



Organización de los
Estados Americanos



Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Pedro Miguel Vera Vera Et Al
(Case 11.535)
against the the Republic of Ecuador

Delegates:

Luz Patricia Mejía Guerrero, Commissioner
Santiago A. Canton, Executive Secretary

Advisers:

Elizabeth Abi-Mershed, Assistant Executive Secretary
Silvia Serrano Guzmán
Nerea Aparicio

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Washington, D.C.
1889 F Street, N.W.
20006

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
VERSUS THE REPUBLIC OF ECUADOR
CASE 11.535
PEDRO MIGUEL VERA VERA¹ ET AL.**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”), submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) an application in Case 11.535, Pedro Miguel Vera Vera *et al.* versus the Republic of Ecuador (hereinafter the “State of Ecuador,” “the Ecuadorian State,” “the State,” or “Ecuador”) for the failure to provide proper medical care to Pedro Miguel Vera Vera, the physical and psychological suffering caused to him, and his subsequent death while in state custody. Pedro Miguel Vera Vera was arrested by the police on April 12, 1993; at the time of his arrest he had a gunshot wound, the origin of which is unclear. Once in state custody Mr. Vera Vera was taken to a public hospital, from where he was discharged the next day and taken to a detention center. He remained there for four more days without receiving any medical treatment in spite of his wound and in spite of the fact that the projectile was still lodged in his body. On April 16, 1993, a court order was issued for the victim’s transfer to a hospital so that he might undergo surgery. This transfer was carried out the following day but the victim had to wait until April 22, 1993, before undergoing an operation, some hours after which he died. The facts have still not been clarified nor those responsible identified and punished.

2. The Inter-American Commission requests the Court to find that the State of Ecuador has engaged its international responsibility by its failure to meet its international obligations and violation of Articles 4(1) (right to life), 5(1) and 5(2) (right to humane treatment), and 8(1) and 25(1) (rights to a fair trial and to judicial protection), in connection with the obligations set forth in Article 1(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

3. The instant case has been processed pursuant to the provisions of the American Convention and is submitted to the Court in accordance with the transitory provision contained in Article 79(2) of the Court’s Rules of Procedure. Attached as an appendix to this application is a copy of report 82/09, which was drafted in accordance with Article 50 of the Convention.² The State of Ecuador has not presented complete and sufficient information on compliance with the recommendations made by the Commission. The information available suggests that those recommendations have not been carried out.

¹ During the processing of this case by the Inter-American Commission on some occasions the parties have referred to the victim as “Milton Zambrano Vera”, on others as “Pedro Miguel Vera Vera”, and on others as “Milton Zambrano Vera or Pedro Miguel Vera Vera”. The information available suggests that the victim was known by both names. In Report 82/09 the Commission called the case “Milton Zambrano Vera” and indicated that he was also known as Pedro Miguel Vera Vera. Following the adoption of that report, in a brief received on September 28, 2009, the representatives of the victims continued to mention both names but specified that the exact identity is Pedro Miguel Vera Vera. Therefore, as of the instant application the Inter-American Commission shall refer to the victim by this last name and takes it as given that the State and the victim’s representatives have both acknowledged that the victim was known by both names. Accordingly, the Court is requested to take this into consideration where appropriate while processing this case.

² IACHR, Report 82/09 (Admissibility and Merits), Case 11.535, *Milton Zambrano Vera*, August 6, 2009. Appendix 1.

II. PURPOSE

4. The purpose of the instant application is to respectfully request the Court to find and declare that:

- a) The State of Ecuador is responsible for the violation of the rights to life and to human treatment recognized in Articles 4(1), 5(1) and 5(2) of the American Convention, in connection with the obligations enshrined in Article 1(1) of the same instrument, to the detriment of Pedro Miguel Vera Vera;
- b) The State of Ecuador is responsible for the violation of the rights to a fair trial and to judicial protection recognized in Article 8(1) and 25(1) of the American Convention, in connection with the obligations enshrined in Article 1(1) of that instrument, to the detriment of Francisca Mercedes Vera Valdez (mother of Pedro Miguel Vera Vera); Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera (siblings of Pedro Miguel Vera Vera); and Francisco Rubén Vargas Balcázar (stepfather of Pedro Miguel Vera Vera).

5. Based on the foregoing, the Inter-American Commission requests that the Court order the Ecuadorian State to

- a) Carry out a prompt, diligent and effective judicial investigation to identify, prosecute, and punish all those responsible for the violations described in the instant application, including those officials who through their acts and omissions contributed to the denial of justice;
- b) Provide reparation to the victims for pecuniary and non-pecuniary damage suffered, including public recognition of international responsibility and publication of the judgment ultimately issued by the Inter-American Court;
- c) Adopt all measures necessary to avoid a repetition of facts such as those described in the instant application, including measures to ensure that persons deprived of liberty have access to timely medical attention appropriate to their state of health; and
- d) Reimburse the costs and legal expenses incurred in the processing of this case before the Inter-American Commission and Court.

III. REPRESENTATION

6. In conformity with Article 24 of the Rules of Procedure of the Court, the Commission has designated Commissioner Luz Patricia Mejía and its Executive Secretary, Santiago A. Canton as its delegates in this case. The Assistant Executive Secretary, Elizabeth Abi-Mershed, and attorneys Silvia Serrano Guzmán and Nerea Aparicio, specialists of the Executive Secretariat of the IACHR, have been designated to act as legal advisers.

IV. JURISDICTION OF THE COURT

7. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases submitted to it regarding interpretation and application of the provisions of this Convention, provided that the states parties to the case recognize or have recognized its jurisdiction.

8. The State of Ecuador ratified the American Convention on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984. The violations claimed in this application occurred within the jurisdiction of the State of Ecuador after the American Convention had entered into force for said state.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION³

9. The IACHR registered the complaint as Petition 11.535, in keeping with its practice at the time. On May 31, 1995, it acknowledged receipt of the petition and requested the petitioners to furnish additional information so that it might complete its preliminary analysis. The petitioners submitted the information requested on August 4, 1995. On September 13, 1995, the IACHR transmitted the pertinent portions of the petition to the State and requested that it present its observations within 90 days, in keeping with Article 34 of the Regulations of the Commission then in force. The State of Ecuador submitted its response in a communication dated December 27, 1995. On January 31, 1996, the IACHR transmitted the information presented by the State of Ecuador to the petitioners and gave them 45 days to submit comments. The petitioners submitted their comments on March 19, 1996. These were forwarded to the State in a communication of April 29, 1996, in which the State was given 30 days to present any observations it might have. In a communication of June 11, 1996, the State offered its observations, which were passed on to the petitioners on June 20, 1996, with a period of 30 days in which to present their comments. The petitioners submitted their reply on August 6, 1996.

10. On April 30, 1999, the IACHR requested additional information from the petitioners, with a deadline of 40 days in which to do so. In a communication dated July 1, 1999, the petitioners sent in their response, which was conveyed to the State on August 13, 1999, with a 30-day deadline to submit its observations. The state presented its observations on September 27, 1999, and they were transmitted to the petitioners on October 27, 1999, with a period of 45 days in which to express any observations they might have. The petitioners submitted their response on January 4, 2000, and it was forwarded to the State on March 21, 2000, with a time limit of 30 days for comments. The IACHR reiterated its request to the Ecuadorian State for information in a communication dated July 17, 2001. The State presented its observations on October 2, 2001. Those observations were relayed to the petitioners on October 16, 2001, with a time-limit of 30 days to comment. On April 24, 2002, the petitioners submitted their comments, which were transmitted to the State on May 9, 2002, with a request that it submit its observations within 60 days.

11. On April 21, 2003, the IACHR notified the petitioners that it had decided to defer its treatment of the petition's admissibility until the debate and decision on merits. Accordingly, it requested that they submit any additional observations that they might have on merits within two months, in accordance with Article 38(1) of its Rules of Procedure. In a communication dated June 28, 2003, the petitioner submitted its additional observations on merits, which were forwarded to the State on September 12, 2003, together with a request that it reply within two months. The State requested the Commission for an additional 30 days in a communication dated October 9, 2003. The extension was granted on October 15, 2003.

³ The proceedings mentioned in this section are contained in the record of the case before the IACHR. Appendix 2.

12. The State submitted its additional observations on merits in a communication dated December 29, 2003. That information was relayed to the petitioners on October 12, 2005, with a request that they comment within one month. The petitioners presented their comments in a communication of January 20, 2006. On March 30, 2007, the pertinent portions of the communication were transmitted to the State, which was given one month to reply. As of the adoption of the report 82/09 no such reply has been forthcoming.

13. In the framework of its 135st Regular Session, on August 6, 2009, the Commission adopted Report on Admissibility and Merits 82/09, prepared in accordance with Article 50 of the Convention. The final part of that report says:

Based on the factual and legal arguments given above, the Commission concludes that the Republic of Ecuador is responsible for the violation of the right to humane treatment recognized in Article 5(1) and (2) of the American Convention; for breach of the obligation to ensure the right to life under Articles 4(1) and 1(1); and for breach of its obligation to provide a fair trial and judicial protection in accordance with Articles 8(1), 25 and 1(1) of the same instrument.⁴

14. In the aforesaid report the Commission recommended that the State of Ecuador

1. Carry out a prompt and meaningful judicial investigation to identify, prosecute, and punish those responsible for the violations described in the conclusions of this report.
2. Adopt pertinent measures to provide reparation to Mr. Milton Zambrano's heirs.
3. Adopt effective measures to ensure that persons deprived of liberty have access to timely medical attention appropriate to their state of health.⁵

15. On August 24, 2009, the Commission notified the Ecuadorian State of Report on admissibility and merits 82/09, and granted it two months to provide information on the measures adopted to comply with the respective recommendations.

16. On October 27, 2009, the State provided information on a series of steps taken by the Ministry of Justice and Human Rights which, although they may have a bearing on the third recommendation of the Report 82/09, were adopted before the Commission notified the State of the report. The measures reported by the State may be summarized as follows:

- In January 2009, the Ministry of Health, the Bureau of Social Rehabilitation, and the Ministry of Justice and Human Rights signed a tripartite agreement to deal with the health situation in the country's prisons. At present, the design is under way of an Inter-Agency Comprehensive Health Care Plan for Persons Deprived of Liberty in the Keeping with Human Rights, 2009-2013.
- A Project on Prevention of HIV-AIDS/STI in Persons Deprived of Liberty has been in progress since 2005 as part of an agreement between the Global Fund (Ministry of Health) and the Bureau of Social Rehabilitation.
- As regards infrastructure changes, the Ministry of Justice is remodeling the spaces where health services are provided at the various Social Rehabilitation Centers in the country.

⁴ IACHR, Report 82/09 (Admissibility and Merits), Case 11.535, *Milton Zambrano Vera*, August 6, 2009, par. 156. Appendix 1.

⁵ IACHR, Report 82/09 (Admissibility and Merits), Case 11.535, *Milton Zambrano Vera*, August 6, 2009, par. 156. Appendix 1.

- Since 2008, the Ministry of Justice and Human Rights, through the Social Rehabilitation Coordination Secretariat, has carried out in cooperation with the Ministry of Health, the National Sanitation Institute, the United Nations Development Programme, and the Bureau of Social Rehabilitation, a variety of capacity building activities for health-care staff in order to improve the care that they provide to persons deprived of liberty.

17. As regards the first two recommendations mentioned in paragraph 14 above, the State said that they are of a complex nature and, therefore, requested an extension of the deadline granted by the Inter-American Commission.

18. On November 17, 2009, the Commission informed the State that by a decision of November 30, 2009, it had agreed to the extension request and gave the State an additional three months. In the same communication the Commission asked the State to submit a preliminary report on progress in implementing the recommendations by December 18, 2009, together with a final report on February 10, 2010. The State of Ecuador submitted neither of the reports requested by the Commission. In a communication dated February 19, 2010, the State requested another extension without offering any information on specific steps taken to comply with the recommendations.

19. For their part, on September 28, 2009, the petitioners expressed their interest that the case be referred to the Inter-American Court.

20. Having considered the information available, which indicates that the State has not complied with the recommendations put forward in the report on admissibility and merits, the Commission decided to refer this case to the jurisdiction of the Inter-American Court.

VI. CONSIDERATIONS ON FACT

1. The arrest, transfers, and death of Pedro Miguel Vera Vera

21. The arguments and evidence presented to the Commission indicate that Pedro Miguel Vera Vera, also known as Milton Zambrano Vera, aged 20,⁶ was arrested on April 12, 1993, by two police officers of the Criminal Investigation Office (OID).⁷

22. The record shows that Pedro Miguel Vera Vera had a criminal Record.⁸ Although the parties state that some months before the events in this case he had escaped from a detention center, there is nothing in the record to confirm the reasons why he had been deprived of liberty and if he was serving a prison sentence.

23. The record shows that prior to his arrest on April 12, 1993, he was being pursued by a group of persons who had supposedly caught him in the act of committing a robbery

⁶ Annex 1. Report of the Forensic Medicine Service to the Chief of the Fifth National Police Precinct of Quito Canton 301-24JI-PA-93 of April 23, 1993.

⁷ Annex 3. Report of April 13, 1993, of the Chief of the Rural Police Service, First Pichincha Command, in connection with Case No. 93-927-000.

⁸ Annex 17. Report from the Criminal Investigation Office to the Chief of Pichincha Criminal Investigation Office, submitted by policeman José Gualotuña; and Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927, p. 3, conclusion b. The report of Agent José Gualotuña indicates that he had three prior arrests recorded for robbery in Santo Domingo de los Colorados and none in the provincial archive. However, in the police report of April 14, 1993, whereby Mr. Vera Vera was turned over to the President of the Allocation Chamber, it says that he had 13 prior arrests in that police jurisdiction.

and were intent on lynching him or burning him alive.⁹ In the course of the pursuit Pedro Miguel Vera Vera sustained a gunshot wound from a firearm discharged at long range¹⁰ in the upper left anterior region.¹¹ There are not enough elements to establish if the gunshot came from the said group of persons or from the police officers who performed the arrest in the same context.

24. According to the official information, Mr. Vera Vera was arrested at 8 p.m. on April 12 for armed robbery.¹² After being relieved of a sharp instrument used as a weapon, Mr. Vera Vera was taken to the police station by taxi for booking,¹³ after which he was transferred in a patrol car to Santo Domingo de los Colorados Public Hospital,¹⁴ where he was admitted at 8:20 p.m. The alleged victim was treated by the physicians on duty in the Emergency Room, Ángel Zapata and Myriam Rubio.¹⁵

25. On April 13, 1993, based on the opinion of specialist physicians that the wound did not warrant hospitalization,¹⁶ Drs. Wilson Castro, Luis Vilca and Mercedes Ojeda, who had been on duty during the day, discharged Mr. Vera Vera.¹⁷

26. According to the legible portions of the progress notes and medical prescriptions from Santo Domingo de los Colorados Hospital,¹⁸ Pedro Miguel Vera Vera was admitted in an intoxicated state to the hospital emergency area on April 12, 1993, at 9 p.m. with a gunshot wound in the left chest region, and was placed in the observation room. It is mentioned that a chest x-ray was pending. Later, at 2 a.m. (on April 13, 1993), it is mentioned that the patient continued to complain. The 7 a.m. report (on April 13, 1993) says that the patient spent the night in an "irritable and plaintive" state, that an x-ray was taken (the removal of which was

⁹ Annex 3. Report of April 13, 1993, to the Chief of the Rural Police Service, First Pichincha Command, in connection with Case No. 93-927-000; and Annex 4. Article from *Hoy* newspaper in Ecuador dated April 24, 1993. The article says, "Milton Eduardo Zambrano Vera (also known as Pedro Miguel Vera Vera) and José Miguel Arias escaped from Prison No. 2, Quito (...). However, on approximately April 8, 1993, Zambrano Vera was wounded in an armed confrontation with the police in the city of Santo Domingo de los Colorados, as a result of which he was taken to a medical facility in that city ..."

¹⁰ Annex 1. Report of the Forensic Medicine Service to the Chief of the Fifth National Police Precinct of Quito Canton 301-24JI-PA-93 of April 23, 1993.

¹¹ Annex 5. Official letter 952583 of December 15, 1995, signed by Police General Marco Hernán Hinojosa Aránz, Under Secretary of Police, addressed to Ambassador Ximena Martínez de Pérez, Under Secretary for International Organizations, Ministry of Foreign Affairs.

¹² Annex 6. National Bureau of Investigations, Official letter No. 940-OID-SDC of June 30, 1995, to Sister Elsie Monge, President of CEDHU.

¹³ Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927. According to this report the items that were confiscated from Mr. Pedro Vera included five wristwatches with the band broken, money, deposit slips, and other objects; and Annex 24. Report of April 12, 1993, to the Chief of the Rural Police Service, First Pichincha Command, signed by IESS Police Agent, Monte de Piedad Wilmo Hurtado.

¹⁴ Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927.

¹⁵ Annex 7. Police Report 95-P2-34-SDC of December 11, 1995, to the Chief of the Rural Police Service, First Pichincha Command.

¹⁶ Annex 5. Official letter 952583 of December 15, 1995, signed by Police General Marco Hernán Hinojosa Aránz, Under Secretary of Police, addressed to Ambassador Ximena Martínez de Pérez, Under Secretary for International Organizations, Ministry of Foreign Affairs; and Annex 8. Record from Santo Domingo de los Colorados Hospital, Emergency Service, indicating the date on which the patient Pedro Miguel Vera was treated: April 12, 1993, 8:20.

¹⁷ Annex 7. Police Report 95-P2-34-SDC of December 11, 1995, to the Chief of the Rural Police Service, First Pichincha Command.

¹⁸ Annex 8. Record from Santo Domingo de los Colorados Hospital, Emergency Service, indicating the date on which the patient Pedro Miguel Vera was treated: April 12, 1993, 8:20.

pending), and that he had vomited twice, which vomit contained residual food matter. Finally, at 12 p.m. on April 13, 1993, the patient's condition was reported as having improved and he was transferred from the hospital under the escort of OID personnel. On the legible portion of the medical prescriptions of April 13, 1993, it says "general care and discharge."¹⁹

27. Following his discharge on April 13, 1993, Mr. Vera Vera was transferred to the Provisional Detention Center, where he was treated by Dr. Fernando Lara, the medical officer at the Police Medical Unit, who certified that Mr. Pedro Miguel Vera had a gunshot wound "without apparent complications."²⁰ However, in a statement given to the National Police on November 15, 1995, Dr Lara said, "It should be noted that the unit's medical service does not have a laboratory or an x-ray machine, making timely detection of complications in the aforementioned wound impossible."²¹

28. It is worth noting in this regard that during its on-site visit to Ecuador in November 1994, the IACHR received information about overcrowding in prisons, prison medical facilities that were poorly supplied in terms of equipment and drugs, and a lack of rudimentary requirements such as adequate infrastructure, sanitation, nutrition and access to medical attention.²²

29. On April 14, 1993, the Prosecutor of the 11th Criminal Court of Pichincha, Felipe Salvatierra Guerrero, with OID investigator Jaime Arévalo Azuero present, took a statement from Mr. Pedro Miguel Vera Vera regarding the events that led to his arrest on April 12, 1993.²³ Later, on April 14, 1993, the Chief of Santo Domingo de los Colorados OID turned Mr. Vera Vera over to the President of the Allocation Chamber together with the police report prepared by the National Investigation Police dated April 14, 1993,²⁴ the aforementioned statement taken from Mr. Vera Vera by the prosecutor, the police arrest report,²⁵ and the medical certificate issued by the medical officer of the National Police Medical Unit.

30. According to the Investigations Police Report of April 14, 1993, at the time of the arrest, Mr. Vera Vera had "a bullet entry wound near his left nipple, and in the area of the kidney on the same side there are marks of having suffered a blow from a fall or from the projectile being lodged there."²⁶

31. On April 16, 1993, the Judge of the 11th Criminal Court of Pichincha, Carlos Humberto Mejía, who took the preliminary signed statement from Mr. Vera Vera in the criminal proceeding for robbery instituted against him on April 12, 1993, sent an official letter to the

¹⁹ Annex 8. Record from Santo Domingo de los Colorados Hospital, Emergency Service, indicating the date on which the patient Pedro Miguel Vera was treated: April 12, 1993, 8:20.

²⁰ Annex 9. National Police Medical Certificate of April 14, 1993.

²¹ Annex 10. National Police of Ecuador, National Bureau of Investigations, Report No. 95-P2-33-SDC of November 15, 1995, in connection with Case 95-P2-33-SDC.

²² Annex 11. IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc. 10 rev. 1, April 24, 1997, Chapter VI: The Human Rights Situation of Individuals Incarcerated within the Penal System of Ecuador.

²³ Annex 12. Case 93-343, Statement signed by Dr. Salvatierra Guerrero, Prosecutor of the 11th Criminal Court of Pichincha and Pedro Miguel Vera Vera, Declarant in Case 93-343.

²⁴ Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927.

²⁵ Annex 3. Report of April 13, 1993, of the Chief of the Rural Police Service, First Pichincha Command, in connection with Case No. 93-927-000.

²⁶ Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927, p. 2, Verifications.

Director of Santo Domingo de los Colorados Hospital requesting him to approve the detainee's admission to said hospital facility so that he might undergo surgery, given that the alleged victim had a gunshot wound, and to inform him about his post-surgery treatment and progress.²⁷ As a result of this official letter, Mr. Pedro Miguel Vera Vera was taken back to Santo Domingo de los Colorados Public Hospital on April 17, 1993 at 13:00 hrs,²⁸ where he was diagnosed with an acute traumatic abdomen, a gunshot wound in the left thorax, and sepsis.²⁹ On April 22, 1993, at the request of the police he was transferred to Eugenio Espejo Public Hospital.³⁰ There, he underwent an emergency exploratory laparotomy from 21:10 hours on April 22 until 01:45 hours on April 23, 1993. As a result of the surgery, Pedro Miguel Vera Vera was diagnosed with "thoraco-abdominal trauma caused by a firearm" and "perforation of the splenic angle of the colon and peritonitis."³¹

32. Pedro Miguel Vera Vera died in the early hours of April 23, 1993.³² According to the report of the forensic medicine service of April 23, 1993, the apparent cause of death was "peritonitis and hemoperitoneum caused by lacerations to the mesenteric vessels, the mesenterium and bowel loops, resulting from penetration by a firearm projectile."³³ The report offers no reference to the mark from the blow that the alleged victim had received in the area of the left kidney at the time of his arrest, which was mentioned in the police report of April 14, 1993. The removal of the corpse was carried out at Eugenio Espejo Hospital on April 23, 1993,³⁴ by order of the Chief of the Fifth National Police Precinct, who also ordered an autopsy.³⁵

2. The investigations conducted by the Ecuadorian authorities

33. With respect to the investigations into the death of Mr. Vera Vera, on April 23, 1993, Agent José Gualotuña went to Eugenio Espejo Public Hospital, where he telephoned First Corporal Jorge Ortega of the OID-SDC, who said that through Report No. 686-OID-SDC "the news had being released regarding what had happened to the criminal Pedro Miguel Vera Vera, who had been wounded by a gunshot and who, together with the aforementioned report, had been turned over to the SDC Allocation Chamber."³⁶

²⁷ Annex 13. Official letter No. 93-490-JDPPP-SDC, of April 16, 1996.

²⁸ Annex 14. Record from Santo Domingo de los Colorados Hospital, Pedro Miguel Vera Vera. Date of treatment April 17, 1993, 13:00.

²⁹ Annex 15. Ministry of Health, Santo Domingo Hospital, Official letter No. 123-DHSD-93 of July 13, 1993, addressed to Sister Elsie Monge, President of CEDHU and signed by Dr. Luis Pullas Zuletas, Hospital Director.

³⁰ Annex 15. Ministry of Health, Santo Domingo Hospital, Official letter No. 123-DHSD-93 of July 13, 1993, addressed to Sister Elsie Monge, President of CEDHU and signed by Dr. Luis Pullas Zuletas, Hospital Director.

³¹ Annex 16. Case history of the patient Pedro Vera from Eugenio Espejo Hospital, Quito.

³² Annex 1. Report of the Forensic Medicine Service to the Chief of the Fifth National Police Precinct of Quito Canton 301-24JI-PA-93 of April 23, 1993.

³³ Annex 1. Report of the Forensic Medicine Service to the Chief of the Fifth National Police Precinct of Quito Canton 301-24JI-PA-93 of April 23, 1993.

³⁴ Annex 17. Report from the Criminal Investigation Office to the Chief of Pichincha Criminal Investigation Office, submitted by policeman José Gualotuña. This official letter notifies the removal of the corpse of the deceased Pedro Miguel Vera, age 20.

³⁵ Annex 18. Report 216-OIDP, of April 4, 1993. Advising of the investigations into the death of PEDRO MIGUEL VERA or MILTON EDUARDO ZAMBRANO VERA on April 23, 1993, in Eugenio Espejo Hospital as a result of a gunshot in Santo Domingo de los Colorados".

³⁶ Annex 18. Report 216-OIDP, of April 4, 1993. Advising of the investigations into the death of PEDRO MIGUEL VERA or MILTON EDUARDO ZAMBRANO VERA on April 23, 1993, in Eugenio Espejo Hospital as a result of a gunshot in Santo Domingo de los Colorados".

34. In 1995, after the instant petition was transmitted to the Ecuadorian State, the National Police of Ecuador took a number of statements in order to provide information to the Inter-American Commission. The declarants were five members of the police,³⁷ four of whom were involved in the arrest of Mr. Vera Vera and his subsequent transfer to Santo Domingo Hospital, along with Lieutenant Fernando Lara, the police medical officer who treated Mr. Vera Vera when he was transferred to the police cells on April 13, 1993; as well as two other persons who were at the scene at the time of the arrest on April 12, 1993.³⁸

35. Subsequently, in 2003, in response to a request from the Chief of the Intelligence Brigade of the Pichincha Judicial Police, the Hospital Director, Dr. Gustavo Domínguez, informed that the physicians who treated Mr. Vera Vera on April 12 and 13, 1993, no longer worked at that health care facility.³⁹ He also reported that the case history of the patient Pedro Miguel Vera Vera had been located in the deceased patients archive.⁴⁰

36. Since the events occurred in April 1993, no judicial proceeding or investigation whatever has been opened in order to clarify the circumstances in which Mr. Pedro Vera Vera was shot, or the circumstances in which he died while in custody of the State. Under Ecuadorian law, the statute of limitations on initiating a criminal action in the instant case has run.⁴¹

VII. CONSIDERATIONS ON LAW

1. Right to Humane Treatment (Article 5 of the American Convention in connection with Article 1(1) of same)

37. Article 5(1) of the American Convention provides, "Every person has the right to have his physical, mental, and moral integrity respected." For its part, Article 5(2) provides, "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment" and "[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." In interpreting this rule, the Commission has held that

Among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of the human person. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals must be treated with dignity and respect. Therefore, Article 5(1) guarantees to all persons the right to have his or her physical, mental, and moral integrity respected, and Article 5(2) requires all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person. These guarantees presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in

³⁷ Annex 19. Report 95-P2-33-SDC of December 4, 1995, sent by the National Police of Ecuador to the Chief of the Rural Police Service, First Pichincha Command. This report notes that statements were taken from Police Lieutenant Edison Sulca, Dr. Fernando Lara, 1st Cpl. Raúl Andino and Cpls. Wilmo Hurtado and Oswaldo Ramírez.

³⁸ Annex 19. Report 95-P2-33-SDC of December 4, 1995, sent by the National Police of Ecuador to the Chief of the Rural Police Service, First Pichincha Command. This report mentions that statements were taken from citizens Dolores Cumanda Roldan Sarango and Juan Francisco Espinoza.

³⁹ Annex 20. Official letter No. 216-DHS_2003, of October 29, 2003, signed by the Hospital Director, Dr. Gustavo Domínguez.

⁴⁰ Annex 21. Letter to Juan Viteri Lastra, Hospital Director, from Moisés Lema Padilla, Chief of the Statistics and Medical Records Department, dated October 30, 2003.

⁴¹ Annex 22. Ecuadorian Criminal Code. Article 101 of the Criminal Code provides, "In publicly actionable offenses, if a trial is not opened, the time limit for their prosecution is 10 years for violations punishable with a prison sentence of more than five years (*reclusión*), and five years for violations punishable with a prison sentence of up to five years (*prisión*). In both cases, the time is counted from the date on which the offense was committed."

circumstances in which a State Party proposes to limit or restrict the most basic rights and freedoms of an individual, such as the right to liberty.⁴²

38. For its part, the Inter-American Court has held, “The State has the duty to provide detainees with regular medical [...] care and adequate treatment whenever necessary.”⁴³ Consequently, persons who are deprived of liberty are under the control of the state authorities and in a situation of special vulnerability. Therefore, the competent authorities have a special duty to adopt measures to protect their physical integrity and their dignity as human beings.⁴⁴

39. Besides the rights and obligations set forth in Article 5 of the Convention, it is necessary to bear in mind regional and universal standards that apply in particular to protection of the right to humane treatment and to health of persons deprived of liberty. In the inter-American system, Principle X of the “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas” provides,

Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment and medication [...]⁴⁵

40. Principle XXIV for the Protection of All Persons Submitted to Any Form of Detention or Imprisonment states that “[...] any person detained [...] will be provided [...] medical care and treatment whenever necessary [...].”⁴⁶ Rule 22(1) of the “Standard Minimum Rules for the Treatment of Prisoners” provides,⁴⁷

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. 2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. 3) The services of a qualified dental officer shall be available to every prisoner.

⁴² IACHR, Report No. 38/00 of April 13, 2000, Case 11.743, Baptiste (Grenada), par. 89.

⁴³ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 6, 2006. Series C No. 150, pars. 102 and 103; *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, par. 132; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 157.

⁴⁴ See also U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), Human Rights Committee, General Comment 21, par. 3; European Court of Human Rights, *Case of Dzieciak v. Poland*, Application No. 77766/01, Judgment of 9 December 2008; European Court of Human Rights, *Case of Slimani v. France*, Application No. 57671/00, Judgment of 27 July 2004, par. 28.

⁴⁵ Document approved by the Inter-American Commission on Human Rights at its 131st Regular Session, held from March 3 to 14, 2008. Principle X: Health.

⁴⁶ U.N., *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, Adopted by General Assembly resolution 43/173, of December 9, 1988, Principle 24. In this regard see also *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, par. 133; and *Case of Tibi v Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, par. 154.

⁴⁷ Adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by Economic and Social Council resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

41. Furthermore, Principles 1 and 2 of the “Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment,”⁴⁸ state that physicians have a duty “to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained,” and that it is a “contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”

42. Based on the foregoing, where persons deprived of liberty are concerned, the obligation of states to respect their physical integrity, not to use cruel or inhuman treatment, and to respect the inherent dignity of the human person, includes guaranteeing access to proper medical care.

43. According to the events narrated above, following his arrest on April 12, 1993, Mr. Vera Vera had a bullet wound near his heart. It should be clarified that while there is insufficient evidence to determine the origin of the projectile or the circumstances in which it was discharged, the responsibility of the State for the failure to elucidate the provenance of the bullet received by Pedro Miguel Vera Vera will be examined in the section that deals with Articles 8(1) and 25(1) of the Convention (pars. 58-69 below).⁴⁹ In this section the Commission puts forward arguments concerning the physical and psychological distress that Pedro Miguel Vera Vera suffered in the interval from his arrest with a serious physical wound until his death 10 days later.

44. As has been recounted, after Pedro Miguel Vera Vera was arrested, despite his condition, he was not taken immediately to a hospital but to a police station for booking.⁵⁰ Some 20 minutes later, at 8:20 p.m. on April 12, 1993, Mr. Vera Vera was admitted to Santo Domingo de los Colorados Public Hospital from where, after less than 24 hours, he was discharged at 1 p.m. the next day. The Commission notes that Pedro Miguel Vera Vera’s clinical history contains no record of the medical considerations that prompted his discharge and the State has offered no explanation in that respect.

45. Nor has the State either furnished any information about the treatment that Mr. Vera Vera might have received on April 13, 14, 15, and 16, 1993, while he was in the police cells, or disputed the petitioners arguments regarding the substandard conditions there in terms of hygiene, sanitation, and medical care.

46. The Commission notes that, in spite of the fact that on April 16, 1993, the Judge of the 11th Criminal Court of Pichincha ordered the Director of Santo Domingo de los Colorados Hospital to readmit Mr. Vera Vera for surgery, Mr. Vera Vera was admitted to the hospital on April 17, 1993, at 13:00 hrs and remained there until April 22 —whereupon he was transferred to Eugenio Espejo Hospital— without undergoing any surgery whatsoever. Aside from Mr. Vera Vera’s clinical history, the State has offered no justification or information regarding the failure to immediately carry out the order of the Judge of the 11th Criminal Court of Pichincha.

⁴⁸ Adopted by General Assembly resolution 37/134 of 18 December 1982.

⁴⁹ The State has put forward conflicting information about the degree of responsibility of its agents in the commission of this act.

⁵⁰ Annex 24. Report of April 12, 1993, to the Chief of the Rural Police Service, First Pichincha Command, signed by IESS Police Agent, Monte de Piedad Wilmo Hurtado.

47. Based on the foregoing, the Commission concludes that for 10 days Pedro Miguel Vera Vera suffered serious consequences to his health that severely undermined his physical integrity due to the State's breach of its obligation to provide him with proper medical care following his arrest on April 12, 1993; during his confinement from April 13 to 17, 1993, in Santo Domingo police cells, which lacked the necessary sanitary and material facilities to house him and provide him with medical treatment; and during his stay from April 17 to 22, 1993, in Santo Domingo de los Colorados Public Hospital, where he did not undergo surgery, in spite of the court order issued on April 16, 1993.

48. The way in which the events in the case unfolded, the sequence of omissions by various officials at different times, the gross nature of those omissions, the predictability of the suffering that Mr. Vera Vera was enduring, and the fact that the custodial staff were aware of his state of health, are elements that constitute a specific and serious violation of the guarantees recognized in Article 5 of the American Convention.⁵¹ As is described below (pars. 58-69), the State did not investigate the facts that surrounded the injury caused to the victim, nor the possible liability to criminal or administrative proceedings that the failure to provide medical assistance might have engaged. Nor was there any investigation to determine if those facts constituted deliberate omissions that might amount to the crime of torture.

49. For the purposes of the analysis contained in this section, the Commission considers that the omissions committed by different state authorities had serious effects on Mr. Vera Vera's physical integrity, under the terms of Article 5(2) of the American Convention, and that the State failed to guarantee the victim's right to humane treatment by its neglect to investigate the facts described in this application.

50. In light of the foregoing, the Commission requests that the Court find and declare that the Ecuadorian State breached its obligation to ensure the right to humane treatment of Pedro Miguel Vera Vera, not to subject him to cruel or inhuman treatment, and to treat him with respect for his inherent dignity as a human person, in accordance with Article 5(1) and (2) of the American Convention, in connection with Article 1(1) of said treaty.

2. Right to Life (Article 4 of the American Convention in connection with Article 1(1) of same)

51. Article 4(1) of the American Convention provides, "Every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life. In keeping with the case law of the Inter-American Court, given the fundamental nature of the right to life, the State has a duty not to jeopardize the lives of individuals through its agents and to ensure this right through all its institutions:

the right to life plays a fundamental role in the American Convention because it is the essential premise for the other rights. States have the obligation to ensure the creation of

⁵¹ Regarding the possible existence of torture by omission, see *ICTY. Prosecutor v Delalić and Others (the Čelebići case)* (1998), §468. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/13/39/Add.5, 5 February 2010, para. 31. The report analyzes different elements that make up the definition of torture and says, 'The term "act" is not to be understood in any way as to exclude omissions. An examination of the travaux préparatoires of the Convention does not reveal any indication whatsoever that the drafters would have intended e.g. to exclude from the definition of torture the intentional deprivation of a detainee of his or her food for a certain purpose leading to severe pain. It is well established by numerous decisions by the UN Committee against Torture and other relevant monitoring bodies that torture can be committed by omission.'

such conditions as may be required to avoid violations to this inalienable right and, specifically, the duty of avoiding attempts against it by the agents of the State.⁵²

52. As to the duty to ensure rights contained in the American Convention, Article 1(1) provides,

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

53. The Inter-American Court has also held that compliance with Article 4, in combination with Article 1(1) of the American Convention, “not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.” The active protection of the right to life by the State involves all state institutions.⁵³

54. The foregoing implies that the duty to protect lives also applies to the public-health sphere. Furthermore, in the case of public hospitals, the acts and omissions of their staff are capable of engaging the responsibility of the State under the American Convention and must be subject to clarification and accountability.⁵⁴ When a person dies while in state custody, it is necessary to determine whether or not the State has fulfilled its duty to ensure the right to life and if the necessary steps have been taken to investigate the facts and, as appropriate, bring those responsible to justice.⁵⁵

55. As has been established in the considerations on fact, Pedro Miguel Vera Vera died in a public hospital while in state custody, following a series of omissions by state agents, notably: Once arrested, Pedro Miguel Vera Vera was not immediately taken to a hospital to receive medical attention, but only after being booked at the appropriate police agency. From the legible portions of the clinical records it emerges that during the time that he stayed in Santo Domingo Hospital (specifically on April 12, 13, 17, 18, 19, 20, 21 and 22, 1993) he underwent no surgery nor receive any medical treatment to restore him to health. The Commission also notes that the police allowed someone with a gunshot wound to be housed in cells with deficient sanitation and medical facilities from April 13 to 17, 1993, without any monitoring. The Commission observes that upon his transfer to Eugenio Espejo Hospital in Quito, Pedro Miguel Vera Vera underwent an emergency exploratory laparotomy that very day from 9:10 p.m. on April 22 until 1:45 a.m. on April 23, 1993. The diagnosis that resulted from the exploratory surgery was “thoraco-abdominal trauma caused by a firearm” and “perforation of the splenic angle of the colon and peritonitis.” According to the medical examiner’s report, Mr. Vera Vera died at

⁵² I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 273; *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, par. 75; *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 131; and *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 120.

⁵³ I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 273; *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, par. 75; *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 131; and *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 120.

⁵⁴ European Court of Human Rights, *Case of Tarariyeva v. Russia*, Application No. 4353/03, Judgment of 14 December 2006, par. 74.

⁵⁵ European Court of Human Rights, *Case of Slimani v. France*, Application No. 57671/00, Judgment of 27 July 2004, par. 27.

approximately 5 a.m. on April 23, 1993. The State has offered no information as to why a laparotomy was not carried out earlier at Santo Domingo Hospital.

56. In short, during the 10 days that Pedro Miguel Vera Vera was in state custody, various officials, including custodial staff and public hospital medical personnel, committed a series of omissions that resulted in the death of the victim on April 23, 1993. As has been explained, said omissions occurred at least at the following moments: following his arrest on April 12, 1993; during his confinement in Santo Domingo police cells, from April 13 to 17, 1993, which lacked the necessary sanitary and material conditions to house him and provide him with medical treatment; and during his stay from April 17 to 22, 1993, in Santo Domingo de los Colorados Public Hospital, where he did not undergo surgery, in spite of the court order issued on April 16, 1993. Finally, as is explained in paragraphs 58 to 69 below, the Ecuadorian State did not carry out an investigation to ascertain the responsibility of its agents for the omissions that led to the victim's death.

57. Consequently, the Commission requests the Court to find and declare that the Ecuadorian State violated its obligation to ensure the right to life of Pedro Miguel Vera Vera under Article 4(1) of the American Convention in conjunction with Article 1(1) thereof.

3. Rights to a Fair Trial and to Judicial Protection (Articles 8 and 25 of the American Convention in connection with Article 1(1) of same)

58. Article 8 (1) of the American Convention provides,

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

59. For its part, Article 25 (1) of the Convention provides,

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

60. Furthermore, it is a generally recognized principle of international law that states bear international responsibility for any acts or omissions of their branches or organs that violate treaty obligations. In that regard, the rights to a fair trial and to judicial protection recognized in Articles 8 and 25 of the Convention,⁵⁶ as well as the obligation to ensure the rights protected in the American Convention under Article 1(1) thereof, are particularly important vis á vis the acts and omissions of judicial authorities.⁵⁷

⁵⁶ I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 173; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 141; *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, par. 28; and *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No 107, par. 109.

⁵⁷ I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 172; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 140; *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, pars. 111 and 112; and *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, par. 108.

61. As regards the obligation of States to investigate violations of the rights to life and to humane treatment protected in Articles 4 and 5 of the American Convention, the Inter-American Court has held,

[T]he State has the duty to commence *ex officio* and without delay, a serious, fair, and effective investigation which is not undertaken as a mere formality condemned in advance to be fruitless. Such investigation should be carried out with all available means and should be designed to establish the truth and to investigate, prosecute, and punish all the persons who are liable for the facts, particularly when State officials are or may be involved.⁵⁸

62. Furthermore, the obligation to protect the health and physical well-being of persons deprived of their liberty -which, as noted above, includes provision of proper medical assistance- implies that where a detainee dies, the State must offer an explanation as to the cause of death and the measures adopted to provide proper medical treatment.⁵⁹

63. With respect to the petition in the instant case, the Commission considers that the State failed to comply with its obligation to investigate the circumstances in which Pedro Miguel Vera Vera was wounded by a firearm on April 12, 1993, as well as the possible responsibility of agents of the state for his death in custody on April 23, 1993.

64. The Commission notes that the Ecuadorian Criminal Code recognizes the offenses of murder,⁶⁰ manslaughter,⁶¹ and involuntary manslaughter.⁶² In the chapter on consummate or attempted wrongdoing, the Criminal Code also provides for failure to fulfill a duty.⁶³ As regards institution of criminal action, Article 14 of the Code of Criminal Procedure in force at the time of the events provided that criminal action in respect of this conduct was public in nature and should be instituted *ex officio*.⁶⁴ Public criminal actions were initiated by a court order to investigate an alleged crime, which could be based on the following: 1) an inquiry performed by a competent court or judge *ex officio*; 2) a prosecution request; 3) a criminal

⁵⁸ I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 148; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 94; *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 143; and *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, par. 203.

⁵⁹ See European Court of Human Rights, *Case of Slimani v. France*, Application No. 57671/00, Judgment of 27 July 2004, par. 27 and *Case of Bitiyeva and X v. Russia*, Applications Nos. 57953/00 and 37392/03, Judgment of 21 June 2007, par. 102.

⁶⁰ Annex 22. Pertinent parts of the Ecuadorian Criminal Code applicable to the case. Article 449: "Homicide committed with the intention of causing death but without any of the circumstances described in the following article is murder and shall be punished with 8 to 12 years of imprisonment".

⁶¹ Annex 22. Pertinent parts of the Ecuadorian Criminal Code applicable to the case. Article 455: "When death is caused by wounds or blows dealt willfully but without the intention of causing death, the culprit shall be punished with three to six years of imprisonment..."

⁶² Annex 22. Pertinent parts of the Ecuadorian Criminal Code applicable to the case. Article 459: "A person commits involuntary manslaughter when they cause death through lack of foresight or care, but without the intention of harming others." Article 460: Whomsoever unintentionally causes the death of another person, shall, in the absence of a higher penalty be punished with 3 months to 2 years of imprisonment and a fine of 50 to 200 sucres.

⁶³ Annex 22. Pertinent parts of the Ecuadorian Criminal Code applicable to the case. Article 12: [Commission by omission].- Failure to prevent an act, in spite of a legal obligation to do so, is tantamount to causing it."

⁶⁴ Annex 23. Pertinent parts of the relevant criminal procedural law. Article 14 of the previous Code of Criminal Procedure: "Criminal action is public in nature. In general, it shall be instituted *ex officio*, and private indictments may be admitted; however in all the cases mentioned in Article 428 of this Code criminal action shall be instituted only through a private indictment." Article 428 of the previous Code of Criminal Procedure provided that the crimes that could be prosecuted by private indictment included statutory rape, abduction of a woman, defamation, unlawful appropriation, damage to trees or orchards, private property.

complaint; 4) a private indictment; 5) a police report or investigation; and, 6) a superior executive order.⁶⁵

65. In the instant case, it is a proven fact that Mr. Vera Vera sustained a gunshot wound to the left side of his chest at the time of his arrest, which engaged the obligation of the State to investigate the circumstances in which it occurred. In the course of the proceedings before the Inter-American Commission the State furnished conflicting information with regard to the origin of the gunshot. . At first, it said that the shot was fired by an agent of the State in legitimate self-defense. Subsequently it said that it did not know where the shot had come from because it had supposedly been fired by ordinary citizens as they were pursuing Mr. Vera Vera after catching him in the act of committing a crime.

66. The information available indicates that there was no investigation to ascertain who fired the gunshot that wounded Pedro Miguel Vera Vera or how the events occurred, in spite of the fact that in the police report of April 14, 1993, with which the Chief of the Criminal Investigation Office in Santo Domingo turned Mr. Vera Vera over to the President of the Allocation Chamber, it said that the detainee had been wounded "by a gunshot that some unidentified citizen had fired at him as he took flight... or law enforcement agents, who were pursuing him through the sector..." Under Article 18 of the Code of Criminal Procedure in force at the time of the incident, the Judge of the 11th Criminal Court of Pichincha (who took the preliminary signed statement from Pedro Miguel Vera Vera on April 16, 1993) was supposed to initiate preliminary proceedings or submit a written report to the appropriate judge when, in any way, the perpetration of a publicly actionable criminal offense came to his attention.⁶⁶ At the time of the events, the Chief of the Fifth Police Precinct, too, had the authority to initiate preliminary proceedings and order an investigation.

67. The information available indicates that there was also no investigation to clarify the facts that surrounded the death of the detainee in custody on April 23, 1993, 11 days after his arrest. The certificate of removal of the corpse and the autopsy report were not referred to the judicial authorities for the purposes of investigating the circumstances of Pedro Miguel Vera Vera's death, in spite of the fact that he only received medical treatment for a few hours following his arrest on April 12, 1993; that he was housed in Santo Domingo police cells from April 13 to 17, 1993, which lacks the necessary hygiene and material conditions to provide him with medical treatment; and that during his stay from April 17 to 22, 1993, in Santo Domingo de los Colorados Public Hospital he did not undergo surgery, despite the court order issued on April 16, 1993.

68. Based on the foregoing, the Commission concludes that in the instant case Mr. Vera Vera's next of kin were not provided with an effective remedy to ensure access to justice, determine the truth of the incident, investigate and prosecute those responsible, and obtain redress for the harm caused. Therefore, the Commission requests the Court to find and declare that the Ecuadorian State violated the rights recognized in Articles 8(1) and 25(1) of the American Convention in connection with Article 1(1) of that treaty, to the detriment of Francisca Mercedes Vera Valdez (mother of Pedro Miguel Vera Vera); Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera (siblings of Pedro Miguel Vera Vera); and Francisco Rubén Vargas Balcázar (stepfather of Pedro Miguel Vera Vera).

69. The Commission wishes to inform the Inter-American Court that in accordance with its consistent practice, when it adopted Report 82/09, it referred in broad terms to the next

⁶⁵ Annex 23. Pertinent parts of the relevant criminal procedural law. Article 15 of the Code of Criminal Procedure.

⁶⁶ Annex 23. Pertinent parts of the relevant criminal procedural law. Article 19 of Law 134.

of kin of Pedro Miguel Vera Vera and mentioned the persons whose names appeared in the record at the time that the decision was adopted. Indeed, in addition to the broad reference to the next of kin, Mrs. Francisca Mercedes Vera, the mother of Pedro Miguel Vera Vera, was mentioned as a victim. Following the adoption of the report on merits and in keeping with the practice then in use, the petitioners informed the Commission about other family members. They included Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera (siblings of Pedro Miguel Vera Vera), and Francisco Rubén Vargas Balcázar (stepfather of Pedro Miguel Vera Vera). Accordingly, the Commission has included the names of these persons in this application.

VIII. REPARATIONS AND COSTS

70. Based on the foregoing facts in this application and on the constant case law of the Inter-American Court, which has found that “it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately,”⁶⁷ the Commission submits its claims regarding reparations and costs that the State of Ecuador should must provide as a consequence of its responsibility for the human rights violations committed to the detriment of the victims.

71. Bearing in mind the Court’s Rules of Procedure, which grant the individual autonomous representation, the Commission will limit itself in what follows to describe general criteria and claims related to reparations and costs which it considers the Court should apply in the instant case. The Commission understands that it is up to the victims and their representatives to substantiate their demands in greater detail, pursuant to Article 63 of the American Convention and Article 25 and others of the Court’s Rules of Procedure. Should the representatives of the victims not exercise this right, however, it is requested that the Court grant the IACHR a procedural opportunity to quantify the pertinent claims. Furthermore, the Commission will advise the Court at the appropriate time if it has any observations regarding the quantification of claims by the victims’ representatives.

1. Obligation to make reparation

72. In the instant case, the Inter-American Commission has requested that the Honourable Court fine and declare that the State of Ecuador engaged its international responsibility for violation of the rights to life, to humane treatment, to a fair trial, and to judicial protection recognized in Articles 4(1); 5(1) and 5(2); 8(1), and 25(1) of the American Convention, in connection with the general obligation to respect and ensure rights enshrined in Article 1(1) of that instrument.

73. Article 63(1) of the American Convention provides:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured.

74. As the Court has consistently found, “Article 63(1) of the American Convention contains a rule of customary law that is one of the fundamental principles of contemporary international law as regards State responsibility. Thus, when an unlawful act is imputed to a

⁶⁷ I/A Court H.R., *Case of Cantoral-Huamani and García-Santacruz*. Judgment of July 10, 2007. Series C, No. 167, par. 156; I/A Court H.R., *Case of Zambrano-Vélez et al.*, Judgment of July 4, 2007. Series C, No. 166, par. 103, and I/A Court H.R., *Case of Escué-Zapata*. Judgment of July 4, 2007. Series C, No. 165, par. 126.

State, that State immediately incurs responsibility for violation of the international norm in question and the consequent duty to make reparations and put an end to the consequences of that violation."⁶⁸

75. This obligation to provide reparation is regulated in all its aspects by international law (scope, nature, manner, and determination of beneficiaries) and cannot be modified by the State nor can it refuse to comply by invoking domestic legal provisions.⁶⁹

2. Beneficiaries

76. Article 63(1) of the American Convention requires reparation of the consequences of a violation and payment of fair compensation. Bearing in mind the nature of the instant case, the beneficiaries of the reparations that the Court orders are the persons mentioned in paragraph 69 above, namely, Francisca Mercedes Vera Valdez (mother of Pedro Miguel Vera Vera); Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera (siblings of Pedro Miguel Vera Vera), and Francisco Rubén Vargas Balcázar (stepfather of Pedro Miguel Vera Vera).

3. Measures of reparation in the instant case

77. Reparations are critical to ensure that justice is done in an individual case and is the mechanism by which the decision of the Court is raised beyond the sphere of moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear.⁷⁰ Such measures cover the various ways a State can redress the international responsibility it has incurred, which, according to international law consist of restitution, compensation, rehabilitation, satisfaction, and measures of non-repetition.⁷¹

78. Reparation of the damage caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previous situation.

79. Given the nature of the instant case, the Commission requests the Court to order the Ecuadorian State to conduct a diligent and effective investigation of the violations of the American Convention, including the circumstances that surrounded the wounding of Pedro Miguel Vera Vera, his death as a result of the failure to be given timely medical attention while he was in

⁶⁸ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 414; I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 6, 2006. Series C No. 150, par. 116.

⁶⁹ I/A Court H.R.. *Case of Cantoral-Huamani and García-Santacruz*. Judgment of July 10, 2007. Series C, No. 167, par. 190; I/A Court H.R.. *Case of Zambrano-Vélez et al.*, Judgment of July 4, 2007. Series C, No. 166, par. 148; I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 415.

⁷⁰ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, par. 190; *Case of the 19 Merchants*, par. 223; *Case of Myrna Mack Chang*. par. 237; *Cantos Case*. par. 108, and *Case of the Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, par. 78.

⁷¹ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1990/10, 26 July 1990*. See also, I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, par. 31; *Suárez Rosero Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, par. 41, and I/A Court H.R., *Castillo Páez Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43.

custody of the state, and the acts and omissions of the officials that resulted in the impunity that reigns over the facts in this case.

80. The Commission also requests the Court to order measures of compensation, satisfaction, and non repetition as broadly indicated below.

81. The Court has established basic guidelines on just compensation designed to provide adequate and effective monetary reparation for injuries suffered as a result of human rights violations. Furthermore, the Court has found that the payment of damages is merely compensatory in nature and should be provided to the extent and in the measure necessary to make good both the pecuniary and the non-pecuniary damage caused.⁷²

82. 281. In its case law on reparations, the Court has consistently held that pecuniary damages include consequential damages and loss of earnings, as well as any non-pecuniary or moral damage to the victims and to their family nucleus in certain cases.⁷³

83. As regards non-pecuniary damages, the Court has established that:

Non-pecuniary damages can include both the suffering and distress caused to the direct victims and their next of kin, and detriment to individuals' very significant values, such as non-pecuniary alterations in the victim's or his family's conditions of existence. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, it can only be compensated for in two ways, for purposes of comprehensive reparation to the victims. First, through payment of an amount of money or providing goods and services that can be appraised in monetary terms, established by the Court through reasonable judicial discretion and in fairness. Secondly, through acts or works that are public in terms of their scope or repercussion, such as transmitting a message of official condemnation of the human rights violations involved and of commitment with efforts to ensure that they never happen again, that have the effect of honoring the memory of the victims, recognizing their dignity and providing consolation to their next of kin. Second, by carrying out acts or works that are public in their scope or repercussions, such as sending a message of official reproof of the human rights violations involved and of commitment to efforts to avoid their repetition, with the effect of remembrance of the victims, acknowledgment of their dignity and consolation to their next of kin.⁷⁴

84. Notwithstanding any claims filed by the representatives of the victims at the appropriate stage in the proceedings, the Commission asks the Court, should it deem it appropriate, to set an amount, in equity, as compensation for the pecuniary and non-pecuniary damages caused as a result of the violations described in this application.

85. The Commission also asks the Court to order the Ecuadorian State to make a public acknowledgement of international responsibility and publish the pertinent parts of the

⁷² I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, par. 204; I/A Court H.R., *Case of Garrido and Baigorria*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, par. 41.

⁷³ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, pars. 213 and 214; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 423.

⁷⁴ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 216; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 430; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 383; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 254.

judgment that the Court ultimately adopts, among other measures of satisfaction that it considers appropriate.

86. In addition the Commission considers that the State has the obligation to prevent the recurrence of human rights violations such as the ones in this instance. Consequently, the Commission requests the Court to order the Ecuadorian State to adopt all the legal, administrative and other measures necessary to ensure that persons deprived of liberty have timely access to medical attention appropriate to their state of health.

4. Costs and expenses

87. Based on the consistent case law of the Court, it should be understood that costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention, because the activities carried out by the victims, their successors or their representatives to access international justice imply expenses and commitments of a financial nature that should be compensated.⁷⁵

88. In the instant case the Commission requests the Court, once it has heard the victims' representatives, to order the State of Ecuador to pay those costs and fees incurred and to be incurred in pursuing this case in the domestic courts and in the Inter-American human rights system.

IX. PETITUM

89. Based on the foregoing arguments on fact and on law, the Inter-American Commission on Human Rights requests that the Court find and declare that:

- c) The State of Ecuador is responsible for the violation of the rights to life and to humane treatment recognized in Articles 4(1), 5(1) and 5(2) of the American Convention, in connection with the general obligations enshrined in Article 1(1) of that instrument, to the detriment of Pedro Miguel Vera Vera;
- d) The State of Ecuador is responsible for the violation of the rights to a fair trial and to judicial protection recognized in Article 8(1) and 25(1) of the American Convention, in connection with the general obligation to respect and ensure rights enshrined in Article 1(1) of that instrument, to the detriment of Francisca Mercedes Vera Valdez (mother of Pedro Miguel Vera Vera); Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera (siblings of Pedro Miguel Vera Vera); and Francisco Rubén Vargas Balcázar (stepfather of Pedro Miguel Vera Vera).

and, consequently, that it order the State to

- a) Carry out a prompt, diligent and effective judicial investigation to identify, prosecute, and punish all those responsible for the violations described in the instant application, including those officials who through their acts and omissions contributed to the denial of justice;

⁷⁵ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 243; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 455; I/A Court H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 152.

- b) Provide reparation to the victims for pecuniary and nonpecuniary damage suffered, including public recognition of international responsibility and publication of the judgment ultimately issued by the Inter-American Court;
- c) Adopt all the measures necessary to avoid a repetition of facts such as those described in the instant case application, including measures to ensure that persons deprived of liberty have access to timely medical attention appropriate to their state of health; and
- d) Reimburse the costs and legal expenses incurred in the processing of this case before the Inter-American Commission and Court.

X. SUPPORTING EVIDENCE

1. Documentary evidence

90. The following is a list of the documentary evidence currently available:

Appendix 1. IACHR, Report 82/09 (Admissibility and Merits), Case 11.535, *Milton Zambrano Vera*, August 6, 2009.

Appendix 2. Record of the proceedings before the Inter-American Commission on Human Rights.

Annex 1. Report of the Forensic Medicine Service to the Chief of the Fifth National Police Precinct of Quito Canton 301-24JI-PA-93 of April 23, 1993.

Annex 2. Report No. 93-343 of April 14, 1993, to the President of the Allocation Chamber in connection with Case 93-927.

Annex 3. Report of April 13, 1993, to the Chief of the Rural Police Service, First Pichincha Command, in connection with Case No. 93-927-000.

Annex 4. Article from *Hoy* newspaper in Ecuador dated April 24, 1993.

Annex 5. Official letter 952583 of December 15, 1995, signed by Police General Marco Hernán Hinojosa Aránz, Under Secretary of Police, addressed to Ambassador Ximena Martínez de Pérez, Under Secretary for International Organizations, Ministry of Foreign Affairs.

Annex 6. National Bureau of Investigations, Official letter No. 940-OID-SDC of June 30, 1995, to Sister Elsie Monge, President of CEDHU.

Annex 7. Police Report 95-P2-34-SDC of December 11, 1995, to the Chief of the Rural Police Service, First Pichincha Command.

Annex 8. Record from Santo Domingo de los Colorados Hospital, Emergency Service, indicating the date on which the patient Pedro Miguel Vera was treated: April 12, 1993, 8:20.

Annex 9. National Police Medical Certificate of April 14, 1993.

Annex 10. National Police of Ecuador, National Bureau of Investigations, Report No. 95-P2-33-SDC of November 15, 1995, in connection with Case 95-P2-33-SDC.

- Annex 11.** IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc. 10 rev. 1, April 24, 1997, Chapter VI: The Human Rights Situation of Individuals Incarcerated within the Penal System of Ecuador.
- Annex 12.** Case 93-343, Statement signed by Dr. Salvatierra Guerrero, Prosecutor of the 11th Criminal Court of Pichincha and Pedro Miguel Vera Vera, Declarant in Case 93-343.
- Annex 13.** Official letter No. 93-490-JDPPP-SDC, of April 16, 1996.
- Annex 14.** Record from Santo Domingo de los Colorados Hospital, Pedro Miguel Vera Vera. Date of treatment April 17, 1993, 13:00.
- Annex 15.** Ministry of Health, Santo Domingo Hospital, Official letter No. 123-DHSD-93 of July 13, 1993, addressed to Sister Elsie Monge, President of CEDHU and signed by Dr. Luis Pullas Zuletas, Hospital Director.
- Annex 16.** Case history of the patient Pedro Vera from Eugenio Espejo Hospital, Quito.
- Annex 17.** Report from the Criminal Investigation Office to the Chief of Pichincha Criminal Investigation Office, submitted by policeman José Gualotuña.
- Annex 18.** Report 216-OIDP, of April 4, 1993.
- Annex 19.** Report 95-P2-33-SDC of December 4, 1995, sent by the National Police of Ecuador to the Chief of the Rural Police Service, First Pichincha Command.
- Annex 20.** Official letter No. 216-DHS_2003, of October 29, 2003, signed by the Hospital Director, Dr. Gustavo Domínguez.
- Annex 21.** Letter to Juan Viteri Lastra, Hospital Director, from Moisés Lema Padilla, Chief of the Statistics and Medical Records Department, dated October 30, 2003.
- Annex 22.** Relevant parts of the Ecuadorian Criminal Code applicable to the case.
- Annex 23.** Pertinent parts of the relevant criminal procedural law.
- Annex 24.** Report of April 12, 1993, to the Chief of the Rural Police Service, First Pichincha Command, signed by IESS Police Agent, Monte de Piedad Wilmo Hurtado.
- Annex 25.** *Curriculum vitae* of Hans Petter Hougen and Önder Özkalıpci, expert witnesses offered by the Commission.
- Annex 26.** *Curriculum vitae* of expert witness offered by the Commission.

91. The Commission would like to explain at the outset that the copies of the documents it has attached as annexes are the best versions that it has available and has been able to obtain to date.

2. Expert witnesses

92. The Commission asks the Court to hear the opinion of the following expert witnesses:

- Hans Petter Hougen and Önder Özkalıpci, who, through their expert testimony, will provide an analysis of the medical condition that Pedro Miguel Vera Vera was in and the consequences of his failure to receive timely medical attention over the 10 days between the time that he received the bullet wound and his death, in the light of international standards on the right to humane treatment. In the opinion of the Commission, the conceptualization of acts and omissions such as those described in the application as contrary to an individual's physical well-being is a matter of public interest for the inter-American community.
- An expert of whose name the Court will be apprised as soon as possible, who will offer expert testimony on the subject of lack of access to timely and adequate medical attention in Ecuadorian detention centers, as well as the criminal-law and criminal-procedural framework applicable to cases such as this, including the possible investigations, both criminal and administrative, that could be carried out to apportion the appropriate responsibilities, how those investigations are opened, application of the statute of limitations, and problems that obstruct proper prosecution of cases of this type. All of these aspects are of public interest in the inter-American community.

XI. INFORMATION ON THE VICTIMS' REPRESENTATIVES

93. In keeping with the Court's Rules of Procedure, the Inter-American Commission advises the Court that in a communication of September 28, 2009, the petitioners mention the following with respect to their representation before the Court: "I appoint as defense counsel Dr. César Duque, legal counsel of CEDHU, who henceforth by his signature may submit such briefs as may be necessary in defense of the instant case, which constitutes sufficient power of attorney granted by me for him to represent me."⁷⁶ This document is signed by Mercedes Vera, Francisco Rubén Vargas Balcázar, and César Duque.⁷⁷

94. As to the information of the representatives, the above-cited communication states

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Washington, D.C.
February 24, 2010

⁷⁶ Appendix 2. Record of the proceedings before the Inter-American Commission on Human Rights.

⁷⁷ Appendix 2. Record of the proceedings before the Inter-American Commission on Human Rights.

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