

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF PALMA MENDOZA *ET AL.* v. ECUADOR
JUDGMENT OF SEPTEMBER 3, 2012
PRELIMINARY OBJECTION AND MERITS

In the case of *Palma Mendoza et al.*,

the Inter-American Court of Human Rights (hereinafter, “the Inter-American Court” or “the Court”) composed of the following judges:*

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice-President
Leonardo A. Franco, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65, and 67 of the Rules of Procedure of the Court** (hereinafter “the Rules of Procedure”), delivers this Judgment, structured as follows:

* Judge Margarete May Macaulay advised the Court that, for reasons beyond her control, she would be unable to attend the deliberation and signature of this Judgment.

** The Court’s Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On February 24, 2011, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the jurisdiction of the Court, in accordance with Articles 51 and 61 of the Convention, the case of Palma Mendoza *et al.* against the Republic of Ecuador (hereinafter "the State" or "Ecuador"). The initial petition was presented to the Commission on September 24, 1997, by the *Comisión Ecuménica de Derechos Humanos* [Ecumenical Commission on Human Rights] (hereinafter "CEDHU"). On October 22, 2010, the Commission adopted Admissibility and Merits Report No. 119/10 (hereinafter "Admissibility and Merits Report"), in which it found the case admissible and, based on factual and legal findings, concluded that Ecuador:

is responsible for the violation of the rights to personal integrity, judicial guarantees and protection, and life recognized in Articles 5, 8 and 25, in relation to Article 4 of the American Convention, all of them related to failure to comply with Articles 1(1) and 2 of the said instrument to the detriment of Lidia Bravo [...], Luis Palma Bravo, Nelson Palma Mendoza, Rosalía Palma Bravo, Perfelita Mendoza Agua[II]o, Carlos Palma, Víctor Palma and Pablo Palma Pico.

In addition, it recommended that the State conduct an investigation into the alleged facts in order "to prosecute and punish all the masterminds and perpetrators of the human rights violations committed against Marco Bienvenido Palma Mendoza" (hereinafter also "Mr. Palma Mendoza" or "Mr. Palma"), and to adopt all appropriate measures to make reparation to Mr. Palma's next of kin "for both the pecuniary and the non-pecuniary damage." Since the State did not adopt the recommendations in a satisfactory manner, the Commission decided to submit this case to the jurisdiction of the Court. The Commission appointed Luz Patricia Mejía, a Commissioner at the time, and Santiago A. Canton, Executive Secretary at the time, as Delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, together with Lily Ching and Nerea Aparicio, lawyers of the Executive Secretariat, as legal advisors.

2. According to the Commission, on May 16, 1997, at around 9.30 a.m., while he was in his car accompanied by his 11-year-old son, in the canton of Manta, province of Manabí, Mr. Palma Mendoza was "intercepted by a white pickup truck," from which three armed men emerged, dressed in civilian clothing and wearing ski masks. Mr. Palma was put in this truck, which departed toward an unknown location, and was murdered "five days after his abduction." Thus the facts alleged by the Commission indicate that the State is supposedly "responsible for not providing a real possibility of filing a simple and prompt remedy that could have obtained the judicial protection required in the case, [because] the applications for *habeas corpus* filed by Mr. Palma Mendoza's next of kin were ineffective to determine his whereabouts." According to the Commission, "the State authorities merely issued orders that did not achieve results or help to prevent the murder of Mr. Palma." Furthermore, as regards the obligation to investigate and to punish, the Commission indicated that "it is necessary that not only the perpetrators [of the human rights violations] are punished, but also the masterminds and accessories after the facts." In the instant case, "even though a guilty verdict was delivered against three people as perpetrators of the detention and death of Mr. Palma, deficiencies in the Ecuadorian State's obligation to investigate are alleged, as well as in the reasonable time in which this was conducted, and the partial impunity that has resulted from the proceedings."

3. The Commission asked the Court to establish the international responsibility of the State because it failed to comply with its international obligations by violating Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection)

of the Convention, in relation to Article 4 (Right to Life) of the Convention, all in connection with failure to comply with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of this instrument, to the detriment of the next of kin of Mr. Palma Mendoza, namely: Lidia Guadalupe Bravo (hereinafter also "Lidia Bravo" or "Mrs. Bravo"), Luis Miguel Palma Bravo (hereinafter also "Luis Palma Bravo"), Nelson José Palma Mendoza (hereinafter also "Nelson Palma Mendoza"), Rosalía Palma Bravo, Perfelita Matilde Mendoza Aguillo (hereinafter also "Perfelita Mendoza Aguillo" or "Perfelita Mendoza"), Carlos Alberto Palma Mendoza (hereinafter also "Carlos Palma Mendoza"), Víctor Ludino Palma Mendoza (hereinafter also "Víctor Palma Mendoza") and Pablo Antonio Palma Pico (hereinafter also "Pablo Palma Pico").

II PROCEEDINGS BEFORE THE COURT

4. The case was notified to the State and the representatives on May 16, 2011. On July 18, 2011, Elsie Monge and César Duque, members of CEDHU, representing the presumed victims (hereinafter "the representatives"), presented their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"). In this brief, they referred to the facts described by the Commission, expanding upon them. They did not name Marco Bienvenido Palma Mendoza as a presumed victim, and neither did the Commission (*supra* para. 3) and, in general agreed with the violations alleged by the Commission to the detriment of Mr. Palma's next of kin.¹ However, they did not ask the Court to declare the violation of Article 2 (Domestic Legal Effects) of the American Convention. Lastly, they requested various measures of reparation.

5. On October 21, 2010, the State presented its brief filing a preliminary objection, answering the submission of the case, and with observations on the pleadings and motions brief (hereinafter "answering brief"). The State referred to the factual and legal arguments presented by the Commission and the representatives, and asked the Court to accept the preliminary objection filed concerning "the so-called fourth instance formula" and to declare that the State had not violated Articles 8, 25, and 5 in relation to Article 4 of the American Convention and to Article 1(1) thereof. It also referred to the measures of reparation requested and the claim for costs and expenses. The State appointed Erick Roberts Garcés, National Director of Human Rights of the Attorney General's Office, as Agent, and Alonso Fonseca Garcés, as Deputy Agent.

6. On December 2 and 6, 2011, the representatives and the Commission, respectively, presented their written arguments on the preliminary objection filed by the State, and asked the Court to reject it and proceed to the merits of the case.

7. By an Order of January 25, 2012, the President of the Court (hereinafter "the President") required that the statements of two presumed victims be received by affidavit. In addition, he summoned the parties to a public hearing, held at its headquarters, on March 1, 2012, during the ninety-fourth regular session of the Court,² in order to receive the

¹ The representatives named the following as Mr. Palma's next of kin: Lidia Bravo, Luis Palma Bravo, María Lilibeth Palma Bravo, Wider Ramón Palma Bravo, William Marco Palma Bravo, Geoconda María Palma Figueroa, Monserrate Lili Palma Cedeño, Robinson Marcos Palma Mendoza, Nelson Palma Mendoza, Perfelita Mendoza Aguillo, Víctor Palma Mendoza, Manuel Vicente Palma Mendoza, Aura Indelira Palma Mendoza, Laurentina Leonor Palma Mendoza, Julio César Palma Mendoza and Pablo Palma Pico.

² At this hearing, the following appeared: (a) for the Inter-American Commission: Silvia Serrano Guzmán and Tatiana Gos, Advisers; (b) for the representatives of the presumed victims: César Duque, of CEDHU, and (c) for the State: Alonso Fonseca Garcés, Deputy Agent, and Carlos Espin Arias, Lawyer.

statements of two presumed victims proposed by the representatives and one expert witness proposed by the State, as well as the final oral arguments of the parties and observations of the Commission on the preliminary objection and eventual merits, reparations and costs; in addition, he granted the parties and the Commission until April 2, 2012, to present their final written arguments and final written observations, respectively.

8. On March 30 and April 2, 2012, the State and the representatives, respectively, presented their final written arguments. The Commission presented its final written observations on the latter date.

9. On May 14, 2012, the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the President, asked the representatives to provide as helpful evidence, by May 28, 2012, at the latest, documentation to prove the identity of each of the next of kin of Marco Bienvenido Palma Mendoza and their relationship to him, with regard to those persons the representatives considered to be presumed victims or beneficiaries. On May 24, 2012, the representatives presented the helpful evidence requested. On June 8, 2012, the Commission indicated that it had no observations to make on the said documentation. On June 12 that year, the State forwarded to the Court a brief with certain objections and considerations relating to the documentation submitted by the representatives (*infra* para. 25).

10. On June 12, 2012, the Secretariat of the Court, on the instructions of the President, asked the representatives and the State to forward the domestic norms regulating the mechanisms and effects of the discontinuance of criminal proceedings, as helpful evidence, by June 19, 2012 at the latest. The representatives and the State submitted the required documentation on June 18 and 19, 2012, respectively. On July 2 the same year, the representatives forwarded their observations. Neither the State nor the Commission submitted observations on the said documentation.

III PRELIMINARY OBJECTION OF "FOURTH INSTANCE"

11. In its answering brief, the State filed the preliminary objection known as "court of appeal or fourth instance." The Court will now analyze the admissibility of this objection.

Arguments of the State and observations of the representatives and the Inter-American Commission

12. In its answering brief, the State asserted that:

In relation to abduction and murder, the objection [...] of the fourth instance has been proposed because those responsible for the crime were prosecuted; in other words, the domestic remedy was implemented. But, additionally, the State's agencies responded to all requests for investigation regarding the alleged participation of State agents, reaching the conclusion that they were not involved, and no causal nexus of any kind was found. Regarding the filing of the application for *habeas corpus*, although this remedy was initially designed to resolve any anomalies in detentions carried out by State agents, in this case it constituted the basic reference point of the mechanisms to search for Mr. Palma.

13. At the public hearing held on March 1, 2012, as well as in its closing arguments, the State reiterated its arguments concerning the filing of the preliminary objection. It indicated that "the Commission's actions had contributed to constituting" the fourth instance formula. The State argued that the Commission had exceeded the powers conferred by the American

Convention, by assessing the evidence of the domestic criminal proceedings and referring to what the relevant procedural aspect for the judgment would be under domestic law. It had also made an analysis where it set forth considerations on the existence of masterminds and accessories to the crime, which the State considered was a task reserved to a domestic judge. The State concluded that the foregoing placed it in a state of defenselessness and, therefore, asked the Court to exercise the powers it has to control legality, as noted in Advisory Opinion OC-19. The State also argued that, in the instant case, "it can be said that the claim found [in the pleadings and motions brief] and in the Admissibility and Merits Report [is circumscribed] to the Inter-American Court [...] assuming a function of court of appeal and review, which exceeds its mandate under the American Convention." In this regard, the State indicated that the failure to punish all the accused does not mean that the proceedings can be analyzed by an international court.

14. For their part, in their brief of December 2, 2011, at the public hearing, and in their final arguments, the representatives indicated that the purpose of this case is for the Court to make a joint assessment of the judicial activity to verify whether or not the actions of the administrators of justice were compatible with the American Convention, and this does not constitute the fourth instance formula. They considered that this does not represent a simple disagreement with the results and content of a final judgment adopted by the domestic courts, as contended by the State, but rather they are denouncing serious shortcomings in the judicial investigation, which constituted the State's violation of its obligation to conduct an adequate investigation within a reasonable time, aimed at discovering the truth, identifying all those responsible, prosecuting them and imposing an appropriate punishment so that such acts are not repeated. They concluded that these considerations cannot be resolved as a preliminary matter, but rather in the analysis of the merits of the case, as regards the violation of Articles 8 and 25 of the Convention. They therefore asked the Court to reject the preliminary objection.

15. In its brief of December 6, 2011, at the public hearing, and in its final observations, the Commission considered that, in the instant case, the Court is not asked to act as a higher court with regard to the domestic judgments, but to rule on whether or not the State violated the American Convention in the exercise of its judicial and investigative powers in relation to the facts of the case. The Commission added that the State's arguments do not have the nature of a preliminary objection:

First because, as State agents, the investigative authorities and the judges can involve the responsibility of the State. Second, because the State's argument is based on the premise that the actions of its authorities were in keeping with the American Convention, a matter that corresponds to the merits of the matter.

Based on the foregoing, the Inter-American Commission asked the Court to reject the preliminary objection filed by the State as inadmissible.

Considerations of the Court

16. This Court has established that the international jurisdiction is of a subsidiary,³ reinforcing and complementary nature,⁴ therefore it does not act as a court of "fourth

³ Cf. *Case of Acevedo-Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 114.

⁴ The Preamble to the American Convention establishes that the international protection is "in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States." See

instance." It is the Court that must decide whether, in the case in question, the State has violated a right protected by the Convention, thus incurring international responsibility. Therefore, the Court is not a higher court or a court of appeal to decide the disagreements of the parties on specific implications of the application of domestic law to aspects that are not directly related to compliance with international human rights obligations.⁵

17. The Court has stated that preliminary objections seek to prevent an examination of the merits of an aspect in question, by objecting to the admissibility of a case or to the competence of the Court to hear a specific case or any of its aspects, based on the person, the matter, the time, or the place, provided that these objections are of a preliminary nature.⁶ If these objections cannot be examined without previously analyzing the merits of a case, they cannot be analyzed by means of a preliminary objection.⁷

18. The Court has also indicated that, for the fourth instance objection to be admissible, it would be necessary that the applicant seeks that the Court examine the decision of a domestic court "owing to its incorrect assessment of the evidence, the facts, or the domestic law, without, at the same time, arguing that the said decision violated international treaties over which the Court has jurisdiction."⁸ The foregoing, within the framework of the Court's reiterated case law, which has noted that the determination of whether or not the actions of judicial organs constitute a violation of the State's international obligations may mean that the Court must examine the respective domestic proceedings to establish their compatibility with the American Convention.⁹

19. This Court considers that the preliminary objection is inadmissible; nevertheless, since the arguments presented by the State are related to due process, they will be analyzed in Chapter VI on the alleged violations of Articles 8 and 25 of the American Convention.

IV COMPETENCE

20. The Court has competence to hear this case, in keeping with Article 62(3) of the American Convention, since Ecuador has been a State Party to the Convention since

also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6; *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para 61, and *Case of Díaz Peña v. Venezuela, supra nota 5*, para. 114.

⁵ Cf. *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 18, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 38.

⁶ Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of González Medina and family members v. Dominican Republic*, para. 39.

⁷ Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of González Medina and family members v. Dominican Republic*, para. 41.

⁸ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 221, para. 18, and *Case of González Medina and family members v. Dominican Republic*, para. 40.

⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of the Barrio Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 181.

December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984, while the facts of the instant case occurred as of May 16, 1997.

V EVIDENCE

21. Based on the provisions of Articles 50, 57 and 58 of the Rules of Procedure, as well as on the Court's case law regarding evidence and its assessment,¹⁰ the Court will examine and assess the documentary evidence provided at different procedural opportunities, the statements of the presumed victims, and the expert opinions provided by affidavit and during the public hearing before the Court, as applicable. To this end, the Court will abide by the rules of sound judicial discretion, within the corresponding legal framework.¹¹

1. Documentary, testimonial and expert evidence,

22. The Court has received documents submitted by the Inter-American Commission, the representatives, and the State together with their main briefs and, on other occasions, in response to requests by the Court (*supra* paras. 1, 4, 5, 9 and 10). The Court has also received the affidavits of presumed victims Pablo Palma Pico and Nelson Palma Mendoza¹² (*supra* para. 7). All the said documents and statements were forwarded opportunely to the parties and to the Inter-American Commission so that they could present any observations they considered pertinent. Regarding the evidence provided at the public hearing, the Court received the testimony of presumed victims Lidia Bravo and Luis Palma Bravo, and of expert witness Diego Zalamea León (*supra* para. 7).

2. Admission of the documentary evidence

23. In this case, as in others, the Court grants probative value to those documents presented opportunely by the parties that were not contested or opposed and the authenticity of which was not questioned.¹³

24. Regarding newspaper articles, this Court has considered that they can be assessed when they contain well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case.¹⁴ The Court decides to admit the documents that are complete or that, at least, allow verification of their source and date of publication, and it will assess them, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.¹⁵

¹⁰ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 31.

¹¹ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. para. 76, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 31.

¹² Cf. *Case of Palma Mendoza et al. v. Ecuador. Order of the Court of January 25, 2012*, fifth operative paragraphs. Available at: http://www.corteidh.or.cr/docs/asuntos/palma_25_01_12.pdf

¹³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 140, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 35,

¹⁴ Cf. *Case of Velásquez Rodríguez. Merits*, para. 146, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 36.

¹⁵ Cf. *Case of Velásquez Rodríguez. Merits*, para. 146, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 36.

25. The State contested the documentary evidence presented by the representatives at the Court's request concerning the identity of each of Marco Bienvenido Palma Mendoza's next of kin and their relationship to him (*supra* para. 9). It indicated that this information should have been presented at the opportune procedural moment, and that the fact that this did not occur - meaning that "information has been introduced into the body of evidence that will influence the result of the proceedings - impairs irreparably the right of the State as a party to the proceedings." It added that, by accepting this evidence, the Court "also violates the right of the parties to an impartial judge." The Court considers that the presentation of the evidence was not time-barred, because it was provided by the representatives at the Court's request in application of Article 58 of its Rules of Procedure. The use of the powers conferred by that article in no way implies partiality or entails a prior determination of the presumed victims. It is in this Judgment that the Court makes this determination. The Court clarifies that, when requesting the respective documentation, it indicated that it did so, not in relation to "victims" or "presumed victims," but rather in relation to those persons who, "as alleged by the representatives, are presumed victims or beneficiaries in the case." Moreover, a "right of the State as party to the proceedings" was not impaired because, as is clear from the above, it had the opportunity to refer to the respective documents. It should be noted, lastly, that the State did not dispute the authenticity of the said documents. Accordingly, the Court considers the State's observations inadmissible.

26. Consequently, with regard to the documentation requested by this Court as useful evidence (*supra* paras. 9 and 10) under Article 58 of the Rules of Procedure, it is incorporated into the body of evidence in keeping with the rules of sound judicial discretion.

3. Admission of the statements of the presumed victims and the expert opinion

27. Regarding the statements of the presumed victims and the expert opinion provided during the public hearing and by affidavit, the Court considers them pertinent to the extent that they are in keeping with the purpose defined by the President of the Court in his Order requiring them (*supra* para. 7). Moreover, in keeping with the Court's case law, the statements of the presumed victims cannot be assessed in isolation, but must be examined together with the rest of the evidence in the proceedings, because they are useful insofar as they can provide further information on the alleged violations and their consequences.¹⁶

VI FACTS

28. The Court recalls that, under Article 41(3) of the Rules of Procedure, it may consider accepted the facts which have not been expressly denied and the claims that have not been expressly contested. The facts described in paragraphs 29 to 62 have been proved in accordance with the evidence provided to the Court, and they were not contested by the State.

1. Deprivation of liberty and subsequent death of Mr. Palma Mendoza

¹⁶ Cf. *Case of Loayza Tamayo. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 43.

29. On May 16, 1997, at around 9.30 a.m., Marco Bienvenido Palma Mendoza, 45 years of age, was traveling in his car with his son Luis Palma Bravo, 11 years old at the time, in the canton of Manta, province of Manabi. While they were driving by the Ecuadorian Professional Training Service (hereinafter "SECAP"), his vehicle was intercepted by a white double cabin pickup truck, without license plates.¹⁷ Heavily armed men wearing ski masks got out of the van and put Mr. Palma Mendoza in the truck, leaving for an unknown destination.¹⁸

30. Before 9:30 a.m. that day, Manuel Armijos, a SECAP security guard, had approached the white truck that was parked outside the establishment to find out what it was doing there. One of the men in the van went up to him before he reached the vehicle and showed him an identity card, identifying himself as a member of the "intelligence force" and telling him not to worry.¹⁹ As was learned subsequently (*infra* para. 42), the men who took Mr. Palma Mendoza were part of the security team of the companies owned by the Cevallos family, and two of them were former members of the Ecuadorian Armed Forces (hereinafter "FAE").²⁰

2. Investigation of the facts, discovery of Mr. Palma Mendoza's body and its subsequent identification

31. On May 16, 1997, after his father had been taken away, Luis Palma Bravo returned home and told his mother what had happened.²¹ That same day, Lidia Bravo, Mr. Palma's companion, together with family members, friends and neighbors, searched for her companion,²² and went to SECAP, where they were told that those who had taken Mr. Palma Mendoza had identified themselves as "military intelligence."²³ She also looked for him on

¹⁷ Cf. Complaint filed by Lidia Bravo before the XIth Criminal Judge of Manabi on May 17, 1997 (file of appendices to the Admissibility and Merits Report, appendix 3, folio 19), and judgment delivered by the Criminal Court of Manabi, Manta, on March 19, 2001, in criminal case No. 18-2001 (file of appendices to the Admissibility and Merits Report, appendix 2, folios 10 to 17).

¹⁸ Cf. Complaint filed by Lidia Bravo before the Criminal Judge of Manabi on May 17, 1997, folio 19; testimony provided by Luis Palma Bravo before the XIth Criminal Judge of Manabi on April 5, 2000 (file of appendices to the Admissibility and Merits Report, appendix 7, folio 43), and statement made Luis Palma Bravo before the Court during the public hearing held on March 1, 2012, and judgment delivered by the Criminal Court of Manabi, Manta, on March 19, 2001, folios 10 to 17.

¹⁹ Cf. Interview of May 23, 1997, with Manuel Armijos contained in police report No. 97-218-OID-MM-PREL, signed by investigating agent Bonifacio Lino Caicedo (file of attachments to the pleadings and motions brief, attachment 1, folio 1384).

²⁰ Cf. Certification of "entry into service and discharge" issued on January 16, 1996, by the head of the Administrative Department of the FAE Personnel Directorate, in response to the request of Freddy Simón Contreras Luna (file of attachments to the answering brief, attachment 8, folio 1913); certification of "entry into service and discharge" issued on May 6, 1996, by the head of the Administrative Department of the FAE Personnel Directorate, in response to the request by Stanley Domínguez (file of attachments to the answering brief, attachment 8, folio 1911), and decision of the Ministry of National Defense, issued by the head of Personnel, of July 30, 1998, with regard to Stanley Domínguez (file of attachments to the answering brief, attachment 8, folio 1912).

²¹ Cf. Statement made by Luis Palma Bravo before the XIth Criminal Judge of Manabi on April 5, 2000, folio 43; court order to investigate an alleged crime issued by the XIth Criminal Judge of Manabi on July 1, 1997 (file of appendices to the Admissibility and Merits Report, appendix 16, folios 71 and 72), and affidavit prepared by Pablo Palma Pico on February 9, 2012 (file of preliminary objection, merits, reparations and costs, tome I, folios 397 to 400).

²² Cf. Complaint filed by Lidia Bravo on May 17, 1997, folio 19, court order to investigate an alleged crime issued by the XIth Criminal Judge of Manabi on July 1, 1997, folios 71 and 71; affidavit prepared by Pablo Palma Pico, folios 397 to 400, and statement made by Lidia Bravo before the Court during the public hearing held on March 1, 2012.

²³ Cf. Statement made by Lidia Bravo before the Court.

police, military, and prison premises; and she publicized the facts in the media.²⁴ She stated that, when she went to the police, she was told that it was necessary to wait 12 hours before beginning the search.²⁵

32. On May 17, 1997, Lidia Bravo filed a complaint for the abduction of Mr. Palma Mendoza, which was examined by the XIth Criminal Judge of Manabi (hereinafter "XIth Judge of Manabí").²⁶ At that time, Mrs. Bravo stated that SECAP personnel and neighbors had indicated that, the previous day, the said white pickup truck had arrived accompanied by a blue FAE pickup truck and another car with uniformed military personnel.²⁷ That same day, the XIth Judge of Manabí ordered the Head of the Manta Crime Investigation Office (hereinafter "the OID") to open an investigation into the incident that had been denounced, and to forward the findings to this judge in order to open the corresponding criminal proceedings.²⁸

33. On May 21, 1997, the OID sent a request to the FAE asking that the "personnel who were present on the SECAP premises on the morning of Friday May 16, [that] year" appear at the OID offices.²⁹ The next day, the OID made another request to the military institution to obtain information on whether personnel under the command of "the Commander of the No. 23 Fighter Wing ha[d] arrested" Mr. Palma Mendoza, and asked it to indicate "whether the said unit ha[d] a white double-cabin pickup truck type of vehicle."³⁰ In addition, from May 17 to 23, 1997, the day on which the police report was prepared recording "measures taken" in the investigation arising from the complaint filed by Lidia Bravo, the OID conducted other procedures: reception of statements from Lidia Bravo, Luis Palma Bravo, and individuals who worked in the SECAP or in its vicinity, and an order (that was not complied with) for a conscript who "was serving his enlistment in the FAE" "to come forward to testify." The report also indicated that an inquiry was made, with negative results, as to whether military forces had organized any operation in which Mr. Palma Mendoza could have been detained, and whether the white pickup truck that was used in his abduction belonged to the army. Among its conclusions, the report noted that "in the moments just before the abduction, a vehicle of the Armed Forces with members of this institution arrived at the SECAP premises to discuss the organization of two courses and the abduction occurred while a conscript was waiting in the vehicle."³¹

²⁴ Cf. Complaint filed by Lidia Bravo on May 17, 1997, folio 19; court order to investigate an alleged crime issued by the XIth Criminal Judge of Manabí on July 1, 1997, folios 71 and 72; affidavit prepared by Pablo Palma Pico, folios 397 to 400, and statement made by Lidia Bravo before the Court.

²⁵ Cf. Statement made by Lidia Bravo before the Court.

²⁶ Cf. Complaint filed by Lidia Bravo on May 17, 1997, folio 19; court order to investigate an alleged crime issued by the XIth Judge of Manabí on July 1, 1997, folios 71 and 73; When filing the complaint, Lidia Bravo asked that the respective investigation be conducted and asked that the pertinent communications be sent to the OID of the Manta Police and to the FAE in order to obtain information on the facts denounced.

²⁷ Cf. Complaint filed by Lidia Bravo on May 17, 1997, folio 19, and court order to investigate an alleged crime issued by the XIth Judge of Manabí on July 1, 1997, folios 71 and 72.

²⁸ Cf. Official note No. 640-97, signed by the XIth Judge of Manabí, addressed to the Head of the Manta OID, dated May 17, 1997 (file of attachments to the answering brief, attachment 9, folio 1916).

²⁹ Cf. Official note No. 97-337-OID-MM of May 21, 1997, signed by the Police Major, Deputy Head of the Manta OID, addressed to the No. 23 Fighter Wing Commander (file of attachments to the answering brief, attachment 2, folio 1863).

³⁰ Cf. Official note No. 97-339-OID-MM of May 22, 1997, signed by the Police Major, Deputy Head of the Manta OID, addressed to the No. 23 Fighter Wing Commander (file of attachments to the answering brief, attachment 3, folio 1866).

³¹ Cf. Police Report No. 97-218-OID-MM-PREL, signed by the investigating agent Bonifacio Lino Caicedo, dated May 23, 1997 (file of attachments to the answering brief, attachment 1, folios 1856 to 1860).

34. Carlos Alberto Palma Mendoza filed an application for *habeas corpus* before the Municipality of Manta on May 22, 1997, and that same day the mayor requested the No. 23 Fighter Wing Commander, the Manta Port Captain, the Chief of the Manta Police Force, the Head of the OID, the Eighth Criminal Judge of Manabí, the XIth Judge of Manabí, the Traffic Judge, and the National Police Captains, that Marco Bienvenido Palma Mendoza be brought before him and that they submit the documents and reports they deemed pertinent.³² Regarding the application for *habeas corpus*, General Luis Carrera appeared before the mayor of Manta and stated that “they were not holding Mr. [...] Palma [Mendoza].”³³

35. On May 23 and 26, 1997, two corpses were found in an advanced state of putrefaction, naked, and with no identification, on the banks of the river Norcay, in Jesus Maria Parish of the Canton of Naranjal, in the province of Guayas.³⁴ The police authorities were informed of the discovery of the two bodies and arranged for them to be transferred to the morgue. A doctor then performed a “forensic examination.”³⁵ Since no one recognized the bodies, they were buried without being identified.³⁶

36. On May 27, 1997, the XIth Judge of Manabí received a preliminary report of the investigations into the abduction of Mr. Palma Mendoza from the Manta OID.³⁷

37. On May 30, 1997, CEDHU filed another application for *habeas corpus* in favor of Mr. Palma Mendoza at the Mayor’s Office of the Metropolitan District of Quito.³⁸ That same day, the mayor ordered that Mr. Palma Mendoza be brought before him on the following June 6, notifying, in this regard, “the Director of the Provisional Detention Center, the Director of the Men’s Social Rehabilitation Center of Quito No. 1, 2, and 3, and the Public Prosecutor.”³⁹ On June 13, 1997, considering that, according to the information provided in the application for *habeas corpus*, Mr. Palma was “at the orders” of the military forces, and that they had not “justified his detention,” the Mayor ordered his “immediate release.”⁴⁰

³² Cf. Communication of the Mayor of Manta regarding the application for *habeas corpus* filed by Carlos Alberto Palma Mendoza before the Municipality of Manta, dated May 22, 1997 (file of attachments to the pleadings and motions brief, attachment 7, folio 1448), and affidavit made by Pablo Palma Pico, folios 397 to 400.

³³ Cf. Affidavit made by Pablo Palma Pico, folios 397 to 400, and statement made by Lidia Bravo before the Court.

³⁴ Cf. Testimony of Lenin Oswaldo Ordoñez Ortiz of February 26, 2000, recorded in police report No. 2000-128-P-J-M-COMPL, signed by Investigating Agent Aladino Zambrano Acosta (file of appendices to the Admissibility and Merits Report, appendix 1, folios 25 to 36); newspaper article published in *El Universo* on May 30, 1997 (file of appendices to the Admissibility and Merits Report, appendix 13, folio 61); supplementary report of the National Investigations Directorate of the Ecuadorian National Police No. 2000-150-PJ-M-COMPL., signed by Investigating Agent Nelson Carrión Cabrera, of March 3, 2000 (file of appendices to the Admissibility and Merits Report, appendix 14, folios 63 to 67). It is worth noting that, according to this police report, the said testimony of Lenin Ordoñez mentions the “Cañar” river. The other documents cited refer to the “Norcay” river.

³⁵ Cf. Supplementary report of the National Investigations Directorate of the Ecuadorian Police No. 2000-150-PJ-M-COMPL., of March 3, 2000, folios 63 to 67.

³⁶ Cf. Supplementary report of the National Investigations Directorate of the Ecuadorian Police No. 2000-150-PJ-M-COMPL., of March 3, 2000, folios 63 to 67, and newspaper article published in *El Universo* on May 30, 1997, folio 61.

³⁷ Cf. Official note No. 97-349-OID-MM of the OID, addressed to the XIth Judge of Manabí, received by the addressee on May 27, 1997 (file of appendices to the Admissibility and Merits Report, appendix 11, folio 56).

³⁸ Fact mentioned in the Admissibility and Merits Report and in the pleadings and motions brief, and not contested by the State (file on preliminary objection, merits, reparations and costs, tome I, folios 17 and 134).

³⁹ Cf. Decision of the Mayor’s Office of the Metropolitan District of Quito, signed by the Secretary General of the Quito Metropolitan Council, of June 13, 1997 (file of attachments to the pleadings and motion brief, attachment 8, folio 1450).

⁴⁰ Cf. Decision of the Mayor’s Office of the Metropolitan District of Quito, folio 1450.

38. On July 1, 1997, the XIth Judge of Manabí heard the complaint filed by Lidia Bravo and issued "a court order to investigate the alleged crime in order to discover the perpetrators, accomplices and accessories after the fact, who might be determined by the investigation procedure," because the act denounced constituted "a crime that must be investigated and punished *ex officio*."⁴¹ To this end, he ordered the implementation of certain measures, including "receiving the testimony of each and every person who had information about the illegal act under investigation [and] inspecting the crime scene [...] with the assistance of experts."⁴²

39. On July 21, 1997, the representatives filed a complaint on the supposed participation of members of the Navy in Mr. Palma's detention. In response, on August 3, 1997, the Vice Admiral, Chief of Staff, advised them that "no naval premises or naval personnel belonging to [that] institution [had] anything to do with the arrest and retention"⁴³ of Mr. Palma. The representatives also addressed another communication to the then President of the Republic, Fabián Alarcón Rivera. On October 3, 1997, the Minister of the Interior and Police informed the representatives that, by order of the Minister of National Defense, an investigation had been carried out into the supposed abduction of Mr. Palma, and the results determined that, at no time, had he been detained by members of the Armed Forces.⁴⁴ On January 25, 1999, the representatives sent another communication to the Minister of National Defense, General José Gallardo Román, in which they requested that an investigation be opened in relation to Mr. Palma's disappearance and the possible involvement of the Armed Forces, based on information provided by the lawyer, Ignacio Buenaventura Reyes Cárdenas (hereinafter also "Ignacio Reyes Cárdenas" or "the lawyer Reyes"). On March 17, 1999, the Minister of National Defense informed the representatives that the intelligence personnel of the Ecuadorian Air Force, based in the Eloy Alfaro Air Base of Manta, bore no responsibility, and that Mr. Palma's disappearance had possibly occurred owing to revenge or blackmail.⁴⁵

40. On June 9, 1998, the head of the OID was informed that, on that day, as part of the investigations into the abduction of Mr. Palma Mendoza being conducted by that office, the lawyer Ignacio Buenaventura Reyes Cadenas and Lidia Bravo had been interviewed, and the latter indicated that a mistress of Lenin Oswaldo Ordoñez Ortiz (hereinafter also "Lenin Ordoñez"), had told her friend Justina Vega that Mr. Palma Mendoza had been killed by Lenin Ordoñez, who was employed as a member of the security team of the "PECIA company."⁴⁶ Also, the police report indicated that Mr. Palma Mendoza's son, Luis Palma Bravo, had stated that, one month before his father's disappearance, the latter had met with Lenin Ordoñez and had an argument with him.⁴⁷

⁴¹ Cf. Court order to investigate an alleged crime issued by the XIth Judge of Manabí on July 1, 1997, folios 71 and 72.

⁴² Cf. Court order to investigate an alleged crime issued by the XIth Judge of Manabí on July 1, 1997, folios 71 and 73.

⁴³ Cf. Official note ESMAAR-SED-062-0 of August 8, 1997, addressed to Sister Elsie Monge, President of CEDHU and signed by Timoshemko Guerrero Rivadenerida, Vice Admiral, Chief of Staff of the Navy (file of attachments of the pleadings and motions brief, attachment 10, folio 1456).

⁴⁴ Cf. Official note No. 0347 of October 3, 1997, addressed to Sister Elsie Monge, President of CEDHU and signed by César Verduga Vélez, Minister of the Interior and Police (file of attachments of the pleadings and motions brief, attachment 11, folio 1458).

⁴⁵ Cf. Official note No. 990281-MJ-2-B of March 17, 1999, from the Ministry of National Defense, addressed to Sister Elsie Monge, Executive Director of CEDHU (file of attachments of the pleadings and motions brief, attachment 15, folios 1472 to 1474).

⁴⁶ Cf. Report sent to the Head of the Manta OID, signed by police officer Lino Caicedo Bonifacio, dated June 9, 1998 (file of appendices to the Admissibility and Merits Report, appendix 19, folio 79).

⁴⁷ Cf. Report sent to the Head of the Manta OID, dated June 9, 1998, folio 79.

41. On September 1, 1998, the OID National Investigations Directorate informed the Head of the OID about the investigations, interviews and procedures that had been conducted,⁴⁸ mainly related to the alleged fabrication of information and documentation given to Lidia Bravo by lawyers who had provided her with advice in the context of the search for Mr. Palma Mendoza.⁴⁹ Despite this, the report concluded that “no information had been obtained that would allow the whereabouts of Mr. [...] Palma Mendoza to be determined, [...] so that investigations would continue in order to [achieve this].

42. On February 16, 2000, Lenin Ordoñez was arrested for alleged misappropriation of certain assets of the “PECIA” company owned by members of the Cevallos family.⁵⁰ Lenin Ordoñez stated that, of his own free will, he wished to make a statement concerning facts related to the abduction and death of Mr. Palma Mendoza,⁵¹ and of another person. He indicated that, in May 1997, Medardo Cevallos asked him to investigate a robbery that had taken place on the premises of “Manabi Motors”; he did this with Freddy Simón Contreras Luna (hereinafter also “Freddy Contreras”), Stanley Vicente Domínguez Avilés (hereinafter also “Vicente Domínguez”) and Jhonny Menéndez. According to the statement made by Lenin Ordoñez, after identifying Mr. Palma Mendoza as one of the individuals involved in the robbery, they captured him as previously described (*supra* para. 29), together with another individual (known as “el Flaco,” who was Jorge Jhon Mero Parrales), informing Medardo Cevallos and Ramón Bravo Mera of the fact. He indicated that, on the latter’s orders, they took the individuals they had abducted to Palestina and then to Puerto Inca and to “a place called Olmedo.” With regard to Mr. Palma, he added that “he was given nothing to eat for five days and merely kept alive with water,” and also that “they chained his feet and hands and strangled him.” He explained that, after leaving Freddy Contreras with Mr. Palma Mendoza and “el Flaco,” he and Vicente Domínguez left for Guayaquil, while Jhonny Menéndez returned to Manta and that, when they were nearing their destination, Medardo Cevallos ordered them to go back. He stated that when they did so, they noted that the individuals they had captured had been killed, and then they threw the bodies into the Cañar

⁴⁸ Cf. Report No. 98-190-OID-MM of September 1, 1998, of the National Investigations Directorate of the Manta OID, signed by investigator Lino Caicedo Bonifacio, addressed to the Head of the Manta OID (file of appendices to the Admissibility and Merits Report, appendix 20, folios 81 to 85). Without indicating the dates on which the respective measures were taken, the report describes the following actions: reception of the statements of Lidia Bravo and Blanca Filadelfia Zambrano Zambrano, of the lawyers Ronald Ecuador Briones Cobos and Ignacio Buenaventura Reyes Cardenas, and of Héctor Moreira Vincens, Pablo Antonio Pico and Carlos Alberto Palma Mendoza. Regarding the latter three, the report mentions that “[their] statements are attached”, but the attached documents were not received by the Court.

⁴⁹ Cf. Report No. 98-190-OID-MM of the National Investigations Directorate of the Manta OID of September 1, 1998, folios 81 to 85. In this regard, the report indicates, *inter alia*, that Lidia Bravo stated that, following her husband’s deprivation of liberty, she sought assistance, first, from the lawyer Ronald Ecuador Briones Cobos, who put her in contact with the lawyer Ignacio Buenaventura Reyes Cárdenas. According to Lidia Bravo’s statement recorded in the report, the lawyer Ignacio Buenaventura Reyes Cárdenas told her that Mr. Palma Mendoza was being detained in Guayaquil. Then, according to Lidia Bravo’s statement recorded in the report, she also contacted the lawyer Isabel Montañó, who went with the lawyer Reyes to the “Huancavilca Fort” and, subsequently, told her that they had seen Mr. Palma Mendoza there. Lidia Bravo also declared that the lawyer Reyes gave her a letter supposedly signed by Mr. Palma Mendoza. Mrs. Bravo also indicated that, in the context of the said actions, on different occasions she gave the lawyers money they had asked for so that they could give it to members of “military intelligence.” According to the report, the result of the respective expert analysis was that “the signature that appears in the letter delivered by the [lawyer] Reyes Cárdenas to Lidia Bravo does not correspond to that of the now disappeared Marco Palma Mendoza.”

⁵⁰ Cf. Police Report No. 2000-116-PJ-M of February 21, 2000, signed by Investigating Agent Aladino Zambrano Acosta, addressed to the Chief of the Judicial Police of Manta (file of attachments to the pleadings and motions brief, attachment 16, folios 1478 to 1483).

⁵¹ Cf. Police Report No. 2000-128-PJ-M-COMPL. of February 22, 2000, signed by Investigating Agent Aladino Zambrano Acosta, addressed to Chief of the Judicial Police of Manta (file of attachments to the answering brief, attachment 4, folios 1869 to 1879).

river.⁵² In this regard, he indicated that Freddy Contreras had received the order “to eliminate” Mr. Palma and Jorge Jhon Mero Parrales from “the Cevallos.”

43. Based on the statement made by Lenín Ordoñez, it was presumed that the body found on May 26, 1997,⁵³ was that of Mr. Palma. Following the said statement, on February 29, 2000, the XIth Judge of Manabí, ordered, *inter alia*, the Judicial Police to continue investigating the case and “to provide information on the presumed burial of the corpses of [Mr.] Palma Mendoza and Jorge Jhon Mero Parrales, in order to require their exhumation and proceed to the identification required by the law in this regard,” the inspection of the scene of the crime, and “the reconstruction of the crime.”⁵⁴ Mr. Palma’s body was exhumed and identified on the same February 29.⁵⁵ Two experts took part in the corresponding procedure; they, together with the Secretary of the respective court who was also present, had previously been sworn in by the XIth Judge of Manabí. Several members of Mr. Palma Mendoza’s family were also present, including his brothers Manuel Vicente and Carlos Alberto, both with the surnames Palma Mendoza; his son Luis Palma Bravo, and Lidia Bravo.⁵⁶ Some family members collaborated in the excavation of the site where the body was located⁵⁷ and, when it was found, Luis Palma Bravo extracted “the bones of his father,” after which his mother, Lidia Bravo, cleaned them.⁵⁸ The body was identified because “the dentures were still intact and [...] were recognized by Lidia [...] Bravo.”⁵⁹ After Mr. Palma Mendoza’s body had been exhumed, it was taken “to the morgue [...] where the sitting judge [...] Roger Pico Benítez [and] Camilo Andrade, police doctor, were present; they carried out the inspection of the remains,” which were later removed by the family members.⁶⁰ According to the pertinent records, the authorities “proceed[ed] to remove the dentures from the exhumed body [...] in order to make the necessary verifications.”⁶¹ Subsequently, it was confirmed that the dentures belonged to Mr. Palma.⁶² Regarding the other measures ordered

⁵² Cf. Police Report No. 2000-128-PJ-M-COMPL., folios 1869 to 1879. It should be noted that, in the said report, it was indicated that Lenin Ordoñez referred to the “Cañar” river; nevertheless, other documents have mentioned the “Norcay” rive (*cf. supra* para. 35).

⁵³ Cf. Supplementary report of the National Investigations Directorate of the National Police of Ecuador No. 2000-150-PJ-M-COMPL., of March 3, 2000, folios 25 to 36.

⁵⁴ Cf. Judicial order of the XIth Judge of Manabí of February 29, 2000 (file of attachments to the pleadings and motions brief, attachment 19, folios 1503 to 1505).

⁵⁵ Cf. Record of inspection and autopsy of the corpse signed by the experts Camilo B. Andrade Carrillo and Edwin G. Díaz, the Secretary Bernardo Zambrano, and the XIth Judge of Manabí, Roger Pico Benítez, dated February 29, 2000 (file of appendices to the Admissibility and Merits Report, appendix 25, folios 102 and 103).

⁵⁶ Cf. Record of inspection and autopsy of the corpse, folios 102 and 103.

⁵⁷ Cf. Report of February 29, 2000, sent to the Manta Chief of National Police, signed by police officer Nelson Carrión Cabrera (file of attachments to the pleadings and motions brief, attachment 17, folio 1490).

⁵⁸ Cf. Statement made by Lidia Bravo before the Court, which was not contested by the State.

⁵⁹ Cf. Report of February 29, 2000, sent to the Chief of National Police of Manta, folio 1490.

⁶⁰ Cf. Report of February 29, 2000, sent to the Chief of National Police of Manta, folio 1490.

⁶¹ Cf. Report of February 29, 2000, sent to the Chief of National Police of Manta, folio 1490.

⁶² Cf. Odontological report of March 3, 2000, signed by Dr. Marlon Alvarado (file of attachments to the pleadings and motions brief, attachment 17, folio 1495).

by the XIth Judge of Manabí, the reconstruction of the crime took place on March 13, 2000,⁶³ and the site of the crime was inspected on March 21 that year.⁶⁴

44. On February 29, 2000, the XIth Judge of Manabí extended the court order to investigate the alleged crime to Lenin Ordoñez, Freddy Contreras, Medardo Cevallos Gómez-Piñán, Ramon Bravo Mera, Vicente Dominguez, Jhonny Menendez, Carlos Alfredo Cedeño Vite (hereinafter also "Carlos Cedeño")⁶⁵ and Marcelino Gomez,⁶⁶ and ordered their preventive detention.⁶⁷

45. On March 9, 2000, Lenin Ordoñez gave preliminary statement before the XIth Judge of Manabí. His testimony about the events that led to the death of Mr. Palma Mendoza was similar to that he had previously given (*supra* para. 42); he also indicated that Freddy Contreras had killed Mr. Palma Mendoza and also Jorge Jhon Mero Parrales, because "they had tried to leave." Lenin Ordoñez also said that, at the time, Medardo Cevallos had indicated that his uncle, named "Marcelino Gomez [Ponce], and a General" would "take over" when the abductors reached Palestina with Mr. Palma Mendoza and Jorge Jhon Mero Parrales.⁶⁸

46. On March 14, 2000, Rosalía Mariuxi Palma Bravo (hereinafter "Rosalía Palma"), Mr. Palma's daughter, filed a civil action before the XIth Judge of Manabí, "for a crime against persons," in connection with the "murder" of her father, accusing Medardo Cevallos Balda, Alberto Cevallos Gómez-Piñán, Medardo Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán,

⁶³ Cf. Record of reconstruction of the facts dated March 13, 2000, signed by the experts Jorge R. Melo Rivera and Rubén Darío Loo Mero, the Secretary Bernardo Zambrano Zambrano and the XIth Judge of Manabí, Roger Pico Benítez (file of appendices to the Admissibility and Merits Report, appendix 28, folios 120 to 123).

⁶⁴ Cf. Record of inspection of the crime scene dated March 21, 2000, signed by the experts Jorge R. Melo Rivera and Rubén Darío Loo Mero, the Secretary Bernardo Zambrano Z., and the XIth Judge of Manabí, Roger Pico Benítez (file of attachments to the pleadings and motions brief, attachment 26, folios 1574 and 1575).

⁶⁵ The decision on the appeal issued by the Fourth Chamber of the Superior Court of Justice of Portoviejo on February 16, 2001, clarifies that the person called "Carlos Vite [...]" responds to the name of Carlos Alfredo Cedeño Vite" (file of attachments to the pleadings and motions brief, attachment 50, folios 1709 to 1716).

⁶⁶ This fact is indicated in the decision on the appeal issued by the Fourth Chamber of the Superior Court of Justice of Portoviejo on February 16, 2001, folios 1709 to 1716.

⁶⁷ It should be clarified that, on the same date, the preventive "detention" of the first four individuals named was ordered by the President of the Superior Court of Justice "[i]n criminal trial No. 127-99 [...] for the death of the politician Jaime Hurtado González and others." Cf. Official note No. 419-CSQ-P of February 29, 2000, signed by the Secretary of the President of the Superior Court of Quito, Ángel Ramírez Martínez, and addressed to the National Director of the Judicial Police (file of appendices to the Admissibility and Merits Report, appendix 26, folios 106 and 107). In addition, the preventive "detention" of the same persons and of the other persons mentioned was ordered by the XIth Judge of Manabí, in relation to the investigation of the events that resulted in the death of Mr. Palma Mendoza. Cf. Judicial Order of the XIth Judge of Manabí of February 29, 2000, folios 1503 to 1505. The evidence before the Inter-American Court reveals that the preventive detention was implemented against Lenin Ordoñez, Freddy Contreras, and Vicente Domínguez. There is no record that this measure was implemented with regard to the other individuals mentioned. In this regard, it can be inferred from the evidence that, at least until January 22, 2001, Carlos Alfredo Cedeño Vite and Jhonny Menéndez had not been captured, and there is no record that they were detained subsequently (cf. Order to open the plenary proceedings issued by the XIth Judge of Manabí on January 22, 2001 (file of attachments to the pleadings and motions brief, attachment 49, folios 1698 to 1707. This indicates that "the plenary proceedings are suspended in relation to the accused Carlos Alfredo Cedeño Vite and Jhonny Menéndez, until they are captured or present themselves voluntarily"). Furthermore, there is no record that the other individuals mentioned were deprived of their liberty. On May 9, the order of preventive detention issued against the accused Medardo Cevallos Gómez-Piñán, Marcelino Ponce and Ramón Bravo Mera was revoked (cf. *infra* para. 51).

⁶⁸ Cf. Preliminary statement by Lenin Ordoñez before the XIth Judge of Manabí on March 9, 2000 (file of appendices to the Admissibility and Merits Report, appendix 27, folios 109 to 118).

Ramón Bravo Mera, Carlos Cevallos and Marcelino Gómez Ponce as masterminds; Lenin Ordoñez, Vicente Domínguez, Jhonny Menéndez, Freddy Contreras and Carlos Cedeño as perpetrators; and the lawyers Reyes and Isabel Montaña de Mera (hereinafter "lawyer Montaña") as accessories.⁶⁹ On March 18, 2000, the XIth Judge of Manabí accepted the civil action and, on this basis, extended the criminal action to those who had not been implicated in the case up until that time: Medardo Cevallos Balda; Alberto Cevallos Gomez-Piñán; David Cevallos Gomez-Piñán, Carlos Cevallos and the lawyer Reyes and the lawyer Montaña.⁷⁰ On April 17 the same year, Nelson Palma Mendoza, together with other members of Mr. Palma Mendoza's family, filed a civil action against the same individuals who had been named by Rosalie Palma Bravo, with the following exceptions: they did not accuse Vicente Domínguez and they did not name Jhonny Menéndez, but rather "Jhonny Moreira."⁷¹

47. On March 18, 2000, the XIth Judge of Manabí issued an order in which he required, *inter alia*, "extending the court order to investigate the crime and all the preliminary proceedings to [...] Medardo Cevallos Balda, [...] Alberto Cevallos Gómez-Piñán, [...] David Cevallos Gómez-Piñán, Carlos Cevallos, the lawyer [...] Reyes [and the lawyer] Montaña." He indicated that these persons were implicated in the case "as co-accused" and should appear "to provide preliminary statement on April 4, 2000."⁷²

48. On March 22, 2000, the XIth Judge of Manabí was informed that Vicente Dominguez and Freddy Contreras had been arrested in Guayaquil.⁷³ According to the respective records, they had both provided testimony that concurred with the statement made by Lenin Ordoñez on March 9 that year (*supra* para. 45), as regards the date of Mr. Palma Mendoza's capture and those who took part in the event.⁷⁴ Subsequently, on March 27 and April 4, 2000, Freddy Contreras and Vicente Dominguez, respectively, gave preliminary statement before the XIth Judge of Manabí.⁷⁵ They both denied what, according to the respective records, they had

⁶⁹ Cf. Civil action filed by Rosalía Palma Bravo addressed to the XIth Judge of Manabí, in "criminal case No. 319-97, of March 14, 2000 (file of attachments to the pleadings and motions brief, attachment 23, folios 1558 to 1564).

⁷⁰ Cf. Order of March 18, 2000, issued by the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 25, folios 1570 to 1572). Regarding lawyer Ignacio Buenaventura Reyes Cárdenas and lawyer Isabel Montaña de Mera, it should be noted that, according to the civil action filed by Rosalía Palma Bravo before the XIth Judge of Manabí on March 14, 2000 (*supra* footnote 69), they had provided professional services relating to the search for Mr. Palma Mendoza and, according to the said action, in this context, they had taken steps to conceal the crime committed against him.

⁷¹ Cf. Civil action of April 17, 2000, filed by Geoconda María and Marco, both with the surnames Palma Figueroa, Nelson and Vicente, both with the surnames Palma Mendoza, and Monserrate Palma Cedeño, before the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 32, folios 1623 to 1627).

⁷² Cf. Order of March 18, 2000, issued by XIth Judge of Manabí, folios 1570 to 1572. The body of evidence provided to the Inter-American Court does not show that the persons mentioned, with the exception of lawyer Reyes, in fact gave preliminary statement. Regarding the latter, his testimony is recorded in the prosecutor's partial indictment issued on December 26, 2000, by the XIth Criminal Prosecutor of Manabí (*cf.* The prosecutor's partial indictment of December 26, 2000, signed by the lawyer George Moreira Mendoza, XIth Criminal Prosecutor of Manabí. File of attachments to the pleadings and motions brief, attachment 48, folios 1686 to 1696).

⁷³ Cf. Official note No. 2000-392-PJ-MM of March 22, 2000, signed by the Chief of the Judicial Police of Manta, Wilson Alulema Miranda, addressed to the XIth Judge of Manabí, Roger Pico Benítez (file of attachments to the pleadings and motions brief, attachment 27, folio 1577).

⁷⁴ Cf. Report of March 22, 2000, sent to the Provincial Chief of the Judicial Police of Guayas, signed by Police Capitan Marcelo González (file of attachments to the pleadings and motions brief, attachment 27, folios 1580 to 1582). It is important to note that Vicente Domínguez indicated that Medardo Cevallos Gómez-Piñán had given the order to kill Mr. Palma Mendoza, and Freddy Contreras stated that the same man had ordered that the bodies be disappeared.

⁷⁵ Cf. Preliminary statement of Freddy Contreras before the XIth Judge of Manabí, of March 27, 2000, and preliminary statement of Vicente Domínguez before the XIth Judge of Manabí, of April 4, 2000 (file of attachments to the answering brief, attachments 6 and 7, folios 1894 to 1899 and 1902 to 1908, respectively).

testified previously. After they had filed an application for *amparo* for their release, this was rejected by the Superior Court of Justice of Portoviejo on June 23, 2000.⁷⁶

49. On March 23, 2000, Rosalía Palma Bravo testified before the XIth Judge of Manabí. She referred, in general, to the events of May 16, 1997, as described above (*supra* paras. 29, 30 and 31).⁷⁷ She stated, *inter alia*, that on that day “the people, the SECAP students and employees, did nothing because they had seen an FAE vehicle.” She added that, for this reason and “because [those who took her father] had identified themselves as members of the [...] FAE and exchanged greetings with the members of the FAE,” prior to the identification of Mr. Palma Mendoza’s corpse, she and her family “had a hope that he was alive.”⁷⁸ She also indicated that “her little brother” saw and recounted what happened to their father, and “thus has been traumatized.”⁷⁹

50. On May 4, 2000, Rosalía Palma Bravo indicated that she would continue the civil action against Lenin Ordoñez, Ignacio Reyes Cárdenas and Isabel Montaña de Mera, but she expressly desisted from her action, as well as from “any civil or criminal action,” with regard to the other individuals she had indicated (*supra* para. 46), because “she had been advised, outside the context of the proceedings, that they [...] had not participated in [her] father’s murder.”⁸⁰ The next day, Wider Ramón Palma Bravo, Mr. Palma’s son, Rosalía Palma Bravo and Lidia Bravo, the latter on her own behalf and on behalf of “the minors,” María Lilibeth, Luis and William, all with the surnames Palma Bravo and also children of Mr. Palma, signed an “undertaking” before notary public in which they expressed their endorsement of the discontinuance decided by Rosalía Palma Bravo and their undertaking, in relation to the same individuals included in her discontinuance, not to file any criminal or civil action.⁸¹

51. On May 9, 2000, the XIth Judge of Manabí revoked the preventive detention ordered against the accused Medardo Cevallos Gómez-Piñán, Marcelino Ponce and Ramón Bravo Mera, considering that, from various procedures “analyzed as a whole[...] there is no consistent evidence that would allow this precautionary measure to be maintained.”⁸² According to this decision, the acts taken into consideration to support it were: (a) the request of Medardo Cevallos Gómez-Piñán, Marcelino Gómez Ponce and Ramón Bravo Mera of May 4, 2000, that the preventive detention ordered against them be revoked; (b) the procedure to identify bones of corpses; (c) the testimony “itself” of police agent Carmelo Aladino Zambrano; (d) preliminary statement of Lenin Ordóñez; (e) certified copies presented by the accused Medardo Cevallos Gómez-Piñán concerning “certain decisions of the President of the Superior Court of Justice of Quito in the trial held for the death of Jaime Hurtado González; (f) the refusal on two occasions of Lenin Ordóñez to answer questions

⁷⁶ Cf. Decision of the Superior Court of Justice of Portoviejo of June 23, 2000 (file of attachments to the pleadings and motions brief, attachment 45, folios 1671 to 1673).

⁷⁷ Cf. Preliminary statement made by Rosalía Palma Bravo before the XIth Judge of Manabí on March 23, 2000 (file of attachments to the pleadings and motions brief, attachment 28, folios 1586 to 1589).

⁷⁸ Cf. Preliminary statement made by Rosalía Palma Bravo before the XIth Judge of Manabí on March 23, 2000, folios 1586 to 1589.

⁷⁹ Cf. Preliminary statement made by Rosalía Palma Bravo before the XIth Judge of Manabí on March 23, 2000, folios 1586 to 1589.

⁸⁰ Cf. Brief of May 4, 2000, signed by Rosalía Palma Bravo and her lawyer, addressed to the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 37, folio 1641).

⁸¹ Cf. Undertaking of May 5, 2000, signed by Lidia Bravo, Wider Ramón Palma Bravo and Rosalía Palma Bravo and their lawyer, authenticated by notary public (file of attachments to the pleadings and motions brief, attachment 38, folios 1647 and 1648).

⁸² Cf. Decision of the XIth Judge of Manabí of May 9, 2000 (file of appendices to the Admissibility and Merits Report, appendix 33, folios 135 to 137).

raised by Medardo Cevallos Gómez-Piñan; (g) preliminary testimony of Rosalía Palma; (h) preliminary testimony of "Rosa Parrales Cedeño, mother of Jhon Mero Parrales"; (i) the waiver of civil actions by the persons mentioned; (j) the testimony of police agent Bonifacio Lino Caicedo "when being interrogated by the judge on the questions raised by Medardo Cevallos Gómez-Piñan," and (k) preliminary statements of the accused Freddy Contreras and Vicente Domínguez (*supra* para. 48).

52. In the same decision, the XIth Judge of Manabí indicated that "the said accused must appear on [...] May 29, [2000, ...] to make their preliminary statements."⁸³ Regarding the decision to revoke the preventive detention, on May 12, 2000, the XIth Criminal Prosecutor of Manabí indicated his disagreement in writing to the XIth Judge of Manabí, stating among other considerations that, in cases of discontinuance, it should be recalled that the proceedings must continue with the intervention of the Public Prosecution Service and the judge himself *ex officio*, because the act was common knowledge.⁸⁴ He added, referring to the judge, that in another order, the latter had:

ordered this precautionary measure against the said accused based on the evidence that existed in the Police Report [...] without, to [...] date, any evidence existing that has disproved or eliminated these indications; consequently, he asked that the order examined above be revoked and the order of preventive detention be re-issued against Medardo Cevallos Gómez-Piñán, Marcelino Ponce and Ramón Bravo Mera.⁸⁵

53. On May 9, 2000, Perfelita Mendoza Aguallo, Mr. Palma's mother, filed a civil action 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 masterminds, and against Lenin Oswaldo Ordoñez Ortiz, Freddy Simón Contreras Luna, Stanley Vicente Dominguez Avilés, Johnny Menéndez and Carlos Vite as perpetrators of her son's murder; the same people who Rosalía Palma had accused, with the exception of the lawyer Reyes and the lawyer Montaña.⁸⁶

54. Nevertheless, in a decision of May 23, 2000, the XIth Judge of Manabí incorporated into the proceedings, the civil actions only with regard to the accused Ignacio Buenaventura Reyes Cárdenas, Isabel Montaña de Mera and Lenin Ordoñez, "because the case file reveals the [...] discontinuance granted in favor of the other defendants, which makes it impossible to file another civil action against them owing to the provisions of article 48 of the Code of

⁸³ Cf. Decision of the XIth Judge of Manabí of May 9, 2000, folios 135 to 137.

⁸⁴ Cf. Brief of May 12, 2000, signed by the XIth Criminal Prosecutor of Manabí and addressed to the XIth Judge of Manabí (file of appendices to the Admissibility and Merits Report, appendix 34, folios 140 and 141). In this regard, article 47 of the Ecuadorian Code of Criminal Procedure, Law 134 of June 10, 1983, in force at the time the civil actions were filed, stipulated the following:

In case of discontinuance of the accusation, or its abandonment, the proceedings shall continue with the intervention of the Public Prosecution Service. In the case of abandonment, the judge is obliged, opportunely, to define whether the accusation has been malicious or injudicious. Discontinuance is only admissible if the accused expressly agrees to this during the proceedings.

Meanwhile, prior to the amendments of March 2009, article 62 of the Code of Criminal Procedure, Law 0, Official Gazette Supplement 360 of January 13, 2000, established:

In case of discontinuance of the accusation in criminal actions, the proceedings shall continue with the intervention of the Public Prosecution Service.

⁸⁵ Cf. Brief signed by the XIth Criminal Prosecutor of Manabí of May 12, 2000, folios 140 and 141.

⁸⁶ Cf. Brief of Perfelita Mendoza Aguallo of May 9, 2000, authenticated with her fingerprint, and signed by her lawyer, addressed to the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 39, folios 1650 and 1651).

Criminal Procedure.”⁸⁷ The civil action filed by Perfelita Mendoza Aguallo “was admitted to the proceedings only against [the defendants who have just been named,] owing to the discontinuance with regard to the other defendants.”⁸⁸

55. Perfelita Mendoza Aguallo’s lawyer filed an appeal for the revocation of this decision, before the XIth Judge of Manabí on May 26, 2000, indicating that, “literally, the law establishes the prohibition to accept a new action only when the victim has desisted, and not when it is his next of kin who have desisted, as in the instant case.”⁸⁹ On July 3, 2000, Perfelita Mendoza presented another brief in which she asked the XIth Judge of Manabí to process her petition of May 26, 2000; there is no record in the case file that this petition was answered. On August 21, 2000, Perfelita Mendoza Aguallo appeared before the XIth Judge of Manabí to give her preliminary testimony and ratified her accusation⁹⁰ and, on November 9 that year “she officialized it.”⁹¹

56. On December 26, 2000, the XIth Criminal Prosecutor of Manabí issued an indictment against Lenin Ordoñez, Freddy Contreras and Vicente Domínguez, concluding that there were “serious indications and presumptions of the criminal responsibility of the accused,” as revealed by the proceedings in the case file and, in particular, by “the statement of the accused Lenin Oswaldo Ordoñez Ortiz in both his pre-trial statement and in his preliminary statement.”⁹²

57. With regard to Medardo Cevallos Balda, Alberto Cevallos Gómez-Piñán, Medardo Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Ramón Bravo Mera, Carlos Cevallos, Marcelino Gómez Ponce, Carlos Cedeño, Jhonny Menéndez, Ignacio Reyes Cárdenas and Isabel Montaña de Mera, the XIth Prosecutor of Manabí did not file any charges, considering, based on the available evidence,⁹³ that “their material or intellectual responsibility had not been proved in relation to the crime that is the subject of [the] procedural investigation.”⁹⁴

⁸⁷ Article 48 of the Code of Criminal Procedure, in force at the time, established: “[t]he victim, or his representative, may waive the right to bring a civil action. If the victim shall have waived the right to lay charges, or has discontinued from the action already filed, or has abandoned it, no one may file another action.”

⁸⁸ Cf. Order to open the plenary proceedings of January 22, 2001, folios 1698 to 1707).

⁸⁹ Cf. Brief of May 26, 2000, signed by the lawyer María Bescy Mendoza Bravo, addressed to the XIth Judge of Manabí (file of appendices to the Admissibility and Merits Report, appendix 36, folio 147).

⁹⁰ Cf. Preliminary testimony of August 21, 2000, of Perfelita Mendoza Aguallo before the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 46, folios 1675 and 1676). (In the document, the first person has the surname “de Mendoza Aguallo.”)

⁹¹ Cf. Brief of November 9, 2000, of Perfelita Mendoza Aguallo ratifying the civil action, authenticated by her fingerprint and signed by her lawyer, addressed to the XIth Judge of Manabí (file of attachments to the pleadings and motions brief, attachment 47, folios 1678 and 1679).

⁹² Cf. Prosecutor’s partial indictment of December 26, 2000, folios 1686 to 1696.

⁹³ The report reveals that the following pieces of evidence were considered with regard to the authorship of the facts: Preliminary testimony of Rosalía Palma Bravo; testimony of Lidia Bravo, Luis Miguel Palma Bravo, Pablo Palma Pico, Freddy Palma Moreira, Rommel Edwin Coronel Miñan, Wilder Joel Cevallos Castro, Julio Amador Becerra Campoverde, Paulino Antonio de la Cruz Berú, Víctor Hugo Burgos Arteaga, Leonor Liduvida Cedeño Paz, Perfelita Mendoza Aguallo, Lufinia Estrella Roldán Espinales and Segundo Gumerindo Arteaga Márquez; statement of Lenin Ordoñez (before the police, and unsworn statement before the XIth Judge of Manabí; unsworn statements of Freddy Simón Contreras Luna, Vicente Domínguez, Ignacio Buenaventura, Ramón Aníbal Bravo Mera, Marcelino Gómez Ponce, and testimony of police agent Carmelo Aladino Zambrano Acosta (ratifying a police report) and of former police agent Bonifacio Artemio Lino Caicedo. In addition, the document indicates that “[t]he testimony of several persons exists that vouches for the good conduct and behavior of Ramón Bravo Mera, Marcelino Gómez-Piñan, Carlos Vite Cedeño, Vicente Domínguez Avilés and Freddy Contreras Luna, without providing further information on the fact under investigation; consequently they do not merit any further observations.”

⁹⁴ Cf. The prosecutor’s partial indictment of December 26, 2000, folios 1686 to 1696. In this report he indicated “that he was unable to determine the participation or responsibility of the Cevallos family in the fact investigated, because none of its members was detained in order to establish the truth.”

58. On January 22, 1002, the XIth Judge of Manabí issued an "order to open the plenary proceedings" against Lenin Oswaldo Ordonez Ortiz, Freddy Simón Contreras Luna, Stanley Vicente Domínguez Avilés, Carlos Alfredo Cedeño Vite and Johnny Menéndez Flores, presuming that they were responsible for the crime established in article 450, circumstances 1, 4, 5 and 7 of the Criminal Code in force. Regarding Medardo Cevallos Gómez-Piñán, Ramón Bravo Mera, Marcelino Gómez Ponce, Medardo Cevallos Balda, Alberto Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Carlos Cevallos, Ignacio Buenaventura Reyes Cárdenas and Isabel Montaña de Mera, the Judge merely issued a "temporary stay of proceedings and provisional dismissal of the [...] accused,"⁹⁵ considering that "the evidence that [had been] indicated was not [consistent] with their conduct" and, consequently, "there was no presumption either, owing to lack of relationship or affinity between this evidence and the purpose of the proceedings."⁹⁶

59. Carlos Cedeño, Jhonny Menéndez Flores, Medardo Cevallos Gómez-Piñán, Marcelino Gómez Ponce, Ramón Bravo Mera, Lenin Oswaldo Ordoñez Ortiz, Freddy Simón Contreras Luna and Stanley Vicente Domínguez Avilés filed an appeal against this decision. On February 16, 2001, the Fourth Chamber of the Superior Court of Justice of Portoviejo (hereinafter "the Fourth Chamber of the Portoviejo Court") decided the appeal and ruled: (a) to confirm the order to open the plenary proceedings against Lenin Oswaldo Ordoñez Ortiz, Freddy Simón Contreras Luna and Stanley Vicente Domínguez Avilés, and (b) to revoke the order to open proceedings issued against Carlos Alfredo Cedeño Vite and Johnny Menéndez and, instead, issue an order for a temporary stay of proceedings.

60. In its reasoning of the said decision, the Fourth Chamber of the Portoviejo Court indicated:

With regard to the accused CARLOS ALFREDO CEDEÑO VITE, JOHNNY MENENDEZ, MEDARDO CEVALLOS GOMEZ-PIÑAN, RAMON BRAVO MERA, MARCELINO GÓMEZ PONCE, MEDARDO CEVALLOS BALDA, ALBERTO CEVALLOS GOMEZ-PIÑAN, DAVID CEVALLOS GOMEZ-PIÑAN, CARLOS CEVALLOS, IGNACIO BUENAVENTURA REYES CARDENAS and ISABEL MONTAÑO DE MERA, although they have been implicated by the accused LENIN ORDOÑEZ ORTIZ, in accordance with the provisions of article 108 of the Code of Criminal Procedure, this testimony has no effects in relation to the co-accused; particularly since the accused ORDOÑEZ ORTIZ was detained as a result of a robbery he had committed of the property of other accused, so that, applying sound judicial discretion, his accusations lose their credibility; especially since there is no other evidence that ties what the accused LENIN ORDOÑEZ has indicated to the other accused [...].⁹⁷

61. On March 19, 2001, the Criminal Court of Manabi delivered judgment, in which it declared that "it had reach[ed] the conclusion that the crime of deprivation of liberty with death, perpetrated with malice and with cruelty, was committed against Jorge Jhon Mero Parrales and [Mr.] Palma Mendoza," convicted Lenin Ordoñez, Freddy Contreras and Vicente Domínguez imposing a sentence of 12 years' special long-term imprisonment, and also required the former "to pay for his share of the damage, owing to the discontinuance of the indictment in favor of the other accused."⁹⁸ The convicted men filed an appeal for annulment

⁹⁵ Article 242 of the Code of Criminal Procedure in force at the time establishes, in relation to a provisional stay of proceedings, that: "[i]f the Judge considers that the existence of the crime has not been proved sufficiently, or, having proved its existence the guilty parties have not been identified, or there is insufficient evidence of the participation of the accused, he shall issue an order for the provisional stay of the proceedings and the temporary dismissal of the accused, declaring that, at that time, the hearing of the case cannot continue."

⁹⁶ Cf. Order to open the plenary proceedings of January 22, 2001, folios 1698 to 1707.

⁹⁷ Cf. Decision on appeal issued by the Fourth Chamber of the Superior Court of Justice of Manabí, of February 16, 2001, folios 1709 to 1716.

⁹⁸ Cf. Judgment of the Criminal Court of Manabi, Manta, of March 19, 2001, folios 10 to 17.

which was declared inadmissible by the Second Criminal Chamber of the Supreme Court of Justice on June 26, 2002.⁹⁹

62. Subsequently, on February 16, 2007, the XIth Judge of Manabí declared final¹⁰⁰ the temporary stay of proceedings and provisional dismissal of the accused,¹⁰¹ and this was confirmed by the First Chamber of the Superior Court of Justice on April 9, 2007,¹⁰² based on a legal consultation filed by the XIth Judge of Manabí concerning the order for the final stay of proceedings. The last two decisions declared that the “final stay of proceedings and dismissal of [certain persons] accused” was decided on the grounds that, after the provisional stay of proceedings had been decided, “the preliminary proceedings had not been reopened” and “further evidence” had not been gathered.

VII
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN RELATION TO
THE RIGHT TO LIFE AND THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS
AND TO ADOPT PROVISIONS OF DOMESTIC LAW
(ARTICLES 8, 25, 4, 1(1) AND 2 OF THE AMERICAN CONVENTION)

Observations of the Inter-American Commission and arguments of the parties

63. The Commission, in its Admissibility and Merits Report, concluded that:

[...] In this case, an effective remedy was not provided to Mr. Palma’s next of kin, within a reasonable time, in order to guarantee them access to justice and to the investigation and prosecution of those responsible as well as to reparations for damage related to Mr. Palma’s kidnapping and murder. Therefore, the State is responsible for violating the rights to judicial

⁹⁹ Cf. Judgment of the Supreme Court of Justice, Second Criminal Chamber, of June 26, 2002 (file of attachments to the pleadings and motions brief, attachment 52, folios 1758 to 1760).

¹⁰⁰ Cf. Order on final stay of proceedings issued by the XIth Judge of Manabí on February 16, 2007 (file of attachments to the pleadings and motions brief, attachment 53, folio 1776). Article 243 of the Ecuadorian Code of Criminal Procedure, Law 134 of June 10, 1983, established that “[t]he stay of the proceedings and the dismissal of the accused shall be final when the judge concludes that the existence of the crime has not been proved beyond any doubt. The judge shall also issue an order of final stay of proceedings and dismissal of the accused, if he finds that reasons exist that exempt the defendant from responsibility.” Article 246 establishes that “[w]hether the stay of proceedings or the dismissal of the accused is provisional or final, the judge shall immediately release the accused if he should be in preventive detention, without prejudice to ordering this again if the stay of proceedings should be revoked, or if, being provisional, new accusations are filed against the accused. In addition, the provisions of article 328 shall be met in relation to the presentation of the individual whose case has been discontinued before the police authorities of his usual place of residence. If the Public Prosecution Service appeals the stay of proceedings ordered, release shall be granted on bail, whatever the crime involved. This bail shall respect the provisions of article 183 of this Code.” Meanwhile, article 348 indicated that “[t]he appeal shall be admissible when any of the parties files it with regard to the following orders: (1) Provisional or final stays of proceedings [...]” Article 247 of this Code established the following: “[t]he final stay of proceedings terminates the trial and, consequently, prevents another one being opened for the same fact.” Furthermore, article 249 establishes that: “[t]he provisional stay of proceedings suspends the hearing for five years; and the provisional dismissal of the accused suspends it for three years. These time frames shall be calculated from the date of the issue of the respective order of stay of proceedings.” Lastly, article 250 established “[i]f, after the order for a provisional stay of proceedings has been issued and within the time frames referred to in the preceding article, the Judge should become aware of the existence of persons, things or documents that can help elucidate the truth, he shall order, extra-procedurally, that the said persons come to his office to question them, or the seizure of the objects or documents to examine them.”

¹⁰¹ Namely: Medardo Cevallos Gómez-Piñán, Ramón Bravo Mera, Marcelino Gómez Ponce, Medardo Cevallos Balda, Alberto Cevallos Gómez-Piñán, David Cevallos Gómez-Piñán, Carlos Cevallos, Ignacio Buenaventura Reyes Cadenas and Isabel Montañó de Mera, and also Carlos Alfredo Cedeño Vite and Jhonny Menéndez.

¹⁰² Cf. Decision of the First Criminal Chamber of the Superior Court of Portoviejo of April 9, 2007 (file of attachments to the pleadings and motions brief, attachment 54, folios 1778 and 1779).

guarantees and to judicial protection established 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 next of kin of Marco Bienvenido Palma Mendoza.

64. In this regard, the Inter-American Commission noted that, in this case, "the complaint filed before the Ecuadorian authorities was not limited to the fact that Mr. Palma Mendoza was missing, [but rather] it also mentioned the violent nature of the incident." The Commission indicated that "the very nature of the facts denounced should have made the victim's situation of extreme risk evident to the State authorities." It indicated that "when there are reasonable reasons to suspect that a person has been disappeared, the prompt and immediate action of the judicial and prosecutorial authorities is essential." In addition, it stressed that:

There were reasonable measures that could have been adopted and were not adopted. The mechanisms available were limited to sending official notes and taking statements without following up on the information resulting from these preliminary measures [and] without following up on relevant elements derived from these statements.

65. Regarding the discovery and identification of Mr. Palma Mendoza's body, the Commission stated that "the procedure was conducted without the presence of qualified technical personnel" and that "the omissions in gathering the minimum amount of evidence that would have allowed prompt and adequate identification of the body that was found and, consequently, the clarification of the circumstances surrounding the facts, their motives and the possible perpetrators, are evident in this case"; thus there were "deficiencies as regards the due diligence that the State should have exercised when carrying out the removal of the body and the investigation of the case."

66. Furthermore, regarding other aspects of the investigation during the period between May 1997 and February 2000, the Commission emphasized that, "on June 9, 1998, [Lidia Bravo] informed [the OID] of the presumed participation in the events of Lenin Ordóñez, without any measure being taken to determine the truth of the information provided." It also asserted that "the obligation to investigate and to punish any act that involves a violation of the rights protected by the Convention requires that not only the punishment of the perpetrators, but also of the masterminds of such acts, and the accessories after the fact" and that, in this case, "the judicial authorities ordered a stay of proceedings for the supposed masterminds [...] based on the discontinuance of the civil action of some of his next of kin and not on the evidence." It added that, "[i]n addition to the deficiencies apparent since the complaint and following the finding of the corpse, [...] in this case, there are several indicators that point to possible degrees of participation in the facts by State agents. These possible links have not been confirmed or dismissed by the courts." It also indicated that "the confession of Lenin Ordoñez [...] indicated that those who perpetrated the abduction used their credentials as former members of the Armed Forces to pass through the police controls when transporting Mr. Palma." Therefore, it indicated that "the respective authorities failed to open lines of investigation aimed at clarifying any indication of direct or indirect participation by State agents." The Commission also stated in the Admissibility and Merits Report that, in this case, the proceedings were not conducted within a reasonable time.¹⁰³

67. Furthermore, the Inter-American Commission considered that:

¹⁰³ It indicated that the case "was not complex, as the pickup truck in which Mr. Palma [Mendoza] was abducted was parked on the street hours before the abduction and many people saw its occupants. [...] Additionally, Mr. Palma's corpse appeared on May 26, 1997." Moreover, it stated that "the actions of the authorities [were] inadequate and without due diligence." Lastly, it asserted that "with regard to the procedural activity of the interested parties, [...] the State had the obligation to conduct an investigation, *ex officio*, without any need for the participation of the interested parties."

The actions of the State – in terms of its lack of diligence with regard to the application for *habeas corpus* (Article 28 of the Constitution in force at the time), which led to its ineffectiveness, and the delegation of jurisdictional powers to the mayor, which constitutes *per se* an incompatibility between the Ecuadorian law applied in this case and the American Convention – resulted in 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, the latter in accordance with the *iura novit curiae* principle.

68. Regarding the discontinuance, the Commission considered that it “cannot be used [...] as an excuse in order not to comply with the obligation to investigate, *ex officio*, any violent death” and that, “as soon as the State authorities become aware of the facts, they must initiate, *ex officio*, and without delay, a serious, impartial and effective investigation using all available legal means.” Consequently, the Commission indicated that:

In the instant case, the punishments that have been imposed to date, are limited to the perpetrators of the facts [...] and the State abstained from investigating thoroughly [the information concerning the possible masterminds] before ordering the stay of proceedings with regard to a group of accused.

In addition, it stressed that “the grounds for the stay of proceedings was not the diligent exhaustion of the possible logical lines of investigation and the material impossibility of gathering more evidence owing to the complexity of the case, [but rather it was] the discontinuance by some of the next of kin.” Consequently, the Commission indicated that “the State took on the investigation merely in response to a ‘measure taken by private interests’ in violation of the obligation to advance the investigation *ex officio*.”

69. For their part, the representatives considered proved that the State “did not investigate the facts opportunely in order to prevent [Mr.] Palma’s death, and that it did not act diligently in carrying out the criminal proceedings, resulting in a delay in deciding the case, all to the detriment of the family that sought justice.” In this regard, they indicated that, after Lidia Bravo had filed the formal complaint about the events on May 17, 1997, and the XIth Judge of Manabí had ordered the police to conduct the investigation, there was a failure to “investigate military personnel [that] was fundamental,” owing to their presence near the SECAP, the place where Mr. Palma Mendoza was deprived of his liberty. In this regard, they noted that “the police report of May 23, 1997, is very clear in establishing that, even though the appearance of military personnel to give testimony was requested, this did not happen.” They added that, when Mr. Palma Mendoza’s body “appeared, [...] the State agents did nothing to identify the corpse and open an investigation to determine the circumstances of his death” and that “[t]he State did nothing to elucidate the facts, even though, in 1998, it was informed that a woman [...] had reported that [Mr.] Palma [Mendoza] was murdered by [Lenin Ordóñez].” They indicated that the State did not comply with its “obligation to promote the judicial investigation to identify and punish both the perpetrators and the masterminds within a reasonable time.” In this regard, they underscored that:

“the decision on the stay of proceedings was bas[ed] on the fact that, in the criminal proceedings there was no evidence of the responsibility of the accused as masterminds of the abduction and subsequent murder of Marcos Palma, [but] that evidence did not have to be provided by [his] family members [...] but rather the State [...] should have acted *ex officio*.”

They also indicated that “[f]or the State, the version given by Lenin Ordóñez was credible [...] only with regard to the perpetrators [...], but not [...] with regard to the masterminds.”

70. The representatives indicated that “the State was not able to grant the victims’ next of kin an effective judicial remedy that, within a reasonable time, [would have permitted] the investigation, identification and punishment of all those responsible for the abduction and subsequent murder. In addition, they noted that “[a]t the time of the investigation, there

were various indications of participation by State agents, [but] there was no investigation into the possible involvement of the FAE." They added that, following the statement made by Lenin Ordoñez, it could be established that "the abduction and subsequent murder of Marco Palma [Mendoza] was a well-planned act by individuals who had military intelligence training, because they had been members of the FAE for several years, who used credentials granted by the State to prevent a SECAP guard from taking any] action that [would] thwart the abduction they were about to carry out, [and] to avoid police controls." The representatives emphasized that "the proceedings conducted based on the facts that had occurred against [Mr. Palma], which should have taken an average of 180 days according to the time frames established by law, in practice, took 9 years and 9 months to be decided." They also indicated that this duration:

Constitut[ed] a violation of the case being resolved within a reasonable time; in addition to the fact that the matter was not overly complex given that a few days after the abduction Marco Palma's corpse appeared and that, if it had been identified promptly, first it would have allowed his family to know what really occurred and, second, it would have expedited the proceedings. Furthermore, few State measures were taken to discover the truth.

71. They also asserted that the application for *habeas corpus* should have served to "make the State take immediate measures to discover Mr. Palma's whereabouts and ensure respect for his right to life." To the contrary, such measures "were not effective," since the mayors:

merely sent communications to State agencies requesting that [Mr. Palma Mendoza be] brought before them, without taking any actions to find him, so that [the] remedies were ineffective to discover [his] whereabouts [...] and prevent his murder.

Consequently, the representatives indicated that "the State failed to comply with its obligation to grant the next of kin of [Mr. Palma Mendoza] a simple and adequate recourse to determine the responsibility of the authors of such serious acts opportunely."

72. For its part, the State indicated that "it can be inferred that the rights recognized in Articles 8 and 25 of the Convention [...] are of a different nature and, therefore, must not be unified without any reason, because the violation of each of them will be autonomous, owing to their different content." Regarding Article 8, the State indicated that "the alleged victim's lawyers [...] did not exhaust the legal procedures available to demand an investigation on criminal procedural matters." It asserted that "[o]wing to factors inherent in the circumstances that existed at that time, the principle of due diligence was limited to using the existing legislation and, based on those legal grounds, to making the best efforts to prevent and to comply with the State's obligations"; that "it never [...] abandoned the case; that its intention was to use all available means to find Mr. Palma [Mendoza] and those responsible for the crime so as to be able to prosecute them," and that it should be considered that the case was "factually" and "legally" complex, based on numerous factors (*cf. infra* para. 77).

73. It also argued that:

The fact that a special procedure carried out within another investigation, in a different province, contributed to the investigation, only proves the efficiency and functionality of the domestic legal system at the time, because measures were taken that complied with the provisions of the criminal laws, thus avoiding impunity.

Thus, it maintained that the OID made "important" efforts and "that there was a comprehensive investigation" involving "the professional work of the police in four provinces, Pichincha, Manabí, Tunguragua and Guayas." In this regard, it concluded that "there was effective coordination" and "communication between the different agencies." It underscored

that “following a proceeding that guaranteed the equality and participation of the parties,” “it was possible [...] to capture and punish the perpetrators of the facts that resulted in the disappearance and murder of Mr. [...] Palma Mendoza.” Accordingly, it indicated that “the proceeding itself was the crucial instrument that provided the presumed victim and his next of kin with guarantees to protect their rights and, consequently, mechanisms of reparation and punishment of those responsible for the crime perpetrated against Mr. [...] Palma Mendoza.”

74. In addition, the State argued the existence of effective criminal proceedings in the course of which different measures were taken in order to reach a procedural truth. In this regard, it indicated that:

It is worth asking ourselves whether the fact that, in the course of the proceedings, all those investigated are not convicted can result in lack of probity of the judges, or determine that the investigative procedure was a mere formality, which appears to be the argument put forward by the Commission in its report and also by the representative of the presumed victims. [...] Hence, if proceedings were held that culminated in the corresponding punishment, respecting all the legal appeals, there is no reason or possibility for having recourse to an international court based on disagreement with the judgment that was handed down.

75. The State added that the task of “determin[ing whether] there were masterminds and [...] accessories after the fact” “is a task reserved to a domestic judge.” Also, that “Mr. Palma Mendoza’s next of kin discontinued their action,” and that this “reveals a certain juridical incoherence in taking the case to the regional system for the protection of human rights, without any grounds.” Also, it indicated that the discontinuance of the action “should not be understood as a secondary element, because it reveals the confidence of Mr. Palma Mendoza’s next of kin in the domestic legal system, which it considered capable of sentencing and convicting those they believed to be responsible for the crime perpetrated.” In addition, it indicated that, owing to the discontinuance, “it would make no sense that [...] compensation is granted to those who waived the exercise of their rights [under] the criminal system and, in addition, under the civil proceedings, renounced compensation for damage against the perpetrators, in a preliminary proceeding.”

76. Moreover, the State argued “the inexistence of [the participation of] State agents in this case.” In this regard, it was emphatic in indicating that “unscrupulous individuals who falsified their identities or used false credentials to pretend that they were members of the Armed Forces, acted autonomously as private agents [...] violating the criminal laws in force at the time.”

77. Regarding the duration of the domestic proceedings, the State indicated that the “complexity of the matter [...] both factually and legally” should be considered, based on factors such as “the inter-relationship between judicial institutions to investigate and hear the case, the type and number of legal measures taken,” and “the number, status and location of the individuals involved in the proceedings, whether defendants or witnesses.” It added that, since this was a case that “went through three proceedings, in which a reconstruction of the crime was organized, [and ...] numerous statements [, and also] grueling interviews took place and, evidently, information was disseminated throughout the country; definitely, the matter was complex.”

78. Regarding the application for *habeas corpus*, the State indicated that “the effective, simple and prompt remedy was indeed [...] *habeas corpus* together with the application for *habeas data*,” and that the latter was not attempted, even though it was the “complementary [remedy] when trying to find persons who had presumably disappeared.” The State indicated that “even though [the application for *habeas corpus*] was initially

designed to resolve anomalies in detentions that might be made by State agents, in this case it constituted a fundamental reference point of the mechanisms to look for Mr. Palma.” It added that “the application for *habeas corpus* in Manta expedited the investigation into the whereabouts of [Mr.] Palma Mendoza in [several] institutions”¹⁰⁴ and that “there was no evidence to establish that Mr. Palma Mendoza had been detained in military installations of the State.”

Considerations of the Court

79. For its analysis in this section, the Court will refer to the obligation to ensure the right to life and, then, will examine the alleged violations of Articles 8 and 25 of the Convention in relation to Articles 1(1) and 2 of this instrument in relation to the different measures taken in the investigation and the criminal proceedings held.

1. Obligation to guarantee the right to life (Article 4 of the American Convention, in relation to Article 1(1) of this treaty)

80. In this case, it has not been found proved that the State incurred responsibility to the detriment of Mr. Palma Mendoza owing to the participation of State agents in the events that led to his death (*infra* paras. 100 and 101). Furthermore, with regard to the right to the investigation of the alleged violation of the right to life, both the Commission and the representatives have claimed State responsibility to the detriment of his next of kin. This Court understands that, in the instant case, the right of the said next of kin in relation to the investigation into Mr. Palma’s death is only admissible in light of Articles 8 and 25 of the American Convention.

2. Rights to judicial guarantees and to judicial protection, in relation to the obligation to investigate the facts (Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this treaty)

2.1. General considerations regarding the obligation to investigate

81. States have the obligation to establish in their laws and to ensure the correct application of effective remedies and guarantees of due process of law before the competent authorities that protect all those subject to their jurisdiction against acts that violate their fundamental rights.¹⁰⁵ This Court’s case law has already indicated that these remedies must not only exist formally by law, but must also be effective.¹⁰⁶

82. In addition to the foregoing, it should be clarified that, in the instant case, access to justice is a right of the next of kin who have suffered a violation of protected rights, because such individuals can also be considered as victims of the unlawful act.¹⁰⁷

¹⁰⁴ Such as the following authorities: the Commander of the Ecuadorian Air Force, No. 23 Combat Wing; the Manta Port Captain (the city’s naval authority); the Chief of the Manta Police Force; the Chief of Police of the Manta OID Crime Investigation Office; the Manabí Criminal Judiciary (the Eighth Criminal Court of Manabí); the Traffic Judge, and the National Police Chiefs (preliminary objection, merits, reparations and costs file, answering brief, Tome II, folio 359).

¹⁰⁵ Cf. *Case of Suarez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 65, and *Case of Mejía Idrovo v. Ecuador*, para. 104.

¹⁰⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 28.

¹⁰⁷ Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 167.

83. It should be recalled that the obligation to act, *ex officio*, in cases such as this one, means that as soon as the State authorities are aware of the facts, they must initiate immediately a serious, impartial and effective investigation by all available legal means aimed at determining the truth and at the pursuit, capture, prosecution and eventual punishment of those responsible.¹⁰⁸ This obligation to investigate is required “whosoever the agent to whom the violation may eventually be attributed, even private individuals, because, if their acts are not investigated seriously, such acts would, to a certain extent, be assisted by the public authorities, which would entail the State’s international responsibility.”¹⁰⁹

84. In this context, it is worth noting that the obligation to investigate is an obligation of means and not of results. Despite this, the investigation must be assumed by the State as its inherent legal obligation and not as a mere formality predestined to be unsuccessful.¹¹⁰ During the investigations, omissions in following up on logical lines of investigation must be avoided.¹¹¹

85. In light of the foregoing, and considering the arguments presented by the Commission and the parties, the Court must determine whether the actions undertaken by the State to discover the whereabouts of Mr. Palma Mendoza, as well as to investigate, prosecute and, as appropriate, punish those responsible for his deprivation of liberty and subsequent death, satisfied the right of his next of kin to have access to justice and to know what happened to Mr. Palma Mendoza. Both aspects are closely interrelated, and usually have a reciprocal impact.

2.2 Applications for habeas corpus filed in this case

86. Before analyzing this aspect, it should be noted that, with regard to the measures taken in the search for Mr. Palma Mendoza, the case has special characteristics as regards the two applications for *habeas corpus* that were filed.

87. The Commission and the representatives argued the State’s supposed failure to comply, to the detriment of Mr. Palma’s next of kin, with its obligation consisting in providing them with a real possibility of filing a legal remedy that would be simple, prompt and effective against acts that violated the Convention, and which would have allowed the required judicial protection to be obtained. The Commission also considered that, since the processing of this type of remedy was not assigned to a judicial authority, the State failed to comply with Article 2 of the treaty (*supra* para. 67). Neither the Commission nor the representatives identified Mr. Palma as a presumed victim (*supra* paras. 1 and 3 and footnote 1), or allege a hypothetical violation of Article 7(6) of the Convention.

88. The Court notes that, according to the facts of the case (*supra* paras. 34 and 27), even in the hypothesis that it could be inferred that, when the applications for *habeas corpus*

¹⁰⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 143, and *Case of Pacheco Teruel v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 128.

¹⁰⁹ *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of González Medina and family members v. Dominican Republic*, para. 206.

¹¹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of Pacheco Teruel v. Honduras*, para. 241.

¹¹¹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of González Medina and family members v. Dominican Republic*, para. 232.

were filed, the participation or acquiescence of State authorities in the deprivation of liberty of Mr. Palma could have been reasonably assumed, this was not proved and judicial decisions found that, to the contrary, what happened to Mr. Palma had been carried out by private individuals (*supra* para. 61 and *infra* paras. 100 and 101). Consequently, irrespective of the authority that processed them, the applications for *habeas corpus* that were filed could not have resulted in State agents or entities reporting the said deprivation of liberty. Consequently, the Court will not make an autonomous examination of the effectiveness of the applications for *habeas corpus* filed in this case. On the same grounds, it understands that it is not appropriate to analyze the compatibility of the way in which the mechanism of *habeas corpus* was regulated in Ecuador at the time of the events with the obligation to adopt provisions of domestic law that arises from Article 2 of the Convention.¹¹²

89. Despite the above, the filing of these applications resulted in a large number of State authorities becoming aware of what had happened to Mr. Palma Mendoza (*supra* paras. 34 and 37).

90. It remains to clarify that the State indicated that the existence of the application for *habeas data* should have been considered when analyzing whether there was an effective remedy to determine the whereabouts of a person deprived of his liberty. Nevertheless, according to the analysis made, it is not relevant to examine this argument.

2.3. Investigation conducted following the deprivation of liberty of Mr. Palma Mendoza

91. When the matter warrants this, as in the instant case, the obligation to investigate includes the obligation to take measures aimed at satisfying the rights of the next of kin to know the fate or whereabouts of their relatives.¹¹³ Thus, in cases in which the person is missing as the result of an unlawful act, the investigation must include taking all necessary measures to determine their fate and to discover their whereabouts.¹¹⁴ The Court has also indicated that, following a report of disappearance or abduction, the States must act promptly in the initial hours and days.¹¹⁵

92. The Court notes that, in a case such as this one, in which the State authorities were informed that Mr. Palma Mendoza had been the victim of an unlawful act, the execution of which had presumably not yet ceased, and that jeopardized his liberty and endangered other protected human rights, such as life and personal integrity, the State should do everything possible to find the person in question and put an end to the unlawful act.

¹¹² In this regard, it is worth noting that, in its decision in the case of *Chaparro Álvarez and Lapo Íñiguez*, the Court ordered the State "to adapt its legislation, within a reasonable time, to the parameters of the American Convention on Human Rights," in relation to the need for Ecuador's laws on *habeas corpus* to be in keeping with Article 7(6) of the Convention as regards the intervention of a judicial authority (*cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, paras. 128, 130 and 268 and eleventh operative paragraph). Subsequently, when monitoring compliance with the judgment, the Court, in an Order of April 29, 2009, determined that the State had "adapted the domestic laws that regulate the application for *habeas corpus* to the American Convention" (*cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Monitoring compliance with judgment*. Order of the Court of April 29, 2009, subparagraph (c) of the second operative paragraph).

¹¹³ *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 80, and *Case of González-Medina and family members v. Dominican Republic*, para. 209.

¹¹⁴ *Cf. Case of Ticona Estrada et al. v. Bolivia*, para. 80, and *Case of González-Medina and family members v. Dominican Republic*, para. 209.

¹¹⁵ *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 284.

93. As indicated (*supra* paras. 31 and 32), the State was informed of the deprivation of liberty of Mr. Palma Mendoza on the day this happened, May 16, 1997. Then, the following day, Lidia Bravo formally filed the respective complaint. The initial measures taken to investigate the facts and discover the whereabouts of Mr. Palma Mendoza were taken between May 17, 1997, when the XIth Judge of Manabí required the OID to proceed with the investigation, and May 23, 1997, when a police report was drafted recording “measures taken” in the context of the investigation resulting from the complaint (*supra* para. 33). In addition, there is evidence that, on May 21 and 22, 1997, the OID required the FAE to investigate the facts (*supra* para. 33). In addition, the proven facts reveal measures recorded in the preliminary police report of September 1, 1998, concerning the conduct of lawyers who assisted Lidia Bravo (*supra* para. 41).

2.4. Discovery and identification of Mr. Palma Mendoza’s body

94. In cases involving the discovery of human remains, the first step in an investigation must be to try and establish their identity¹¹⁶ in order to determine what happened; hence this is an important element to determine those responsible for the events that have occurred. In this regard, the Court has indicated that:

[...] the passage of time bears a directly proportionate relationship to the constraints to – and, in some cases, the impossibility of – obtaining evidence and/or testimony, complicating and even making ineffective or useless, the implementation of probative measures to clarify the facts investigated, identify the possible authors and participants, and determine the eventual criminal responsibilities. Despite this, the domestic authorities are not excused from making every effort necessary in compliance with their obligation to investigate.¹¹⁷

95. In the instant case, on May 23 and 26, 1997, two corpses were found on the banks of the Norcay river in the province of Guayas, and the police authorities proceeded to perform their “forensic examination,” with the intervention of a doctor, and their subsequent burial (*supra* para. 35). Following the statement made by Lenin Ordoñez, on February 29, 2000, it was realized that the corpse found on May 26, 1997, corresponded to Mr. Palma Mendoza, and it was exhumed and identified (*supra* paras. 42 and 43).

2.5 Determination of perpetrators and participants in the facts

96. The State Court initiated criminal proceedings for the facts related to the abduction of Mr. Palma Mendoza. Following the voluntary statement of Lenin Ordoñez on February 16, 2000, in the criminal proceedings before the XIth Judge of Manabí, the latter was accused of the facts that had occurred to Mr. Palma, together with other persons (*supra* paras. 42, 44 and 46). During the said criminal proceedings, on March 19, 2001, the Manabí Criminal Court sentenced and convicted Lenin Ordoñez, Freddy Contreras and Vicente Domínguez based on the determination of their perpetration of the facts, and the sentence was made final on June 26, 2002, when the Second Criminal Chamber of the Supreme Court of Justice declared the appeal for annulment filed by the convicted men inadmissible (*supra* para. 61). Regarding the other individuals who had been implicated in the criminal case, a stay of proceedings was declared, first, provisionally on January 22, 2001, by the XIth Judge of Manabí, and then finally, on February 16, 2007, by the same judge, and confirmed on April 9, 2007, by the

¹¹⁶ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No.92, para. 127.

¹¹⁷ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 135, and *Case of González-Medina and family members v. Dominican Republic*, para. 218.

First Chamber of the Provincial Court of Justice of Portoviejo (*supra* paras. 58 and 62).

97. This Court observes that neither the Inter-American Commission nor the representatives have questioned the validity of the respective criminal proceedings as a whole, even though they indicated that the measures taken by the State were not sufficient to make an adequate inquiry into the possible participation in the facts of either State agents or other private individuals (*supra* paras. 66, 69 and 70). For its part, the State indicated that the perpetrators of the facts were punished and, therefore, "it had complied with the purpose for which [the proceedings] were held." It added that the determination of the existence of masterminds and accessories after the fact is a task reserved to the domestic judicial authorities (*supra* paras. 73 to 75).

98. Regarding the arguments of the Commission and representatives that other individuals could have taken part in the facts, besides those who actually perpetrated them, this Court observes that this was considered by the domestic judicial authorities themselves. In this regard, it underscores the order of March 18, 2000, in which the XIth Judge of Manabí required that the court order to investigate the crime be extended to various individuals (*supra* para. 47)

99. In addition, the proven facts reveal that the determination of the individuals against whom criminal indictments were filed was made in three decisions: the indictment of December 26, 2000 (*supra* para. 56), the order to open the plenary proceedings of January 22, 2001 (*supra* para. 58), and the decision of the Fourth Chamber of the Superior Court of Justice of Portoviejo of February 16, 2001 (*supra* paras. 59 and 60). These decisions were taken after some members of Mr. Palma Mendoza's family had discontinued the civil actions they had filed. Nevertheless, as revealed by the reasoning set out in the said decisions, they were not based on the said discontinuances, but on weighing probative measures taken in the case.

100. In other words, the State did in fact investigate the possible criminal responsibility of individuals, other than those who it finally found to be the perpetrators of the facts. According to the evidence provided to the Court, the findings adopted by the State authorities were based on their assessment of the different pieces of evidence. This assessment was founded, because the respective decisions included justified reasons, and no evident arbitrariness can be noted in them.¹¹⁸ Consequently, this Court does not find elements that would allow it to consider that the State had failed to comply with its obligation to investigate the possible participation in the facts of other individuals.

101. Finally, regarding the suggested possible implication of State agents, it should be noted that, in this case, there has been a judicial determination of the persons considered responsible for the facts that involved the deprivation of life and subsequent death of Mr. Palma Mendoza, which indicated that the said facts were perpetrated by private individuals. When reaching this conclusion, the domestic judicial bodies that intervened considered that certain facts had been proved, without indicating the responsibility of State agents in them. Furthermore, it should be noted that, in any case, the possible lack of certainty about the involvement of State agents in the said facts cannot lead the Court to conclude that this involvement existed.¹¹⁹ The Court does not have sufficient probative elements that would reveal that the State did not investigate those responsible for the facts effectively.

¹¹⁸ Regarding the concept of "reasoning" *cf.* *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 107, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of the Court of September 1, 2011. Series C No. 233, para. 141.

¹¹⁹ *Cf. Case of González et al. ("Cotton Field") v. Mexico*, para. 242.

102. The Court observes, therefore, that in the context of the same criminal proceedings that were effective to sentence and convict certain persons, the possible participation of others was investigated, and that the stay of proceedings in their favor resulted from an assessment of the probative material that was described in the pertinent decisions. This Court is unable to “settle the disagreements between the parties concerning specific implications of the evidence or the application of domestic law on aspects that are not directly related to compliance with international human rights obligations.”¹²⁰

2.6. Obligation to conduct the investigation within a reasonable time

103. Regarding the arguments about the reasonableness of the duration of the proceedings, the Court notes, first, that the State was able to determine what happened to Mr. Palma Mendoza around two years and nine months after his abduction. Despite this, after Lenin Ordoñez was detained on February 16, 2000, and made his voluntary statement, one year, one month and three days elapsed before, on March 19, 2001, Lenin Ordóñez, Freddy Contreras and Vicente Domínguez were sentenced and convicted, a decision that was made final on June 26, 2002, after the appeal for annulment filed by the convicted men had been declared inadmissible. Regarding the time that elapsed after this last decision until the final confirmation of the stay of proceedings ordered (*supra* para. 62), this did not result in a delay that prejudiced Mr. Palma’s next of kin. This was because the facts had already been determined, together with the responsibilities arising from them and, up until the stay of proceedings were confirmed as final, the State kept open the possibility of conducting further inquiries, if the circumstances arose that the law established for this.

3. Conclusion

104. The Court concludes that, for the said reasons, in this case it has not been proved that the State’s conduct gave rise to the violation of the rights to judicial guarantees and protection of the next of kin of Mr. Palma Mendoza. Consequently, the Court determines that the State did not violate the said rights established in Articles 8 and 25 of the American Convention, in relation to its Article 4, all in relation to Article 1(1) of this treaty.

VIII

RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF MR. PALMA MENDOZA IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS (ARTICLES 5 AND 1(1) OF THE AMERICAN CONVENTION)

Observations of the Inter-American Commission and arguments of the parties

105. The Commission argued that in accordance with the proven facts, for nearly three years, Mr. Palma Mendoza’s next of kin kept hoping that he would be found alive, a situation that changed with the exhumation and identification of his body. It considered that, if the State had not incurred in lack of due diligence in the investigations to elucidate the events that led to Mr. Palma’s abduction and subsequent death, it would not have subjected the members of his family to additional suffering and anguish, which has taken a toll on their social relationships.

¹²⁰ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of González Medina and family members v. Dominican Republic*, para. 38.

106. The representatives indicated that the lack of a prompt investigation by the State in order to discover the reasons for the abduction, identify those responsible, and prosecute them promptly so as to sentence and convict them, exposed his next of kin to a situation of anguish and despair, not only because of the disappearance of their relative, but also because they were obliged to incur financial expenses and travel to different places. This necessarily led them to change their way of living, which only added to the non-pecuniary damage and affected their social relations. The representatives concluded that the violation of the right to personal integrity of Marco Bienvenido Palma Mendoza's family is evident because of the consequences suffered as a result of the facts of the case and their search to obtain justice.

107. The State defined the situation of Mr. Palma's next of kin as:

A complex and painful situation, but not because of the lack of action in the investigation of the case, [which] was conducted in an extremely dangerous context in the coastal provinces of Ecuador, but because private agents (who had no connection whatsoever with the State) were able to exercise pressure and intimidate the family which, evidently, should have reported these acts.

108. In addition, the State indicated that, in order to analyze the alleged violation, the following aspects, among others, should be taken into account: (a) that the alleged violation of the physical or moral integrity was not increased by the stigmatization or denigration, because the courts, the police, and the civil authorities provided support to clarify the events; (b) a careful examination of the discontinuance procedure in the proceedings by the next of kin, in order to assess the pertinence of considering them direct victims; (c) that the timetable of the events related to Mr. Palma's disappearance provided by the representatives does not imply the involvement of State agents; (d) that Mr. Palma's remains were recovered, the exhumation was conducted, and the remains were returned to his next of kin; (e) that, as a result of a regional operation, it was possible to obtain the testimony of an individual (with no ties whatsoever to the State) who recounted what happened to Mr. Palma, and (f) that, while it is likely that some of the suffering experienced by Mr. Palma's next of kin is similar to that of the relatives of victims in other cases submitted to the Court based on forced disappearance, their origin is very different as regards the international responsibility of the State in the instant case. Lastly, the State indicated that, in this case, there was no enforced disappearance and none of the characteristic elements of this crime occurred; rather, to the contrary, a serious and thus ongoing investigation was opened, based on the complaint that was filed and the applications for *habeas corpus*, criminal proceedings were undertaken, and those responsible were punished. In conclusion, Ecuador indicated that it has been proved that it did not violate Article 5 of the Convention, because it was not State agents who intervened in the unfortunate events of the instant case.

Considerations of the Court

109. The Court finds that the State has not incurred responsibility in relation to the alleged violation of the right to personal integrity established in Article 5 of the American Convention, since it has concluded that a violation of the rights to judicial guarantees and protection has not been established.

X OPERATIVE PARAGRAPHS

110. Therefore,

THE COURT

DECIDES:

Unanimously,

1. To declare the preliminary objection inadmissible, in accordance with paragraphs 16 to 19 of this Judgment.

DECLARES:

Unanimously, that

1. The State did not violate the right to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention on Human Rights, in relation to the right to life recognized in Article 4 of this instrument, all in relation to Article 1(1) thereof, in the terms of paragraphs 80 and 92 to 104 of this Judgment.

2. The State did not violate the right to personal integrity established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, in the terms of paragraph 109 of this Judgment.

3. It abstains from ruling on the supposed failure of the State to comply with the obligation contained in Article 2 of the American Convention on Human Rights, in the terms of paragraph 88 of this Judgment.

AND ORDERS:

Unanimously,

1. To close the case file.

Done, at San José, Costa Rica, on September 3, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary