

REPORT No. 122/12
PETITION 533-05
FRIENDLY SETTLEMENT
JULIO RUBÉN ROBLES ERAS
ECUADOR
November 13, 2012

I. SUMMARY

1. On May 12, 2005, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or the "IACHR") received a petition that the *Comisión Ecuménica de Derechos Humanos* (CEDHU) [Ecumenical Human Rights Commission] (hereinafter the "petitioner") filed against the State of Ecuador (hereinafter the "State," the "Ecuadorian State" or "Ecuador"). The petition alleged that the Ecuadorian State had violated Julio Rubén Robles Eras' rights to life and to humane treatment; it also alleged a failure to investigate the facts and to punish those responsible.

2. The petitioner maintained that the State had violated the rights protected under articles 4 (right to life), 5 (right to humane treatment), 8 (right to judicial guarantees), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), in conjunction with Article 1(1) thereof.

3. On October 10, 2006, the parties signed a Friendly Settlement Agreement.

4. As provided in Article 49 of the Convention and Article 40(5) of the Commission's Rules of Procedure, this friendly settlement report is a brief statement of the facts and of the solution reached. Having checked the agreement to confirm that it is compatible with the commitments undertaken by the parties and is in compliance with the principles of the Convention, the Commission resolves to approve the present report, notify the parties, make the report public and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING WITH THE COMMISSION

5. The Commission received the petition on May 12, 2005, and classified it as number 533-05. On January 18, 2006, it forwarded the pertinent parts to the State and gave it two months in which to present its observations.

6. A communication was received from the petitioner on July 27, 2006, in which it requested that, in application of Article 48(1)(f) of the American Convention and Article 40 of the Commission's Rules of Procedure, the Commission place itself at the disposal of the parties with view to reaching a friendly settlement.

7. On August 2, 2006, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. By a communication received at the IACHR on September 7, 2006, the petitioner expressed its interest in embarking upon the friendly settlement process.

8. On October 12, 2006, the Commission asked the State to present its observations within one month. By a communication dated November 17, 2006, the State sent the Commission a certified copy of the friendly settlement agreement signed by the Attorney General of the State and Dr. Luis Vega Eras, the victim's brother and his representative.

9. On November 27, 2006, the IACHR sent the parties a communication in which it requested information concerning compliance with the agreement. Information was received from the

petitioner on March 6, 2008. On April 9, 2009, the Commission again asked the parties to provide it with information concerning fulfillment of the commitments undertaken in the friendly settlement agreement.

10. Via communications received at the IACHR on September 20 and October 2, 2009, the State forwarded the information that had been requested of it. The Commission sent that information to the petitioner and asked for its comments, whereupon the requested information was received on December 14, 2009 and January 4, 2010.

11. On June 13, 2011, the Commission asked the parties whether they were still engaged in the friendly settlement process and, if so, to report what progress had been made. Information was received from the petitioner on June 23, 2011 and July 11, 2011, in which it informed the IACHR that "the friendly settlement process concluded with the signing of the respective agreement, which was duly forwarded to the IACHR so that the respective report might be issued." The State's June 30, 2011 communication reported the same information.

III. THE FACTS

12. In its complaint, the petitioner alleged that Julio Rubén Robles Eras, age 22, graduated from the Eloy Alfaro Military Academy in the city of Quito, with the rank of Sub-Lieutenant in the Army. On August 21 of that year, he was assigned to Macará's B1-21 Infantry Battalion in the province of Loja, near the border with the Republic of Peru.

13. On August 22, 2001, Julio Robles Eras received a visit from an in-law who found him to be in perfect health. Later that same day, the "initiation" of the newly arrived sub-lieutenants got underway, a ritual presided over by Major Jorge Segovia, Battalion Commander.

14. According to the facts revealed in the complaint, in the early morning hours of August 23, 2001, Major Jorge Segovia called Dr. Luis Vegas Eras and informed him that his brother, Sub-lieutenant Julio Robles, had died; the major said that the deceased drank a bottle of whiskey and choked to death. This information was reportedly confirmed by Dr. Edmundo Ortiz, the military unit's physician.

15. The petitioner alleged that Major Jorge Segovia, two other soldiers and the battalion driver had taken the lifeless body of Julio Robles Eras to the civilian hospital in Macara, in violation of Article 101 of the Code of Criminal Procedure, under which a corpse shall not be moved without the authorization of the Prosecutor or the Judicial Police.

16. The information provided revealed that two soldiers took the alleged victim's lifeless body to the hospital and from there it was finally taken to the morgue. The physician who received the victim's body stated that the soldiers arrived yelling "emergency" and brought in the limp body of Julio Robles Eras, whose hands were tied; he was admitted as NN. The physician asserted that the "victim was in his underpants; he was cold, damp and pale; the soles of his feet had dirt on them, but no dirt was found elsewhere on the body; postmortem lividity had set in at least two or three hours earlier."

17. The autopsy conducted revealed, *inter alia*, extensive bruising and abrasions on various parts of the body. In the neck area, the body of Julio Robles Eras was quite loose in contrast to the rigidity elsewhere on the body. There was also internal hemorrhaging in the pelvic region.

18. The family of Julio Robles denounced these events publicly and demanded an impartial investigation. In view of the complaint the Office of the Inspector General of Ground Forces organized a Multi-sector Commission to investigate the facts. In its August 30, 2001 report, that Commission found that Major Jorge Segovia and Captain Luis Parreño were in charge of organizing the initiation and welcome for the four sub-lieutenants who joined the unit on August 21, 2001. The initiation or hazing involved a series of acts, among them the following: the sub-lieutenants rode through the city on a donkey, drank whiskey, ate rice with toothpaste, raw eggs and a dead roach. The report also revealed that Captain Varela took the sub-lieutenants to an area called "villa cariñito" where they were locked up.

Given the unwholesome conditions and high temperatures, their clothes were taken away and they were left in their underpants.

19. At night, when Captain Romel Varela went to the "villa cariñito" to awaken the sub-lieutenants, he realized that Sub-Lieutenant Julio Robles Eras' body was cold. He called Major Segovia, who said to find a doctor. When the doctor arrived, he confirmed that the victim did not have a pulse, and he was taken to the hospital where he was declared dead. The report of the Multi-Sector Commission concluded that Julio Robles Eras' cause of death may have been a combination of acute alcoholic intoxication and involuntary homicide.

20. In view of these events, two judicial proceedings were instituted: one in the civilian courts and the other in the military courts. In the civilian justice system, the Seventh Criminal Court Judge of Loja issued an order setting a preliminary hearing against Major Jorge Segovia and Captains Luis Perreño and Romel Varela for an alleged violation against persons. He ordered that they be taken into custody pending trial. However, a conflict of jurisdiction developed with the military justice system. To settle the question of the competing jurisdictions, the case was referred to the Court of Military Justice. On December 24, 2001, that court held that the Military Judge had competence because the conduct was categorized in the Military Code of Criminal Justice, the act had taken place inside a military unit, the initiation rite had been organized and approved by the Unit Commander, the events occurred during working hours and on working days, and the accused were active service members of the Armed Forces.

21. With that decision, both cases were joined to be heard by the military court. Mr. Julio Robles Eras' family members tried to bring a private charge, but were not allowed since military law does not allow civilian third parties.

22. On July 31, 2003, the First Criminal Judge of the Third Military Zone convicted the accused Major Jorge Antonio Segovia Neyra and Captains Luis Alfredo Perreño Pincay and Romel Varela Guerrón of being co-authors of the crime of involuntary homicide and sentenced them to three years in prison. The Military Court of Appeals upheld that ruling; and while the convicted men's degree of involvement was changed, the three-year prison sentence remained unchanged in the case of Major Jorge Antonio Segovia Neyra. The sentence given to Captain Luis Perreño was downgraded to two years, and Captain Romel Varela's to six months.

IV. FRIENDLY SETTLEMENT

23. On October 10, 2006, the parties signed a friendly settlement agreement, the text of which appears below:

FRIENDLY SETTLEMENT AGREEMENT FOR VIOLATION OF HUMAN RIGHTS, CONCLUDED
BETWEEN THE ECUADORIAN STATE AND THE REPRESENTATIVE OF MR. JULIO ROBLES
ERAS

I
THE PARTIES PRESENT

The following parties are present to conclude this friendly settlement agreement:

First, Dr. José María Borja Gallegos, Attorney General of the State, as attested to by his letter of appointment and the record of his swearing-in, which are attached hereto as his credentials.

On the other hand, Dr. Luis Vega Eras, who has a general power of attorney granted by Mrs. María Augustina Eras Romero and Mr. José Julio Robles Vega, in the presence of Dr. Jaime Aillón Albán, Fourth Notary of the Canton of Quito, as the attached documents attest.

II
BACKGROUND

In its desire to protect human rights and given the vital role they play as underpinnings of the democratic system, the Ecuadorian State, through the Office of its Attorney General, launched a new process in the evolution of human rights in Ecuador.

In strict compliance with the obligations it undertook with its ratification of the American Convention on Human Rights and mindful of the fact that every international obligation that has been violated demands full reparations, the Ecuadorian State and Dr. Luis Vega Eras, representing the victim, have together resolved to sign the present friendly settlement agreement in keeping with the provisions of articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 45 of the Inter-American Commission's Rules of Procedure.

III
FACTS OF THE CASE

On August 10, 2001, Mr. Julio Rubén Robles Eras, age 22, graduated from the Eloy Alfaron Military Academy with the rank of Sub-Lieutenant in the Army. On August 22, he and three of his companions were initiated in a ritual presided over by Major Jorge Segovia, Commandant of the Macará Infantry Battalion, and Captain Luis Parreño.

That night, Captain Varela discovered that Mr. Robles Eras was dead. Major Segovia ordered Dr. Edmundo Ortiz to the scene, who confirmed that the Sub-Lieutenant did not have a pulse. Even so, he was taken to the Macará Civilian Hospital and admitted as NN.

With the help of two soldiers and the Battalion driver, Major Segovia took the body of Mr. Robles Eras as far as the Macará Civilian Hospital, and in so doing violated Article 101 of the Code of Criminal Procedure, which prohibits moving a body without the authorization of the Prosecutor or the Judicial Police.

The investigations conducted by the Office of the Inspector General of Ground Forces concluded that the cause of death was acute alcoholic intoxication and involuntary homicide; the autopsy concluded that the possible cause of death was a spinal cord injury.

The death of Sub Lieutenant Julio Rubén Robles Eras triggered two criminal cases, one in the military justice system under the First Criminal Judge of the Third Military Zone; the other case was in the civilian justice system and was being prosecuted by the Macará District Attorney and the Seventh Criminal Court Judge of Loja. A conflict of competence ensued that the Court of Military Justice resolved by deciding that the case belonged in the military courts. As a result, the case

initiated in the civilian justice system was joined to the criminal case underway in the military justice system.

In July 2003, the First Criminal Judge of the Third Military Zone delivered a verdict finding Major Jorge Antonio Segovia Neyra and Captains Luis Alfredo Parreño Pincay and Romel Varela Guerrón, guilty of the crime whose description and punishment appear in Article 179 of the Code of Military Criminal Justice (involuntary homicide).

In keeping with Article 29 of that code, they were sentenced to three years in prison.

The three convicted men filed with the Military Court to appeal the verdict of the First Criminal Judge of the Third Military Zone. After hearing the Prosecutor's legal opinion, the Military Court ruled as follows:

1. Major Jorge Antonio Segovia planned and executed the initiation of the new Sub-Lieutenants. Therefore, his guilty verdict is confirmed and his sentence is three years in prison.
2. Captain Luis Alfredo Parreño Pincay passed along orders to Varela without noticing the suggestions. His guilty verdict stands and he is sentenced to two years in prison.
3. Captain Romel Varela Guerrón did not plan the initiation rite and simply followed orders from Captain Parreño and Major Segovia. Therefore, his sentence is amended and he will serve 6 months in prison.

The court verdict classified the case as one of involuntary homicide, but failed to get at the real cause of death; the subsequent investigations failed to explain the cause and circumstances of the multiple lesions found on the victim's body.

The President of the Court of Military Justice disregarded the right of the victim's family members to know the truth. They were not allowed to appear as a party to the proceedings because Article 3 of the Code of Military Criminal Procedure does not allow private parties to bring charges in military court. Because the aggrieved parties were not allowed to be party to the military criminal proceedings, the latter failed to clearly establish the cause of the victim's injuries and death; and even though the Third Criminal Judge of the Third Military Zone ordered exhumation of the body, the experts concluded that cause of death could not be established because by that time the body was in an advanced state of decay.

IV THE STATE'S INTERNATIONAL RESPONSIBILITY

Based on the case history and the evidence presented at trial, and given the international nature of these violations, which occurred within the jurisdiction of the Ecuadorian state, the State expresses its willingness to accept international responsibility for the violation of Julio Robles Eras' human rights; the State, therefore, is shouldering its duty to provide some measure of redress for the violation.

The State thus acknowledges its international responsibility for violation of the human rights recognized in articles 4 (right to life), 5 (humane treatment), 8 (judicial guarantees) and 25 (judicial protection) and the obligation undertaken in Article 1(1) (obligation to respect and ensure human rights) of the American Convention, to the detriment of Mr. Julio Robles Eras.

V PECUNIARY REPARATIONS

The Ecuadorian state pledges to pay the sum of three hundred thousand United States dollars (USD\$300,000) in compensatory damages to Dr. Luis Vega Eras, the victim's representative. The sum that the Ecuadorian state will pay shall be exempt of any current taxes and any taxes that may one day be decreed.

NON-PECUNIARY REPARATIONS

To ensure a unitary system of justice in practice, the Office of the Attorney General of the State shall ensure that this principle is enforced, so that the military and police systems of justice, which now come under the Executive Branch, will become part of the Judicial Branch, in keeping with transitory provision twenty-six of the Constitution. Until this principle becomes practice, measures will be taken to ensure that military proceedings are respectful of all judicial guarantees.

The Office of the Attorney General of the State shall make overtures to the Ministry of National Defense to do away with the routine practice of initiation procedures within the Armed Forces, which have frequently been a source of excess and offensive to human dignity.

VII

THE RIGHT TO THE TRUTH OF THE VICTIM'S FAMILY MEMBERS AND THE RIGHT OF RECOURSE AGAINST THE RESPONSIBLE PARTIES

The Ecuadorian state shall do everything within its power to ensure that the persons who participated in the act that violated the victim's human rights and that engaged the state's international responsibility, shall face civil and criminal liability.

The state reserves exercise of the right of recourse against the former officers that the military courts convicted of violating Mr. Robles Eras' right to life. It shall exercise this right in accordance with Article 22 of the Constitution.

The Office of the Attorney General of the State shall present all the necessary documents to enable the Public Prosecutor's Office and the Judicial Investigation Service to investigate the violations of Mr. Robles Eras' right to personal integrity. Once the circumstances of Sub-Lieutenant Robles Eras' death are known, i.e., once the culpable parties' degree of blame has been established and they are sentenced accordingly, the final judgment shall be sufficient for the state to reclaim damages from the convicted former officers.

VIII

LEGAL BASIS

The compensatory damages that the Ecuadorian state is paying to the victim's representative are provided for in articles 22 and 24 of the Constitution of the Republic of Ecuador, for violations of the Constitution and other domestic laws, and of the rights protected by the American Convention.

This friendly settlement is being signed out of respect for the human rights recognized in the American Convention and as a function of the fact that the state's highest duty is to respect and enforce human rights, as articles 16 and 17 of the Constitution prescribe.

IX

INFORMATION

Through the Office of the Attorney General, the Ecuadorian state shall periodically report to the Inter-American Commission on Human Rights concerning compliance with the obligations undertaken by the state in this friendly settlement.

As is its practice and in keeping with its obligations under the Convention, the Inter-American Commission will supervise compliance with this agreement.

The Ecuadorian state and the petitioners are submitting this friendly settlement agreement to the Inter-American Commission on Human Rights, so that it may be published in accordance with Article 49 of the American Convention on Human Rights and Article 41(5) of the Rules of Procedure of the Inter-American Commission on Human Rights.

X

NOTIFICATION AND APPROVAL

Dr. Luis Vega Eras expressly authorizes the Attorney General of the State to bring this friendly settlement agreement to the attention of the Inter-American Commission on Human Rights, so that the latter may approve it and confirm it in all its parts.

XI
CONSENT

The parties signing this agreement do hereby state freely and voluntarily that they agree with and consent to the content of the above clauses, and expressly state for the record that they are thus putting an end to any dispute that seeks to blame the Ecuadorian State for the facts that prompted this petition.

XII
CREDENTIALS

The following credentials are included in this friendly settlement agreement:

- Certified copies of the letter of appointment and swearing-in of the Attorney General of the State.
- A copy of Dr. Luis Vega Eras' citizenship card
- General powers of attorney granted by Mrs. María Augustina Eras Romero and Mr. José Julio Robles Vega, to Dr. Luis Vega Eras, in the presence of the Fourth Notary of the Canton of Quito.

To signify their acceptance and agreement, the parties do hereby affix their signatures in the city of San Francisco de Quito, this tenth day of October in the year two thousand six.

Dr. José María Borja Gallegos
ATTORNEY GENERAL OF THE STATE

Dr. Luis Vega Eras
C.C. 1705284048
REPRESENTATIVE OF THE VICTIM

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

24. The IACHR reiterates that pursuant to Article 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in th[e] Convention.” The agreement to engage in this procedure is a manifestation of the State’s good faith to accomplish the purposes and objectives of the Convention, in keeping with the principle of *pacta sunt servanda*, whereby States must comply in good faith with the obligations they undertake in treaties. In this regard, the Commission wishes to once again point out that the friendly settlement procedure provided for in the Convention makes it possible to end individual cases in a non-contentious manner and has proven, in cases regarding several countries, to offer an important and effective vehicle for settlement that can be used by both parties.

25. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in this case and greatly appreciates the efforts made by the parties to achieve this settlement, which is compatible with the object and purpose of the Convention.

26. As for compliance with the points of the agreement, from the information supplied by the parties, the IACHR observes the following:

- **Pecuniary reparations measures:** through a communication dated May 6, 2008, the petitioners reported that the State had paid economic reparations in the amount of US\$300,000, to the members of Julio Rubén Robles Eras’ family. That information was confirmed by the State in a communication received on October 2, 2009.
- **Non-pecuniary reparations measures:** on September 29, 2009, the state reported that it had complied with the commitment undertaken by the Office of the Attorney General to ensure application of a unitary justice system, so that the police and military justice system is incorporated into the judicial branch, in keeping with the constitutional amendment approved via the September 28, 2008 referendum. Also, Article 266 of the Organic Code of the Judicial Service, approved on March 4, 2009, provides that the specialized military and police criminal courts are part of the ordinary justice system, in keeping with Article 183(5), which provides for the existence of the Military Criminal Chamber and Police Criminal Chamber of the National Court of Justice. The petitioners confirmed this in a communication dated June 23, 2011.

As for the second commitment undertaken by the State, namely to eliminate the practice of “initiation”, the petitioners reported that the State had prohibited initiations within the armed forces.

- **Right of the victim’s family members to know the truth and the right of recourse against the individuals responsible:** while the state points out that it has undertaken a preliminary inquiry against those responsible for the death of Julio Robles Eras, in a letter dated December 10, 2009 the petitioners reported that no steps had been taken to vacate the judgment handed down by the military court, nor had the military judges who denied the family access to the proceedings been investigated, tried and punished .

VI. CONCLUSIONS

1. Based on the foregoing considerations and in accordance with the procedure provided in Articles 48(1)(f) and 49 of the American Convention, the Commission reiterates its profound appreciation for the efforts made by the parties and its satisfaction with the achievement of the friendly settlement agreement in this case, based on respect for human rights and in keeping with the object and purpose of the American Convention.

2. Given the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To approve the terms of the agreement the parties signed on October 10, 2006.
2. To continue to supervise the commitments that the Ecuadorian State has not yet fulfilled and, to that end, to remind the parties of their commitment to periodically inform the Commission concerning compliance with the agreement.
3. To make the present report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 13th day of November 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.