravo, common-law wife of Mr. Marco Palma Mendoza, before Criminal Judge XXI of Manabí on May 17, 1997. Appendix to the communication of the State from August 24, 2000

²⁸ Report filed by Mrs. Lidia Guadalupe Bravo Bravo, common-law wife of Mr. Marco Palma Mendoza, before Criminal Judge XXI of Manabí on May 17, 1997. Appendix to the communication of the State from August 24, 2000.

²⁹ Report filed by Mrs. Lidia Guadalupe Bravo Bravo, common-law wife of Mr. Marco Palma Mendoza, before Criminal Judge XXI of Manabí on May 17, 1997. Appendix to the communication of the State from August 24, 2000. Police Report No. 97-218-OID-MM-PREL of May 23, 1997, signed by Lino Caicedo, investigator of the Ecuadorian National Police, addressed to the Assistant Chief of Police of the Manta Criminal Investigations Unit. Appendix to the August 24, 2000 communication of the State; Statement of prisoner, Lenin Ordóñez. Police Report

62. On that same May 17, 1997, the Eleventh Criminal Court Judge of Manabí asked the Chief of the Manta O.I.D. to conduct an exhaustive investigation of the events reported by Mrs. Lidia Guadalupe Bravo and that it send its results to that judicature.³⁰

63. On May 22, 1997, Mr. Carlos Alberto Palma Mendoza, brother of Marco Bienvenido Palma Mendoza, presented a writ of *habeas corpus* at the Municipality of Manta.³¹ On May 22, 1997, the Mayor of Manta asked the Commander of Combat Wing No. 23, the Captain of the Port of Manta, the Chief of the Manta Police Commando, the O.I.D. Chief, the Eight Criminal Court Judge of Manabí, the Traffic Court judge, and the national police commissioners to bring Mr. Palma to him personally and to present the relevant documents and reports.³²

64. On May 23, 1997, the Manta O.I.D. sent the Eleventh Criminal Court Judge of Manabí a preliminary report of the investigations carried out on the kidnapping of Mr. Marco Bienvenido Palma Mendoza.³³ The report contains interviews conducted with Mrs. Lidia Guadalupe Bravo, Mr. Palma's common law wife; Mr. Manuel Armijos, who was providing security guard services at SECAP on May 16, 1997, before the kidnapping; Mr. Francisco Andrade, who was providing security guard services at SECAP on May 16, 1997 at the moment in which Mr. Palma's kidnapping occurred; Octavio Alcívar Arteaga, SECAP Director; Mrs. Zambrano Sánchez, who had a food sales kiosk in front of SECAP, and Mr. Palma's son, who was with his father at the time of the kidnapping.³⁴

65. With regard to the possible participation of FAE members in the kidnapping of Mr. Palma, the report concluded that moments before the kidnapping, a FAE vehicle had arrived at the SECAP facilities carrying members of that institution to prepare two courses that were going to be taught and that "the kidnapping had occurred at the moment that a conscript was waiting in the vehicle," and so it was a coincidence and that it had not been possible to establish any connection between that event and the kidnapping.³⁵ The preliminary report attaches FAE documents that certify that Mr. Palma was not detained in any FAE office and that institution did not have any vehicle fitting the description of the one used in the kidnapping.³⁶

No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to written communication from the petitioners received on December 7, 2005.

³⁰ Official letter N° 640-97 of May 17, 1997 addressed to the Chief of the Criminal Investigations Unit of Manta, signed by Attorney Alfredo Pinargotty Alonzo, Criminal Court Judge XI of Manabí. Appendix to the August 24, 2000 communication of the State.

³¹ *Habeas corpus* petition presented by Mr. Carlos Alberto Palma Mendoza, signed by Ing. Jorge Zambrano Cedeño, Mayor of Manta and received in the Office of the Assistant Chief of the Manta O.I.D. on May 22, 1997. Appendix to the August 24, 2000 communication of the State.

³² *Habeas Corpus* petition presented by Mr. Carlos Alberto Palma Mendoza, signed by Ing. Jorge Zambrano Cedeño, Mayor of Manta and received in the Office of the Assistant Chief of the Manta O.I.D. on May 22, 1997. Appendix to the August 24, 2000 communication of the State.

³³ Official O.I.D. letter N° 97-349-O.I.D-MM of May 23, 1997, signed by Wilson Alulema Miranda, Police Major, and Assistant Chief of the Manta O.I.D. Appendix to the August 24, 2000 communication of the State; Appendix to the communication of the petitioners dated November 17, 2005.

³⁴ Official O.I.D. letter N° 97-349-O.I.D-MM of May 23, 1997, signed by Wilson Alulema Miranda, Police Major, and Assistant Chief of the Manta O.I.D. Appendix to the August 24, 2000 communication of the State; Appendix to the communication of the petitioners dated November 17, 2005.

³⁵ Official O.I.D. letter N° 97-349-O.I.D-MM of May 23, 1997, signed by Wilson Alulema Miranda, Police Major, and Assistant Chief of the Manta O.I.D. Appendix to the August 24, 2000 communication of the State; Appendix to the communication of the petitioners dated November 17, 2005.

³⁶ Official O.I.D. letter N° 97-349-O.I.D-MM of May 23, 1997, signed by Wilson Alulema Miranda, Police Major, and Assistant Chief of the Manta O.I.D. Appendix to the August 24, 2000 communication of the State; Appendix to the communication of the petitioners dated November 17, 2005.

66. On May 30, 1997,³⁷ the petitioners presented a writ of *habeas corpus* before the Mayor of the Metropolitan District of Quito, in which they declared that Mr. Palma had been detained, possibly at the orders of Military Intelligence, the Army General Command, the Head of Military Intelligence, or the Military Intelligence Group.³⁸ The Mayor's office ordered various authorities to bring Mr. Palma in person to the office on June 6, 1997 along with any relevant arrest warrant.³⁹ This petition, did not, however, generate any result to clarify the whereabouts of Mr. Palma.

67. On May 30, 1997, the daily newspaper *El Universo* from the city of Guayaquil published a notice reporting that two weeks earlier two cadavers in an advanced state of decomposition and with signs of violence had been found on the banks of the Norcay River, near the Jesús de María parish of the district of Naranjal, in the province of Guayas.⁴⁰ According to information from the press, the political lieutenant of Jesús María parish, Fanny Valladolid, oversaw the retrieval of the bodies and ordered them to be taken to the morgue⁴¹ in the Jesús de María cemetery, where the medical and legal examination was done. Then they proceeded to bury the bodies in the cemetery of that jurisdiction since no family members had come forward to claim them.⁴² The body had "a gag in its mouth, a strip of cloth around its neck, and a fabric inside the mouth."⁴³

68. On July 1, 1997, the Eleventh Criminal Court of Manabí took charge of the report filed by Mrs. Lidia Guadalupe Bravo and issued the order setting the matter for trial.⁴⁴

69. On July 21, 1997, the petitioners presented a grievance about the alleged participation of members of the Navy in the detention of Mr. Palma, which was responded to via official letter of August 8, 1997 from the Chief of the Navy High Command.⁴⁵ In response, the Chief of the Navy High Command reported that after conducting a "detailed" investigation into the complaint filed, its results showed that no navy division nor any

³⁷ Alleged by the petitioners. Not contradicted by the Estado.

³⁸ Mayor's Office of the Metropolitan District of Quito, June 13, 1997, signed by Dolores Pérez, Secretary General of the Metropolitan Council of Quito. Appendix to the petitioners' communication dated March 20, 1998.

³⁹ Mayor's Office of the Metropolitan District of Quito, June 13, 1997, signed by Dolores Pérez, Secretary General of the Metropolitan Council of Quito. Appendix to the petitioners' communication dated March 20, 1998 (This communication was sent to the Chief of the Judicial Technical Police, to the Director of the Center of Provisional Detention, to the Director of the Center for Provisional Detention, to the Director of the Center of Social Rehabilitation for Men of Quito, No. 1, 2, and 3 y and to the Attorney General. This is established in the petitioners' communication received December 7, 2005).

⁴⁰ Article published on May 30, 1997, in the Guayaquil newspaper *El Universo*, p. 14. Appendix to the August 24, 2000 communication of the State.

⁴¹ Article published on May 30, 1997, in the Guayaquil newspaper *El Universo*, p. 14. Appendix to the August 24, 2000 communication of the State.

⁴² Supplementary Report of the Ecuadorian National Police No. No. 2000-150-PJ-M-COMPL from March 3, 2000, signed by Nelson Carrión, investigator of the Ecuadorian National Police. Appendix to the August 24, 2000 communication of the State.

⁴³ Interview with Miss Abg. Fanny Valladolid in the Supplementary Report of the Ecuadorian National Police No. 2000-150-PJ-M-COMPL of March 3, 2000 signed by Nelson Carrión, investigator of the Ecuadorian National Police. Criminal Case 319-97. Appendix to the August 24, 2000 communication of the State.

⁴⁴ XI Criminal Court of Manabí, July 1, 1997, signed by attorney Bernardo Zambrano, Secretary of the XI Court of Manabí, Manta and by the XI Criminal Court Judge of Manabí.

⁴⁵ Official letter ESMAAR-SED-062-0 of August 8, 1997, addressed to Sister Elsi Monge, President of the Ecumenical Commission of Human Rights (CEDHU) and signed by Timoshenko Guerrero Rivadeneira, Vice-Admiral, Chief of the Navy High Command. Appendix to petitioners' communication dated March 20, 1998.

personnel belonging to the institution had anything to do with the detention and imprisonment of Mr. Palma.⁴⁶

70. Subsequently, the petitioners sent a communication addressed to then Interim President of the Republic, Dr. Fabián Alarcón Rivera, telling him about Mr. Palma's kidnapping.⁴⁷ On October 3, 1997, the Minister of the Interior and Police communicated to the petitioners that by disposition of the Ministry of National Defense, an investigation had already been conducted on the alleged kidnapping of Marco Bienvenido Palma Mendoza, and that results showed that at no time had he been detained by members of the Armed Forces.⁴⁸

71. On June 9, 1998, the Chief of the Manta Police O.I.D. was informed that, as part of the investigation being conducted in that office on the kidnapping of Mr. Palma, Attorney Ignacio Reyes Cadenas and Lidia Bravo, the common-law wife of Marco Bienvenido Palma Mendoza, had been interviewed and that they had indicated that Mr. Lenin Ordóñez's lover, known as "Bélgica," had commented to a woman friend that Mr. Palma was dead and that he had been killed by Mr. Lenin Ordóñez, who was working as a member of the PECIA security team, which had new vehicles and sophisticated security equipment.⁴⁹ The police report indicates that Mr. Palma's son had said that one month before his father's disappearance, he had encountered Mr. Lenin Ordóñez and had had an argument with him.⁵⁰

72. On September 1, 1998, the National Investigations Office of the Manta O.I.D. reported to the Manta O.I.D. chief on the investigations, interviews, and procedures conducted, indicating that no information had been obtained on the whereabouts of Mr. Palma.⁵¹

73. On January 25, 1999, the petitioners sent a communication to the Minister of National Defense, General José Gallardo Román, in which they asked him to initiate an investigation into the disappearance of Mr. Palma and the possible involvement of the Armed Forces, based on information supplied by the attorney Ignacio Reyes Cárdenas, lawyer for Mr. Palma's common-law wife.⁵² On March 17, 1999, the Ministry of National Defense communicated to the petitioners that the intelligence personnel of the Ecuadorian Air Force, stationed at the Eloy Alfaro de Manta Air Base⁵³ bore no responsibility and that it

⁴⁶ Official letter ESMAAR-SED-062-0 of August 8, 1997, addressed to Sister Elsi Monge, President of CEDHU and signed by Timoshenko Guerrero Rivadeneira, Vice-Admiral, Chief of the Navy High Command. Appendix to petitioners' communication dated March 20, 1998.

⁴⁷ Official letter N° 0347 of the Ministry of the Interior, October 3, 1997, addressed to Sister Elsie Monge, President of CEDHU and signed by Ec. César Verduga Vélez, Minister of Interior and Police. Appendix to petitioners' communication dated March 20, 1998.

⁴⁸ Official letter N° 0347 of the Ministry of the Interior, October 3, 1997, addressed to Sister Elsie Monge, President of CEDHU and signed by Ec. César Verduga Vélez, Minister of Interior and Police. Appendix to petitioners' communication dated March 20, 1998.

⁴⁹ Provincial Commando of Manabí N° 4, Report sent to the Chief of the Manta O.I.D. on June 9, 1998, signed by Lino Caicedo Bonifacio, Police Sergeant. Appendix to the communication of the State dated August 24, 2000.

⁵⁰ Provincial Commando of Manabí N° 4, Report sent to the Chief of the Manta O.I.D. on June 9, 1998, signed by Lino Caicedo Bonifacio, Police Sergeant. Appendix to the communication of the State dated August 24, 2000.

⁵¹ National Investigations Office, Offices of the Chief- Assistant Chief of the Manta-Manabí O.I.D. Report No. 98-490-OID-MM of September 1, 1998, signed by Sgt. Lino Caicedo Bonifacio, Investigator. Appendix to the December 1, 1998 communication of the State.

⁵² Official letter No. 034-CEDHU/99 of January 25, 1999, signed by Elsie Monge, president of CEDHU, addressed to José Gallardo Román, Minister of National Defense. Appendix to the petitioners' communication dated February 22, 1999.

⁵³ Official letter No. 990281-MJ-2-b of March 17, 1999, signed by Oscar Isch, Brigadier General of the Ministry of National Defense, addressed to Sister Elsi Monge, Executive Director of CEDHU. Appendix to the petitioners' communication dated May 31, 1999.

was possible that the disappearance of Mr. Palma had occurred for reasons of revenge or blackmail, since "he is comfortable economically and since his background included involvement in homicide."⁵⁴

74. On February 16, 2000, Mr. Lenin Oswaldo Ordóñez was arrested by order of a competent judge in the city of Ambato, province of Tungurahua, based on an existing denunciation against him and other people for the unauthorized appropriation of vehicles, firearms, and communications equipment from the PECIA company, property of the Cevallos family.⁵⁵ When it was time to make his statement, Mr. Ordóñez indicated that he wanted, voluntarily, to make a statement about the kidnapping and death of Mr. Palma and another person he knew as "NN"⁵⁶.

75. In his statement, Mr Ordóñez said that in the month of May 1997, when he was working as the Chief of Security for the Cevallos family businesses, unidentified criminals had stolen firearms, computers, tires, and a fax machine in the "Manabí Motors" company, and so Mr. Medardo Cevallos had asked him to take charge of the investigation, offering him everything he would need to do that work.⁵⁷ Lenin Oswaldo Ordóñez said that he called together Freddy Contreras, Vicente Domínguez, and Jhonny Menéndez, the bodyguards of the executives of the Cevallos family businesses, in order to conduct various investigations, which led to the identification of Mr. Palma and another person known as "*el Flaco*" as the people responsible for the crime.⁵⁸

76. He stated that when they kidnapped Mr. Palma on May 16, 1997, they took him to Manabí Motors to change vehicles and that they took him then to another property belonging to the Cevallos family where the other kidnapped person was also located and where he confessed that he had participated in the robbery.⁵⁹ He said that since Mr. Palma told them that they were never going to recover the stolen objects, he communicated with Medardo Cevallos and Ramón Bravo Mera who ordered the two kidnapped persons be taken to the business that the Cevallos family had in Palestina and later, to Puerto Inca and to Puerto Olmedo.⁶⁰

⁵⁴ Preliminary Report of the Agency, Appendix to Official letter 990281-MJ-2-b of March 17, 1999, signed by Oscar Isch, Brigadier General of the Ministry of National Defense, addressed to Sister Elsie Monge, Executive Director of CEDHU. Appendix to the petitioners' communication dated May 31, 1999.

⁵⁵ Police Report No. 2000-116-PJ-M of February 21, 2000, signed by Aladino Acosa, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000.

⁵⁶ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners' communication dated November 17, 2005.

⁵⁷ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners' communication dated November 17, 2005.

⁵⁸ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners' communication dated November 17, 2005.

⁵⁹ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners' communication dated November 17, 2005.

⁶⁰ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners' communication dated November 17, 2005.

77. Mr. Lenin Oswaldo Ordóñez said that they got past the police checkpoints on the road by presenting the identification they had as former members of the FAE.⁶¹ He said that they did not give the kidnapped persons anything to eat for five days, only water, and that they had kept them tied up.⁶² He said that Freddy Contreras had killed Marco Bienvenido Palma and Jorge Jhon Mero Parrales (known as “*el Flaco*”) because they had tried to escape.⁶³ He said that afterwards they threw the dead bodies into the Norcay River⁶⁴ and that the bodies had been found by farmers from the Jesús María parish in the district of Naranjal on May 26, 1997.⁶⁵

78. Based on the statements made by Lenin Oswaldo Ordóñez, the corpses of Marco Bienvenido Palma Mendoza and Jorge Jhon Mero Parrales were exhumed.⁶⁶ Their bodies had been buried in the María José parish of the District of Naranjal, after having been found naked and without identification in the Norcay River on May 23 and 26 of 1997.⁶⁷

79. On February 29, 2000, the Superior Court of Quito ordered the arrest of Lenin Oswaldo Ordóñez Ortiz, Freddy Contreras, Medardo Cevallos Gómez, and Ramón Bravo Mera for purposes of investigation.⁶⁸

80. On March 9, 2000, Mr. Lenin Oswaldo Ordóñez Ortiz gave sworn testimony in the trial for the murder of Marco Bienvenido Palma Mendoza.⁶⁹ On March 13, 2000, a procedure was conducted to reconstruct the events of the crime.⁷⁰

81. On May 2, 2000, Mrs. Rosa Rufina Parrales, mother of murder victim Jhon Mero Parrales, asked the Eleventh Criminal Court Judge of Manabí—in view of the fact that she had learned “outside of the process of the trial” that Medardo Cevallos Balda, Medardo Cevallos Gómez-Piñán, Alberto Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Carlos Cevallos, Marcelino Gómez Ponce, Ramón Bravo Mera, Vicente Domínguez Avilez, Jhonny

⁶¹ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners’ communication dated November 17, 2005.

⁶² Manabí Criminal Court, Judgment of March 19, 2001. Appendix to the petitioners’ communication dated November 17, 2005.

⁶³ Manabí Criminal Court, Judgment of March 19, 2001. Appendix to the petitioners’ communication dated November 17, 2005.

⁶⁴ Manabí Criminal Court, Judgment of March 19, 2001. Appendix to the petitioners’ communication dated November 17, 2005.

⁶⁵ Police Report No. 2000-128-PJ-M-COMPL of February 26, 2000, signed by Aladino Zambrano, investigator of the Ecuadorian National Police, addressed to the Chief of the Manta Judicial Police. Appendix to the communication of the State dated August 24, 2000 and appendix to the petitioners’ communication dated November 17, 2005.

⁶⁶ As established in the judicial file, the identification and autopsy of the body of Marco Palma Mendoza was conducted on February 29, 2000 in the presence of his family members. See certificate of identification and autopsy carried out in Manta and signed by Attorney Roger Pico Benítez, XI Criminal Court Judge of Manabí; Atty. Bernardo Zambrano, Secretary; Dr. Camilo B. Andrade Carrillo, expert; Dr. Edwin G. Diaz Looor, expert. Appendix to the communication of the State dated August 24, 2000.

⁶⁷ Manabí Criminal Court, Judgment of March 19, 2001. Appendix to the petitioners’ communication of November 17, 2005.

⁶⁸ Superior Court of Quito, Official letter No. 419-CSQ-P of February 29, 2000, signed by Dr. Angel Ramírez Martínez, Secretary of the Presidency of the Superior Court of Quito. Appendix to the communication of the State dated August 24, 2000.

⁶⁹ Sworn statement of the accused Lenin Oswaldo Ordóñez Ortiz, in Manta on March 9, 2000, signed by the XI Criminal Court Judge of Manabí, Atty. Roger Pico Benítez. Appendix to the State’s communication of August 24, 2000.

⁷⁰ Certificate of crime reconstruction, Manta, March 13, 2000, signed by Atty. Roger Pico Benítez, XI Criminal Court Judge of Manabí, the Court Secretary, and two experts. Appendix to the communication of the State dated August 24, 2000.

Menéndez, Carlos Cedeño Vite, and Freddy Contreras had not had any participation in the death of her son, Jhon Mero PARRALES—to allow her to drop the charges she had lodged against these men and stated that she would not be pursuing any criminal or civil suits against them.⁷¹ In the same written document, Mrs. PARRALES indicated that she would continue to press charges against the primary party responsible for the death of her son, Mr. Lenin Ordóñez, as the only person liable for the accused crime.⁷²

82. On May 3, 2000, the family members of murder victim Jhon Mero PARRALES signed a written statement of commitment before a notary in which they expressed their agreement with the actions of Mrs. Rosa Rufina PARRALES Cedeño in dropping personal charges against the aforementioned men and their commitment to not pursue any civil or criminal suit against them.⁷³

83. On May 4, 2000, Mr. Palma's daughter, Mrs. Rosalía Mariuxi Palma Bravo, expressly dropped charges lodged against Medardo Cevallos Balda, Medardo Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Carlos Cevallos, Marcelino Gómez Ponce, Ramón Bravo Mera, Vicente Domínguez Avilés, Jhonny Menéndez, Carlos Cedeño Vite, and Freddy Contreras and also agreed not to bring any criminal or civil suit against them.⁷⁴ In the same written statement, Mrs. Palma Bravo indicated that she would continue to press charges against Lenin Ordóñez, as the primary party responsible for her father's murder and the only person liable for the accused crime.⁷⁵

84. On May 5, 2000, Mrs. Lidia Guadalupe Bravo, the common-law wife of Mr. Palma, signed a document of commitment at the Fourth Notary Public of the District of Manta, in representation of the minor and adult children of Mr. Palma in which she expressed her intention to join Mrs. Rosalía Mariuxi Palma Bravo in dropping charges against the aforementioned men and her commitment to not pursue any civil or criminal charges against them.⁷⁶

85. On May 9, 2000, Mrs. Perfelita Matilde Mendoza Aguayo, mother of Mr. Palma, filed personal charges against Medardo Cevallos Balda, Alberto Cevallos Gómez-Piñán, Medardo Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Ramón Bravo Mera, Carlos Cevallos, and Marcelino Gómez Ponce as the intellectual authors of the murder of her son; and against Lenin Oswaldo Ordóñez Ortiz, Freddy Simón Contreras Luna, Stanley Vicente Domínguez Avilés, Johnny Menéndez, and Carlos Vite, as material perpetrators of the murder of Marco Bienvenido Palma Mendoza.⁷⁷

⁷¹ Written statement led by Mrs. Rosa Rufina PARRALES Cedeño in criminal trial 319-97 of Lenin Ordóñez for the crime against persons, signed by Rosa Rufina Cedeño PARRALES. Appendix to the State's communication of August 24, 2000.

⁷² Written statement addressed to the Eleventh Criminal Court Judge of Manabí by Mrs. Rosa Rufina PARRALES Cedeño in the criminal trial 319-97 of Lenin Ordóñez for the crime against persons, signed by Rosa Rufina Cedeño PARRALES. Appendix to the communication of the State dated August 24, 2000.

⁷³ Fourth Public Notary of the district of Manta, Written testimony authorized by Notary Atty. Simón Zambrano Vínces. Appendix to the communication of the State on August 24, 2000.

⁷⁴ Written statement addressed to the Eleventh Criminal Court Judge of Manabí by Mrs. Rosalia Mariuxi Palma Bravo, in criminal charge No. 319-97 against Dr. Medardo Cevallos Balda, Ing. Medardo Cevallos Gómez Piñán, and Lenin Ordóñez Ortiz. Appendix to the communication of the State dated August 24, 2000.

⁷⁵ Written statement addressed to the Eleventh Criminal Court Judge of Manabí by Mrs. Rosalia Mariuxi Palma Bravo, in criminal charge No. 319-97 against Dr. Medardo Cevallos Balda, Ing. Medardo Cevallos Gómez Piñán, and Lenin Ordóñez Ortiz. Appendix to the communication of the State dated August 24, 2000.

⁷⁶ Fourth Notary Public of Canton Manta, Written testimony authorized by Notary Atty. Simón Zambrano Vínces. Appendix to the communication of the State of August 24, 2000.

⁷⁷ Written statement addressed to the Judge of the Eleventh Criminal Court of Manabí by Perfelita Matilde Mendoza Aguayo. Appendix to the communication of the State on August 24, 2000.

86. On May 9, 2000, the XI Criminal Court Judge of Manabí revoked the preventative imprisonment order against the accused Medardo Cevallos Gómez-Piñán, Marcelino Gómez Ponce, and Ramón Bravo Mera, based on the aforementioned dropping of charges.⁷⁸

87. On May 12, 2000, the XI Criminal Prosecutor of Manabí sent an written statement to the Eleventh Criminal Court Judge of Manabí expressing his objection to the revocation of the preventative prison authorized by the judge on May 9, 2000, since he had only taken into account the fact that family members of Mr. Palma and Mr. Jhon Mero Parrales had dropped charges. The Prosecutor reminded the judge that the trial should move forward under the direction of the Public Ministry and *de oficio* by the judge himself.⁷⁹

88. On May 23, 2000, the charges filed by the family members of Mr. Palma, by the family of Jhon Mero Parrales, and by the mother of Marco Bienvenido Palma Mendoza, Perfilita Matilde Mendoza Aguayo, were incorporated into the process, but only with respect to the accused Ignacio Reyes Cárdenas, Isabel Montaña de Mera, and Lenin Oswaldo Ordóñez "since by order it has been established that the signatures and stamps on the document dropping charges against the other accused parties have been inspected."⁸⁰ On May 26, 2000, Mrs. Perfelita Matilde Mendoza Aguayo filed a motion before the Eleventh Criminal Court Judge of Manabí, to recall the order issued on May 23, 2000, based on the fact that only the victims can drop charges based on Article 48 of the CPP and not the family members of the victims.⁸¹ In her statement, Mrs. Perfelita Mendoza reiterated her accusations against both the direct perpetrators and the intellectual authors of her son's murder.⁸²

89. On January 22, 2001, the Judge of the Eleventh Criminal Court of Manabí issued the order to initiate the trial stage of criminal proceedings against Lenin Ordóñez Ortiz, Freddy Contreras Luna, Stanley Vicente Domínguez Avíles, Carlos Alfredo Cedeño Vite, and Jonny Menéndez and provisionally dismissed charges against the other accused parties.⁸³ On March 19, 2001, the Sixth Criminal Court of Manabí issued its judgment against Lenin Oswaldo Ordóñez Ortiz, Freddy Simón Contreras Lunas, and Stanley Vicente Domínguez Avíles, sentencing them to 12 years in prison (*reclusión mayor extraordinaria*)⁸⁴ based on Article 450, paragraphs 1, 4, and 5 of the Criminal Code,⁸⁵ and ordering them to pay, costs, and damages to Mrs. Perfelita Matilde Mendoza, mother of Marco Bienvenido

⁷⁸ Resolution of the XI Criminal Court of Manabí, Manta, May 9, 2000, signed by Atty. Roger Pico Benítez, Judge of XI Criminal Court of Manabí. Appendix to the State's communication dated August 24, 2000.

⁷⁹ Ministry of the Attorney General, Criminal Case No. 319-97, signed by Attorney George Moreira Mendoza, Prosecuting Attorney for the XI Criminal Court of Manabí. Appendix to the communication of the State on August 24, 2000.

⁸⁰ Manta, May 23, 2000, 10:00 hrs. Escrito signed by Atty. Bernardo Zambrano, Secretary of the XI Criminal Court of Manabí and by Atty. Roger Pico Benitez, Judge of the XI Criminal Court of Manabí. Trial 319-97. 6° Corps. Appendix to the communication of the State dated August 24, 2000.

⁸¹ Written statement addressed to the Judge of the Eleventh Criminal Court of Manabí, signed by Atty. María Bescy Mendoza Bravo. Trial 319-97, 6° Corps. Appendix to the communication of the State dated August 24, 2000..

⁸² Written statement addressed to the Judge of the Eleventh Criminal Court of Manabí, signed by Atty. María Bescy Mendoza Bravo. Trial 319-97, 6° Corps. Appendix to the communication of the State dated August 24, 2000.

⁸³ Criminal Court of Manabí, Manta, March 19, 2001. Appendix to the petitioner's communication dated November 17, 2005.

⁸⁴ Criminal Court of Manabí, Manta, March 19, 2001. Appendix to the petitioner's communication dated November 17, 2005.

⁸⁵ Article 450 of the Criminal Code of Ecuador establishes: "Homicide that is committed with any of the following circumstances is murder and shall be punished with imprisonment (*reclusión mayor extraordinaria*) of twelve to sixteen years,: 1. With premeditation, 4. With cruelty, deliberately and inhumanely increasing the pain of the victim; 5. When the victim has not been allowed to defend himself."

Palma Mendoza. The guilty parties presented an appeal to the court of cassation, which was denied by the Second Criminal Chamber of the Supreme Court of Justice on June 26, 2002.⁸⁶

B. Legal considerations

1. Right to judicial protection with regards to *habeas corpus* (Article 25 in relationship to Articles 1.1 and 2 of the American Convention)

90. In this case, the petitioners maintain that, once the habeas corpus petition was filed for Mr. Palma, all of the state agencies should have been activated in order to find him in military, police, or penitentiary establishments. They also state that this recourse was not effective because it did not lead to the location of Mr. Palma, and they argue that Articles 7(6) and 25 of the Convention have been violated. The Ecuadorian State did not make a statement about this argument.

91. Article 7.6 of the American Convention establishes that:

Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

92. Article 25 of the Convention establishes that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

93. For its part, Article 2 establishes:

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

94. The IACHR observes that Article 7 of the American Convention refers to the deprivation of liberty carried out by or with the acquiescence of the State. In this case, the lack of investigation with respect to the allegations about the possible participation of agents of the Armed Forces of Ecuador as well as the confession of the one of the direct perpetrators of the kidnapping and murder of Mr. Palma—referring to the crime as being motivated by personal conflicts—mean that sufficient elements do not exist to determine possible state responsibility in Mr. Palma’s kidnapping. Because of this, the IACHR will not make a statement

⁸⁶ Judgment of the Supreme Court of Justice, Second Criminal Chamber, Quito, June 26, 2002. Appendix to the petitioners’ communication of November 17, 2005.

on the possible violation of the right to personal liberty established in Article 7 of the Convention.

95. However, the IACHR observes that on May 22, 1997 and May 30, 1997, family members of Marco Bienvenido Palma Mendoza filed a *habeas corpus* petition at the Municipality of Manta and at the Mayor's Office of the Metropolitan District of Quito, respectively. According to the proved facts, the Mayor of Manta limited himself to asked the various state dependencies (Commander of Combat Wing No. 23, Captain of the Port of Manta, Chief of Manta Police Commando, Chief of the Manta O.I.D., Eighth Criminal Judge of Manabí, the Traffic Court judge, and national police commissioners) for Mr. Palma to be brought to his presence without the recourse producing any results. Likewise, the Mayor of the Metropolitan District of Quito only asked various authorities to bring Mr. Palma before him on June 6, 1997, also without result.

96. Based on the jurisprudence of the Inter-American Court, the Commission recalls that Article 25 (1) of the Convention establishes, in broad terms, the obligation of the States to offer all people under their jurisdiction an effective judicial remedy against acts that violate their fundamental rights.⁸⁷ With this perspective, the Court has pointed out that for the State to comply with the provisions of the cited Article 25(1) of the Convention, it is not enough for those remedies to exist formally; rather they must be effective,⁸⁸ that is to say that they should offer the person a real possibility of filing a simple and quick remedy that makes it possible to obtain the required judicial protection in his or her case. The Court has repeatedly expressed that the existence of these guarantees "is one of the basic pillars, not only of the American Convention, but also of the Rule of Law itself in a democratic society in the sense of the Convention."⁸⁹

97. The Commission notes that according to legislation in effect at the time of the events, the family members of Mr. Palma, the victims in this case, had at their disposition, and used, the recourse of *habeas corpus* to try to identify the whereabouts of Marco Bienvenido Palma Mendoza, who according to the information available, had initially been disappeared by people identifying themselves as members of the FAE. The *habeas corpus* remedy was regulated by Article 28 of the Political Constitution of Ecuador in the following manner:⁹⁰

All persons believed to be illegally deprived of their liberty can avail themselves of *Habeas Corpus*. This right will be exercised on its own by a person filing, without need for a written mandate, before the Mayor of the jurisdiction in question, or before a person acting on behest of the mayor. The municipal authority shall immediately order that the person be brought before his presence and that a warrant for that person's arrest be shown. His order will be obeyed without comments or excuses by those in charge of the social rehabilitation centers or places of detention.

Informed of the situation, the Mayor shall order the immediate liberty of the detainee if that person has not been presented, if the warrant has not been shown, if the warrant does not comply with legal requirements, or if

⁸⁷ Inter-American Court of Human Rights, Maritza Urrutia, Judgment of November 27, 2003, Ser. C. No. 103, para. 116.

⁸⁸ Inter-American Court of Human Rights, Maritza Urrutia, Judgment of November 27, 2003, Ser. C. No. 103, para. 117; Case of Juan Humberto Sanchez, Preliminary Exception, Merits Reparations, and Costs. Judgment of June 7, 2003, Ser. C. No. 99, para. 121.

⁸⁹ Inter-American Court of Human Rights, Case of Cesti Hurtado. Judgment of September 29, 1999, para. 121. Case of Castillo Petruzzi *et. al.* Judgment of May 30, 1999, Ser. C. No. 52, para. 184; Case of the "White Van" (Panigua Morales *et. al.*). Judgment of March 8, 1998, Ser. C. No. 37, para. 164; Case of Blake, Judgment of January 24, 1998, Ser., C, No. 36, para. 102; and Case of Castillo Paez, Judgment of November 3, 1997. Ser. C. No. 34, para. 82.

⁹⁰ Political Constitution of 1978 codified February 13, 1997.

procedural mistakes have been made, or, in sum, if the basis of the remedy is justified. The official or employee who does not adhere to the order shall be immediately relieved of his position or employment with no further procedures by the Mayor, who will communicate this destitution to the General Comptroller of the State and to the authority who must name the person's replacement.

98. However, the two *habeas corpus* petitions filed were ineffective, since the authority in charge of initiating the search for Marco Bienvenido Palma Mendoza—in this case the Mayor—did not have the jurisdiction necessary to duly investigate the events, did not go to the place of the crime, and also did not order, with urgency, that minimum essential procedures be carried out that could have helped to locate the whereabouts of Mr. Mendoza. According to the O.I.D. Police Report of May 23, 1997, in addition to the son of Marco Bienvenido Palma Mendoza, other people who were at the scene of the crime may have observed the men who were in the pickup truck who kidnapped Mr. Palma. These persons, had they been asked, may have been able to offer, at least, more information about them, their identification, their possible connection with the Ecuadorian Armed Forces, the vehicle they used, and the direction in which it drove off, which could have all been indications used to determine Mr. Palma's whereabouts.

99. The *habeas corpus* recourse should be the best method to guarantee liberty, monitor respect for human life, and prevent a person's disappearance or the inability to determine the place of that person's detention.⁹¹ The Commission notes, however, that the recourse was not effective and that it does not conform to the standards of the American Convention.

100. In terms of its effectiveness, the IACHR reiterates that the act of filing the petition did not cause the competent authorities—as established by the Ecuadorian Constitution—to carry out the minimum procedures necessary to discover immediately the whereabouts of Mr. Palma. In spite of the fact that there were several witnesses and that the events occurred in the eyesight of employees of a State agency (The Ecuadorian Professional Training Service), State authorities limited themselves to issuing orders that did not produce results nor did they help prevent the murder of Mr. Palma, which occurred five days after his kidnapping.

101. With respect to this case, the IACHR believes that the right to effective judicial recourse implies the correlative duty of State to undertake a serious search, employing all efforts possible to determine as soon as possible the whereabouts of the person whose disappearance or kidnapping has been reported by his or her family members.

102. In terms of the compatibility of the *habeas corpus* recourse with the American Convention, the inter-American system has already considered this issue, and the Ecuadorian State has already recognized in previous cases, that the *habeas corpus* recourse enshrined in Article 28 of the Constitution of Ecuador is incompatible with the Convention. This is because it establishes that the Mayor—an administrative authority—is the person charged with determining the legality or illegality of an arrest or detention. In fact, it must be a judge who can establish both formally and substantially whether a person has been appropriately detained in a legal system and whether any of the rights of the detained person has been violated. Mayors cannot have the authority to exercise this jurisdictional power.⁹²

⁹¹ Inter-American Court of Human Rights, Case of *Bámaca Velásquez Vs. Guatemala*. Merit. Judgment of November 25, 2000. Ser. C. No. 70, para. 192.

⁹² Inter-American Court of Human Rights, Report No. 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, June 14, 2001, paras. 78-81.

103. In the case of *Chaparro and Lapo vs. Ecuador*, the State carried out a partial settlement and accepted certain reparations measures. With regard to the *habeas corpus* remedy, the State specifically stated:

The Ecuadorian State will exercise its best efforts through the National Constituent Assembly, soon to be established, to adapt the constitutional guarantee of *habeas corpus* to international standards, [...] so that the judicial verification of the conventionality, constitutionality, and legality of a detention will no longer depend on the highest municipal representative.⁹³

104. In the proceedings before the Commission no evidence was presented that definitely determines or excludes the possibility of the involvement of State agents in this case. Nevertheless, the IACHR considers that the actions of the State—in terms of its lack of diligence with respect to the *habeas corpus* recourse (Article 28 of the Constitution in effect at the time) which led to its ineffectiveness, and the delegation of jurisdictional powers to the mayor, which is a *per se* incompatibility between Ecuadorian law applied in this case, and the American Convention—caused a violation of the victims' right to have access to a simple and effective recourse for the protection of their fundamental rights in the terms of Articles 25 of the American Convention in relation to Articles 1(1) and 2 of this instrument, this latter in accordance with the principle of *iura novit curiae*.

105. The Commission notes that Article 90 of the 2008 Political Constitution of Ecuador⁹⁴ establishes a new recourse for those cases in which “the place of the deprivation of liberty is unknown and there are indications of the intervention of some public official or any other agent of the State, or persons who act with their authorization, support, or acquiescence,” as occurred in the case of Mr. Palma Mendoza and it establishes an urgent search mechanism for a disappeared or kidnapped person.

2. The right to a fair trial and to judicial protection (Articles 8(1) and 25(1) of the American Convention) in relation to Article 4(1) of the same instrument

106. In this case, the petitioners argue that the conduct of the judicial authorities was deficient in that they did not carry out an effective investigation. They maintain that the criminal proceedings lasted more than five years, which is not a reasonable time period. They state that the matter was not a complex one in that Mr. Palma's dead body was discovered a few days after his disappearance. They argue that the only reason that three people were sentenced for the kidnapping and murder of Mr. Palma is that one of those persons made a voluntary confession when he was arrested for reasons not related to this case.

107. For its part, the State contends that it undertook a serious and effective investigation and discovered those responsible for the criminal act, punishing them according to domestic legislation. It asserts that by virtue of the judgment on March 10, 2001, issued by the Sixth Criminal Court of Manabí, three people were punished for the kidnapping and murder of Marco Bienvenido Palma Mendoza, and that that verdict was upheld by the Criminal Chamber of the Supreme Court of Justice on June 26, 2002, and that therefore the alleged violation did not take place.

⁹³ Inter-American Human Rights Court, Case of *Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Ser. C. No. 170, para. 30.

⁹⁴ Article 90 of the 2008 Constitution of Ecuador: “When the place of the deprivation of liberty is unknown and indications exist about the intervention of a public official or any other agent of the State, or persons acting with their authorization, support, or acquiescence; the judge must call to his or her presence the highest representative of the National Police and the competent Minister. After hearing them, necessary measures will be undertaken to locate the person and those responsible for depriving them of their liberty.”

108. In this respect, the IACHR observes that Article 8(1) of the American Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

109. Article 25 (1) of the Convention establishes that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

110. For its part, Article 4.1 establishes that "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

111. The IACHR notes that Mr. Palma's kidnapping and execution was the result of an operation planned and executed by several people who identified themselves to State agents as members of the Ecuadorian Armed Forces and that, according to the confession of at least one of them, they used this alleged investiture to pass through several official checkpoints. A generalized situation of lack of due diligence and impunity has also been verified (see *infra*) in terms of the investigation of the facts and events of this case, which condition the protection of the rights in question.

112. In this sense, since the State had knowledge of Mr. Palma's kidnapping on the day after it occurred, that is since May 17, 1997, it should have initiated and been proactive in the investigation and clarification of the facts. As the proved facts show, Mr. Palma Mendoza was murdered days after having been kidnapped, and during that time, the State did not enact any type of procedure to try to determine his whereabouts. In this sense, the Commission recalls that the State has the obligation to act promptly with the first hours and days after a disappearance or kidnapping has been reported.⁹⁵ In addition, the Commission observes that, in spite of the fact that the possible participation of state agents was reported, the State did not exercise its duty to investigate the reported events with due diligence (established by reports that do not go beyond denying the participation of FAE agents). In addition to all of this, Mr. Palma's common-law wife reported to the police on June 9, 1998 about the possible involvement of Mr. Lenin Ordóñez in Mr. Palma's death and the police did not open any line of investigation on the matter. The Commission notes that it was not until after the statement of Lenin Ordóñez in another proceeding in February 2000, that the investigation on the kidnapping and murder of Mr. Palma was reactivated and a series of judicial procedures were conducted to locate the place where the body was buried, to exhume it, and to deliver it to his family members.

113. The Commission also notes that the perpetrators of Mr. Palma's kidnapping and murder were found guilty through the March 19, 2001 judgment; however, it must not go without saying that failures existed in terms of the due diligence that the State must exercise when a body is being recovered and when a case is being investigated. These include, limited efforts to advance the investigation; and, later, the decision not to investigate a number of people based only on the fact that Mr. Palma's common-law wife

⁹⁵ Inter-American Court of Human Rights. Case of *González et. al. ("Cottonfields") Vs. México*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 16, 2009, Ser. C., No. 205, para. 284.

and children were dropping charges, without taking into account that Mr. Palma's mother had filed separate charges or taking into account that the matter was a violent death—as established in its own medical-legal certification—and that therefore the State had the obligation to pursue all possible persons involved in the crime in an diligent manner.

114. The Commission also recalls that the State can be held liable internationally for actions committed by third parties or private parties, when the State fails to comply with its duties of prevention and its obligation to provide guarantees.

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found liable for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.⁹⁶

115. In this sense, the obligations established in the American Convention, and especially in this provision, “are not fulfilled simply by not violating the rights and liberties proclaimed in them (obligation to respect), but also include an obligation to guarantee the free and full exercise of rights to all persons subject to their jurisdiction (obligation to guarantee).”⁹⁷

116. The IACHR observes that, just as in past cases,⁹⁸ when the situation is one of a violent death, it becomes necessary to analyze and evaluate the actions undertaken by the State in light of the criteria established in the “Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions”⁹⁹ in order to determine if the state has fulfilled its duty to immediately, exhaustively, and impartially investigate the facts related to the death of Mr. Palma. The importance of the Manual lies in the fact that its primary purpose is to “discover the truth about the events leading to the suspicious death of a victim”¹⁰⁰ To that effect, this Manual establishes that those who conduct an inquiry into a “suspicious death,” such as the one that occurred in this case, shall at a minimum seek:

- (a) To identify the victim;
- (b) To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;

⁹⁶ Inter-American Court of Human Rights. Case of *The Massacre of Mapiripán Vs. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005. Ser. C. No. 134, para. 111.

⁹⁷ Inter-American Court of Human Rights, Case of *Velásquez Rodríguez Vs. Honduras*. Merits. Judgment of July 29, 1988. Ser. C No. 4, para. 165.

⁹⁸ Inter-American Court of Human Rights. Report No. 48/97, Case 11.411, Merits, Severiano and Hermelindo Santiz Gómez “Ejido Morelia”, México, February 18, 1998; Report No. 34/00, Case 11.291, Merits, Carandirú, Brasil, April 13, 2000; and Report No. 1/98, Case 11.543, Merits, Rolando Hernández Hernández, México, May 5, 1998.

⁹⁹ Adopted by the United Nations General Assembly in 1991. Document ST/CSDHA/12.

¹⁰⁰ Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, adopted by the General Assembly of the United Nations in 1991. Document ST/CSDHA/12, para. 9

- (c) To identify possible witnesses and obtain statements from them concerning the death;
- (d) To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) To distinguish between natural death, accidental death, suicide and homicide;
- (f) To identify and apprehend the person(s) involved in the death;
- (g) To bring the suspected perpetrator(s) before a competent court established by law.

117. At the same time, in order to be able to guarantee a thorough and impartial investigation, the Manual establishes that "one of the most important aspects [of the investigation] is the collection and analysis of evidence". In this way, according to the Manual, the procedure for collecting evidence should adhere to the following parameters:

- (a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area;
- (b) Color photographs of the victim should be taken as these, in comparison with black and white photographs, may reveal in more detail the nature and circumstances of the victim's death;
- (c) Photographs should be taken of the scene (interior and exterior) of any other physical evidence;
- (d) A record should be made of the body position and condition of the clothing;
- (e) The following factors may be helpful in estimating the time of death:
 - (i) Temperature of the body (warm, cool, cold);
 - (ii) Location and degree of fixation of lividity;
 - (iii) Rigidity of the body;
 - (iv) Stage of its decomposition;

118. According to the proved facts, when the dead body of Mr. Palma was discovered, the political lieutenant of the Jesús María parish ordered that the body be buried, arguing that no family member had come to claim it. The judicial file contributed by the state shows that no autopsy was done and that there was no investigation done aimed at identifying the body, collecting evidence, or examining the reasons for his death and trying to punish those responsible for the death, in spite of the fact that the State had the duty to begin such a process "*ex officio*." The Commission also notes that, according to the proved facts, that no effort was made to identify the body by taking fingerprints or by other means, the cause of the death was not determined, and no report was prepared detailing observations about the place, the actions of the investigators, and what was done with all of the evidence recovered.

119. The Commission has established that, as a general rule, a criminal investigation must be conducted promptly to protect the interests of the victim, preserve evidence, and safeguard the rights of all people who may be considered suspects in the context of the investigation.¹⁰¹ The Court has emphasized this responsibility of the State,

¹⁰¹ Inter-American Court of Human Rights. Case of *The Massacre of Mapiripán Vs. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005. Ser. C. No. 134. para. 190.

especially when it faces an event that has cost a person's life.¹⁰² The lack of diligence in the investigation reported by the petitioners was not refuted by the Ecuadorian State in its observations. The IACHR thus maintains that, in this case, the State did not proceed with a diligent investigation of the events that occurred in order to identify the body of Mr. Palma and determine the reasons for his death.

120. In this respect, as general international law establishes, States are internationally liable for the actions or omissions of their authorities and bodies that are in violation of the obligations assumed in the treaties. In this sense, the rights to a fair trial and to judicial protections established in Articles 8 and 25 of the Convention¹⁰³ and the obligation to guarantee the rights protected in the American Convention according to its Article 1(1)¹⁰⁴ are especially relevant *vis-à-vis* the actions and omissions of the bodies linked to the administration of justice.

121. The right to a fair trial established in Article 8 of the American Convention encompasses a set of requirements that must be observed in legal institutions so that people have the conditions to adequately defend their own rights in the face of any action by the State.¹⁰⁵ For its part, the right to judicial protection contained in Article 25 of the American Convention requires the existence of adequate and effective remedy that makes it possible to safeguard fundamental rights.¹⁰⁶ A remedy will be considered adequate if it is constituted as an effective and sufficient means to reach the result desired by the one seeking the recourse¹⁰⁷ and, effective in the sense that it is capable of producing the result for which it was conceived.¹⁰⁸

122. The Inter-American Court has maintained that, according to the American Convention, the States Party must provide effective judicial recourse to the victims of human rights violations. Now, this must be substantiated in accordance with the rules of legal due process, all within the general obligation, under the responsibility of the States themselves, to guarantee the free and full exercise of the rights recognized by the Convention for all people under its jurisdiction.¹⁰⁹

¹⁰² Inter-American Court. Case of *Myrna Mack Chang Vs. Guatemala. Merits, Reparations, and Costs*. Judgment of November 25, 2003. Ser. C. No. 101, para. 167; Case of *Juan Humberto Sánchez Vs. Honduras. Preliminary Objections, Merit, Reparations, and Costs*. Judgment of June 7, 2003. Ser. C. No. 99, para. 127.

¹⁰³ Inter-American Court. *Case of Ximenes Lopes*. Judgment of July 4, 2006. Ser. C. No. 149, para. 173, *Case of Baldeón García*. Judgment of April 6, 2006. Ser. C. No. 147, para. 141; Case of López Álvarez. Judgment of February 1, 2006. Ser. C. No. 141, para. 28; and *Case of Herrera Ulloa*. Judgment of July 2, 2004. Ser. C., No. 107, para. 109.

¹⁰⁴ Inter-American Court. Case of Ximenes Lopes. Judgment of July 4, 2006. Ser. C. No. 149, para. 172; *Case of Baldeón García*. Judgment of April 6, 2006. Ser. C. No. 147, para. 140; Case of *the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Ser. C. No. 140, para. 111 and 112; and Case of *Massacre of Mapiripán*. Judgment of September 15, 2005. Ser. C. No. 134, para. 108.

¹⁰⁵ Inter-American Court. Case of *Genie Lacayo Vs. Nicaragua. Merits, Reparations, and Costs*. Judgment of January 29, 1997. Ser. C. No. 30, para. 74; Case of *Claude Reyes et. al. Vs. Chile. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Ser. C. No. 151, para. 116; and Inter-American Court., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights). Consultative Opinion OC-9/87 of October 6, 1987. Ser. A., No. 9, para. 27.

¹⁰⁶ Inter-American Court. Case of *Durand and Ugarte Vs. Perú. Merits*. Judgment of August 16, 2000. Ser. C. No. 68, para. 101.

¹⁰⁷ Inter-American Court. Case of *Godínez Cruz Vs. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Ser. C. No. 3, para. 67.

¹⁰⁸ Inter-American Court. Case of *Velásquez Rodríguez Vs. Honduras. Merits*. Judgment of July 29, 1988. Ser. C. No. 4, para. 66; Case of *The Mayagna Community (Sumo) Awas Tingni Vs. Nicaragua. Merits, Reparations, and Costs*. Judgment of August 31, 2001. Ser. C. No. 79, para. 135; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et.al.) Vs. Perú. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2006. Ser. C., No. 158, para. 130.

¹⁰⁹ Inter-American Court. Case of *Bayarri Vs. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 30, 2008. Ser. C. No. 187, para. 103; and Case of *Kawas Fernández Vs. Honduras. Merits, Reparations, and Costs*. Judgment of April 3, 2009, Ser. C. No. 196, para. 110.

123. In this way, all persons who have had their human rights violated have the right to obtain from the competent bodies of the State, a clarification of the events of the violation and an establishment of the corresponding responsibilities through investigation and trial as established in Articles 8 and 25 of the American Convention.¹¹⁰

124. The State's obligation to investigate and punish human rights violations must be undertaken by the States in a serious manner. To this effect the Court has said:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.¹¹¹

125. In relation to the State's duty to investigate, the Inter-American Commission has also declared that:

The duty to investigate is not considered unfulfilled simply because no person has been found guilty in the case or because of a circumstance in which, in spite of efforts made, the verification of the facts is impossible. However, in order to establish convincingly and credibly that this result has not been the consequence of a mechanical execution of certain procedural formalities rather than a result of the State's effective search for the truth, the State must demonstrate that it has conducted an immediate, thorough, serious, and impartial investigation.¹¹²

126. Specifically, in relation to the States' duty to investigate violations of the right to life, contained in Article 4 of the American Convention, the Inter-American Court has established that:

The State has the obligation to commence *ex officio* and without delay, a serious, impartial, and effective investigation, which is not undertaken as a simple formality preordained to be ineffective. This investigation must be undertaken with all of the legal means available and must be aimed at the determination of the truth and at the investigation, trial, and punishment of those responsible for the violations, especially when state agents are, or may be, involved.¹¹³

¹¹⁰ Inter-American Court. Case of *Barrios Altos Vs. Perú*. Merits. Judgment of March 14, 2001. Ser. C., No. 75, para. 48. Also: IACHR, Report No. 85/09, Case 11.607, Compliance Agreement, Víctor Hugo Maciel, Paraguay, August 6, 2009, para. 145.

¹¹¹ Inter-American Court. Case of *Velásquez Rodríguez Vs. Honduras*. Merits. Judgment of July 29, 1988. Ser. C. No. 4. para. 177.

¹¹² IACHR, Report No. 55/97, Case 11.137, Merits, *Juan Carlos Abella et. al.*, Argentina, November 18, 1997, para. 412; and Report No. 52/97, Case 11.218, Merits, *Arges Sequeira Mangas*, Nicaragua, February 18, 1998, para. 96 and 97.

¹¹³ Inter-American Court. Case of *Ximenes Lopes Vs. Brazil*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Ser. C. No. 149, para.148; Case of *Baldeón García Vs. Perú*. Merits, Reparations, and Costs.

127. The aforementioned obligation to investigate and punish requires that the punishment must occur within a reasonable time period,¹¹⁴ and that there will be punishment, not only of the direct perpetrators of the human rights violations, but also of the intellectual authors of these crimes and of any accessories to the crime.¹¹⁵ At the same time, the Inter-American Court has determined that the investigation must be undertaken through all of the legal means available and must be aimed at determining the truth and at the investigation, pursuit, arrest, trial, and punishment of all persons responsible for the crimes.¹¹⁶

128. The Commission notes that from the moment in which Mr. Palma was kidnapped until Mr. Ordóñez made his statement on February 2000, the only investigative procedures that are documented in the file are the interviews that the O.I.D. conducted in the days following the crime with Mrs. Lidia Guadalupe Bravo, Mr. Palma's common-law wife; with Mr. Manuel Armijos, who was working as a security guard at SECAP on May 16, 1997 before the kidnapping; with Mr. Francisco Andrade, who was working as a security guard in SECAP on May 16, 1997 at the moment in which Mr. Palma's kidnapping took place; with Mr. Octavio Alcívar Arteaga, Director of SECAP; with Mrs. Zambrano Sánchez, who has a food stand in front of SECAP; and with Mr. Palma's son. These are documented in the police report from May 23, 1997.

129. The Commission recalls that in the Case of *the Massacre of lo Bello Vs. Colombia*, the Court established that the negligence of the judicial authorities responsible for examining the circumstances of a human rights violation through timely *in situ* collection of evidence cannot be corrected by belated evidentiary procedures to find and exhume the remains of the body.¹¹⁷

130. Furthermore, both the Inter-American Commission¹¹⁸ and the Court¹¹⁹ have been emphatic in stating that the obligation to investigate and sanction all acts that involve a violation of rights protected by the Convention requires punishment not only for the direct perpetrators of the crime, but also for the intellectual authors and accessories to the crime.

Judgment of April 6, 2006. Ser. C. No. 147, para. 94; and Case of *The Moiwana Community Vs. Surinam*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 15, 2005, Ser. C. No. 124, para. 203.

¹¹⁴ Inter-American Court. Case of *Zambrano Vélez et.al. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Ser. C. No. 166, para. 115; and Case of *The Massacre of Dos Erres Vs. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2009. Ser. C., No. 211, para. 105.

¹¹⁵ Inter-American Court. Case of *The Gómez Paquiyauri Brothers Vs. Perú*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Ser. C. No. 110, para. 146; Case of *Myrna Mack Chang Vs. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Ser. C. No. 101, para. 275; Case of *Juan Humberto Sánchez Vs. Honduras*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 7, 2003. Ser. C., No. 99, para. 186; and Case of *Constitutional Court Vs. Perú*. Competence. Judgment of September 24, 1999. Ser. C. No. 55, para. 123.

¹¹⁶ Inter-American Court. Case of *Almonacid Arellano et.al. Vs. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Ser. C. No. 154, para. 111; Case of *Ximenes Lopes Vs. Brasil*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Ser. C. No. 149, para. 148; Case of *Baldeón García Vs. Perú*. Merits, Reparations, and Costs. Judgment of April 6, 2006. Ser. C. No. 147, para. 94; and Case of *The Massacre of Pueblo Bello Vs. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Ser. C., No. 140, para. 143.

¹¹⁷ Inter-American Court. Case of *The Massacre of Pueblo Bello Vs. Colombia*. Merits, Reparations, and Costs. Judgment of January 31, 2006. Ser. C., No. 140, para. 178.

¹¹⁸ IACHR. Report No. 44/01, Case 11.016, Admissibility, Emilio Moisés and Rafael Samuel Gómez Paquiyauri, Peru, March 5, 2001, para. 34.

¹¹⁹ Inter-American Court, Case of *The Gómez Paquiyauri Brothers Vs. Perú*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Ser. C. No. 110, para. 146; and Case of *Blake Vs. Guatemala*. Reparations and Costs. Judgment of January 22, 1999. Ser. C No. 48, para. 65.

In this sense, the Commission reiterates that the judicial authorities dismissed charges against the alleged intellectual authors of Mr. Palma's kidnapping and murder, based on the fact that some of his family members had dropped charges and not on elements of conviction, in spite of the fact that the case involved crimes that are prosecutable *de oficio*, as the IX Criminal Prosecutor of Manabí pointed out in his written statement of May 12, 2000.

131. The Commission observes that, in relation to the material claim of this case, it will now examine whether the State fulfilled its duty to effectively investigate in a reasonable time period the material and intellectual authorship of the murder of Mr. Palma.

132. The Commission recalls that Article 8.1 of the Convention establishes that one of the elements of due process is that cases submitted to the courts must be ruled on by a competent judge within a reasonable time. In this sense, a prolonged delay can in and of itself come to constitute a violation of the right to a fair trial.¹²⁰ The reasonableness of the time period must be evaluated in relationship to the total length of the criminal procedure.¹²¹

133. Therefore, according to the terms of Article 8.1 of the Convention, and in light of the concrete circumstances of this case, the Commission will keep in mind the three elements that it has taken into account in its ongoing jurisprudence: a) the complexity of the matter, b) the conduct of judicial authorities, and c) the procedural activity of the interested party.¹²²

134. With regard to the first, the Commission considers that the case was not a complex one, since the pick-up truck in which Mr. Palma was kidnapped was parked hours before the kidnapping on a public road and numerous people saw the people inside of it, as recorded by the Police Report from May 23, 1997. Furthermore, the dead body of Mr. Palma appeared on May 26, 1997.

135. Secondly, the Commission notes that in this case, the actions of the authorities have been deficient and without due diligence. In this regard, the IACHR notes that it concluded previously that Ecuador did not carry out the necessary procedures to investigate the events. In addition, the Commission would like to highlight that it has not received any information about any significant activity that took place between May 23, 1997—the date in which the O.I.D. sent its preliminary report of its investigations to the Eleventh Criminal Court Judge of Manabí—and February 26, 2000, the date in which another police report was sent to the same judge with the statement of Mr. Ordóñez in which he admitted having participated in Mr. Palma's kidnapping. Furthermore, the Commission notes that in spite of the fact that a guilty verdict was issued against the direct perpetrators of Mr. Palma's kidnapping and murder on March 19, 2001, that is to say four years after the crime was committed, the intellectual authors of the murder are still in impunity.

¹²⁰ Inter-American Court. Case of *García Asto and Ramírez Rojas Vs. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2005. Ser. C. No. 137, para. 166; Inter-American Court. Case of *Gómez Palomino Vs. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Ser. C., No. 136, para. 85; Case of *The Moiwana Community*. Judgment of June 15, 2005, Ser. C. No. 124, para. 160.

¹²¹ Inter-American Court. Case of *López Álvarez Vs. Honduras*. Merits, Reparations, and Costs. Judgment of February 1, 2006. Ser. C., No. 141, para. 129; Inter-American Court. Case of *Acosta Calderón Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of June 24, 2005. Ser. C. No. 129, para. 104; and Inter-American Court. Case of *Tibi Vs. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Ser. C. No. 114, para. 168.

¹²² IACHR, Report on Merits No. 77/02, *Waldemar Gerónimo Pinheiro and José Victor dos Santos* (Case 11.506), December 27, 2002, para. 76. See also Inter-American Court, *Case of López Álvarez*, para. 132; *Case of García Asto and Ramírez Rojas*, para. 166; and *Case of Acosta Calderón*, para. 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Observation N° 32, para. 35.

136. Finally, in terms of the procedural activity of the interested parties, the Commission notes that after the State first received the report on the crime of disappearance, which is a crime of public action, the State should have conducted its own investigation, with or without the participation of the interested parties. Court documents establish independently that Mr. Palma's family members made declarations in a timely manner and reported on the possible participation of members of the FAE in Mr. Palma's kidnapping since these FAE members were at the scene of the crime. The family also sent various communications to the Chief of the Naval High Command, to the Interim President of the Republic, and to the Minister of National Defense. Later, on June 9, 1998, Marco Bienvenido Palma's common-law wife informed the Chief of the O.I.D. about the alleged participation of Mr. Lenin Ordóñez in the crime and at that time no procedures were conducted to determine the veracity of the information provided.

137. The delay in judicial action constitutes a violation of the State's duty to uncover the facts and to try and punish those responsible for serious violations, according to standards of reasonable timeliness and effective judicial protection.¹²³

138. Based on the elements of fact and law analyzed above, the Commission concludes that, in this case, effective recourse was not provided to Mr. Palma's family members within a reasonable time period in order to guarantee them access to justice and to the investigation and trial of the responsible parties as well as to reparations for damages related to Mr. Palma's kidnapping and murder. Therefore, the State is responsible for violating the rights to a fair trial and to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention in relation to Articles 4(1) and 1(1) of that international instrument, to the detriment of the family members of Marco Bienvenido Palma Mendoza.

3. Right to humane treatment (Articles 5 and 1(1) of the American Convention on Human Rights)

139. The right to humane treatment enshrined in Article 5(1) of the American Convention establishes that "every person has the right to have his physical, mental, and moral integrity respected." In this sense the Commission has recognized that:

The American Convention is based on fundamental principles including the recognition that the rights and liberties that it protects are derived from the attributes of the human personality. From this principle comes the basic requirement that undergirds the Convention as a whole, and Article 5 in particular, that individuals must be treated with dignity and respect.¹²⁴

140. The jurisprudence of the Inter-American Court has established that the family members of the victims may, in turn, suffer from violations of their right to mental and moral integrity.¹²⁵ Thus, the Inter-American Court has considered that family members' right to mental and moral integrity is violated when they suffer additionally as a result of the

¹²³ Inter-American Court. Case of *The Massacre de Mapiripán Vs. Colombia*. Merits, Reparations, and Costs. Judgment of September 15, 2005, Ser. C., No. 134, para. 190.

¹²⁴ IACHR, Report No. 38/00, Case 11.743, Merits, [Rudolph Baptiste](#), Grenada, April 13, 2000, para. 89.

¹²⁵ Inter-American Court. Case of *Juan Humberto Sánchez Vs. Honduras*. Preliminary Objections, Merit, Reparations, and Costs. Judgment of June 7, 2003. Ser. C., No. 99, para. 101; Case of *The Dos Erres Massacre Vs. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2009. Ser. C., No. 211, para. 206, and Case of *Heliodoro Portugal Vs. Panamá*. Preliminary Objections, Merit, Reparations, and Costs. Judgment of August 12, 2008. Ser. C. No. 186, para. 163.

particular circumstances related to the crimes perpetrated against their loved ones¹²⁶ or as a result of the actions or omissions of state authorities vis-à-vis the events.¹²⁷

141. The petitioners maintain that the fact that Marco Bienvenido Palma Mendoza's disappearance was not investigated for three years generated a deep sense of anguish and uncertainty among his family members, and that the truth about what had happened was not uncovered until an event occurred that did not come about as a result of the actions of the State. The State did not present any observations on this point.

142. According to the proved facts, during almost three years, the family members of Mr. Palma continued to hope that he would be found alive, a situation that changed only recently with the exhumation and identification of his body. The IACHR believes that if the State had not shown a lack of diligence in investigations aimed at uncovering the events that led to the kidnapping and subsequent murder of Mr. Palma, his family members would not have been exposed to a situation of additional suffering and anguish, which has had an effect on their social relationships.

143. By virtue of the above, the Commission considers that the State of Ecuador violated Article 5(1) of the American Convention to the detriment of Mr. Palma's common-law wife, Lidia Bravo Bravo; Mr. Palma's children, Luis Palma Bravo, Nelson Palma Mendoza, and Rosalía Palma Bravo; Mr. Palma's mother, Perfelita Mendoza Aguayo; Mr. Palma Mendoza's brothers, Carlos Palma and Víctor Palma; as well as Mr. Palma Mendoza's cousin, Pablo Palma Pico.

VI. CONCLUSIONS

144. Based on the considerations of fact and law presented above, the Commission concludes that the Republic of Ecuador is responsible for the violation of the rights to humane treatment, fair trial, and judicial protection, and life, enshrined in Articles 5, 8, and 25, in relation to Article 4 of the American Convention, all in connection with non-compliance with Articles 1(1) and 2 of that instrument to the detriment of: Lidia Bravo Bravo, Luis Palma Bravo, Nelson Palma Mendoza, Rosalía Palma Bravo, Perfelita Mendoza Aguayo, Carlos Palma, Víctor Palma, and Pablo Palma Pico.

VII. RECOMMENDATIONS

145. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights recommends that the Ecuadorian State:

4. Conduct a complete, impartial, and effective investigation of the events reported in order to try and punish all of the parties responsible, both materially and intellectually, for the violations of human rights committed to the detriment of Marco Bienvenido Palma Mendoza and his family members.

5. Adopt pertinent measures to make reparations to the family members of Mr. Marco Bienvenido Palma Mendoza, in both material and moral aspects.

6. Adopt the measures necessary to keep similar events from occurring in the future, according to the duty to prevent violations and the duty to guarantee the fundamental rights recognized in the American Convention and apply the urgent search

¹²⁶ Inter-American Court. Case of *Miguel Castro Castro Prison Vs. Perú*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Ser. C. No. 160, para. 335; Case of *Vargas Areco Vs. Paraguay*. Merits, Reparations, and Costs. Judgment of September 26, 2006. Ser. C. No. 153, para. 96.

¹²⁷ Inter-American Court. Case of *Manuel Cepeda Vargas Vs. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of May 26, 2010. Ser. C., No. 213, para. 195.

mechanism established in article 90 of the 2008 Constitution to cases similar to the present case.

VIII. NOTIFICATION

146. The Commission agrees to send this report to the Ecuadorian State and give it a period of two months to comply with the recommendations above. This period of time will begin from the date in which this report is sent to the State, which will not have the power to publish it. Likewise, the Commission agrees to notify the petitioners of the adoption of a report under Article 50 of the Convention.