



ORGANIZATION OF THE AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 USA

February 24, 2011

Ref.: Case No. 12.004
Marco Bienvenido Palma Mendoza et. al.
Ecuador

Mr. Secretary,

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.044, *Marco Bienvenido Palma Mendoza et. al. v. the Republic of Ecuador* (hereinafter "the State" or "the Ecuadorian State") before the jurisdiction of the Honorable Inter-American Court of Human Rights. The State ratified the American Convention on Human Rights on December 8, 1977 and accepted the contentious jurisdiction of the Court on July 24, 1984.

The Commission has designated Commissioner Luz Patricia Mejía, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary; Lilly Ching and Nerea Aparicio, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of report No. 119/10 prepared in accordance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission. The merits report of October 22, 2010, was notified to the State on November 24, 2010, granting it a two-month term to inform on the implementation of the recommendations. The term elapsed and the State did not submit any information on the implementation of the recommendations.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica

Enclosure

The Commission submits the instant case to the jurisdiction of the Inter-American Court due to the State's failure to comply with the recommendations and the resulting need for justice to be assured in the case at hand. As shown in the merits report, the Ecuadorian State is responsible for failing to provide a real possibility to lodge a simple and prompt remedy to ensure the judicial protection required in the case. Thus, the two habeas corpus remedies lodged by Mr. Palma Mendoza's family were ineffective in revealing his whereabouts, in that the filing of the remedy did not cause the competent authorities to carry out the minimal formalities necessary to immediately establish Mr. Palma's location. In spite of the presence of several witnesses and the fact that the abduction was carried out in front of employees of a state agency (the Ecuadorian Professional Training Service), the State's authorities merely issued orders that were both fruitless and ineffective in preventing Mr. Palma's murder five days later.

The IACHR believes that the right to an effective judicial remedy implies the correlating state obligation of conducting a serious search and of making every possible effort to determine, as promptly as it can, the whereabouts of people whose families report them as disappeared or abducted. At the same time, the IACHR notes that the obligation of investigating and punishing all acts that entail violations of the rights protected by the Convention requires the punishment not only of the physical perpetrators, but also of those who mastermind such crimes and serve as accessories after the fact. In this regard, the judicial authorities dismissed the charges against the suspected masterminds behind Mr. Palma's abduction and murder on the grounds that some members of his family had dropped the charges and not because of the evidence, even though publicly actionable offenses were involved.

The Commission believes that in analyzing this case, the Inter-American Court should pay particular attention to the widespread situation of failed due diligence and impunity as it affected the investigation of the facts in the case at hand, in light of its impact on the rights in question. In addition, the delay in the court proceedings represents a violation of the State's duty to establish the facts and to prosecute and punish the persons responsible for the serious violations committed in accordance with the standards of timely justice and effective judicial protection.

Pursuant to the above, the Commission requests the Court to conclude and declare the international responsibility of the State for the violation of the rights to humane treatment, to a fair trial, to judicial protection, and to life, enshrined in Articles 5, 8, and 25 in connection with Article 4 of the American Convention, all in connection with the failure to abide by Articles 1(1) and 2 thereof, with respect to Lidia Bravo Bravo, Luis Palma Bravo, Nelson Palma Mendoza, Rosalía Palma Bravo, Perfelita Mendoza Aguayo, Carlos Palma, Víctor Palma, and Pablo Palma Pico.

Accordingly, the Commission requests the Inter-American Court to order the Ecuadorian State to take the following measures of reparation:

1. Conduct a complete, impartial, and effective investigation of the events reported in order to prosecute and punish all of the parties responsible, both materially and intellectually, for the violations of human rights committed to the detriment of Marco Bienvenido Palma Mendoza and his family members.
2. Adopt pertinent measures to make reparations to the family members of Mr. Marco Bienvenido Palma Mendoza, in both material and moral aspects.
3. Adopt the measures necessary to keep similar events from occurring in the future, according to the duty to prevent violations and the duty to guarantee the

fundamental rights recognized in the American Convention, and apply the urgent search mechanism established in Article 90 of the 2008 Constitution to cases similar to the present case.

With regard to the identification of the family members who should be considered victims in this case, the Commission informs the Inter-American Court that it determined the number and identities of the victims upon adopting Report No. 119/10. However, following the adoption of the merits report, the petitioners sent the Commission a more extensive list of the members of Mr. Palma Mendoza's family.

The Commission offers an expert witness to be defined, who will testify about the topic of effective judicial protection: the right to an effective remedy, the minimum formalities needed to reveal the whereabouts of a person reported as disappeared or abducted, and the absence of an effective response from the Ecuadorian judiciary. The *curriculum vitae* of the expert proposed by the IACHR is attached as an annex.

Finally, the petitioners expressed the victims' interest in the submission of the present case to the Inter-American Court and informed that the representatives of the victims are:

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Please allow me to greet you and express my appreciation.

Signed in the original

Elizabeth Abi-Mershed
Executive Deputy Secretary