

OEA/Ser.L/V/II.154  
Doc. 6  
23 March 2015  
Original: Spanish

**REPORT No. 12/15**  
**CASE 11.458**  
REPORT ON ADMISSIBILITY AND MERITS

JORGE VÁSQUEZ DURAND AND FAMILY  
ECUADOR

Approved by the Commission at its 2021th meeting held on March 23, 2015, during its 154th regular session

**Cite as:** IACHR Report No. 12/15], Case 11.458. Admissibility and Merits. Jorge Vásquez Durand and family. Ecuador. March 23, 2015.

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**I. SUMMARY**

1. On March 9, 1995, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint lodged by María Esther Gomero Cuentas de Vásquez and, on April 7, 1995, a complaint filed by both her and the Asociación Pro Derechos Humanos (APRODEH) ("Association for Human Rights in Peru") (hereinafter "the petitioners"). Both petitions alleged that Mr. Jorge Vásquez Durand (hereinafter "the alleged victim" or "Mr. Vásquez"), a merchant, of Peruvian nationality, had crossed the border between Peru and Ecuador on January 30, 1995 and had been detained by agents of the Ecuadorian State during a period of conflict between the two countries. Since then his whereabouts remain unknown.

2. The petitioners allege that the State of Ecuador (hereinafter also referred to as "the Ecuadorian State," "Ecuador," or "the State") is guilty of violating articles 5 (right to human treatment), 7 (right to personal liberty), and 22 (freedom of movement and residence) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

3. On April 25, 1995, the IACHR began its initial processing of the case, in accordance with its Rules of Procedure in force at that time, and forwarded the complaint to the Ecuadorian State. On April 8 and July 7, 2003, the Commission informed the parties that, pursuant to Article 37.3 of those Rules of Procedure, it had decided to defer its treatment of admissibility until the debate and decision on the merits.

4. The State submitted the objection that domestic remedies had not been exhausted. It considered that the petition was manifestly groundless and out of order and that it did not state facts that tend to establish a violation of human rights. For those reasons, it requested that the petition be declared inadmissible. Following publication of the Truth Commission's Report in 2010, which included the case,<sup>1</sup> the State reiterated its arguments about failure to exhaust domestic remedies and maintained that "it has not been proved that State agents participated in the alleged disappearance of Mr. Jorge Vásquez, so that the Ecuadorian State had incurred no liability."<sup>2</sup>

5. After reviewing the positions of the parties and pursuant to the requirements set forth in articles 46 and 47 of the American Convention, the Commission concluded that it is competent to hear the complaint lodged, with respect to rights protected under articles 3, 4, 5, 7, 8, and 25 of the Convention, in conjunction with articles 1.1 and 2 of that same instrument; and to articles I and II on the Inter-American Convention on Forced Disappearance of Persons (hereinafter "IACFDP"). Based on its analysis of the merits, it concluded that the Ecuadorian State is liable for violations of rights protected under articles 3, 4, 5, 7, 8, and 25 of the Convention, in conjunction with articles 1.1 and 2 of that same instrument, all to the detriment of Jorge Vásquez Durand. As regards the family members of the victim, the IACHR concluded that the State is liable for the violation of articles 5, 8, and 25 of the American Convention, in conjunction with article 1.1 of that same international instrument.

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<sup>1</sup> In 2010, the Truth Commission in Ecuador included the case under the heading "torture, forced disappearance, illegal deprivation of liberty" and in 2013 the State enacted a law acknowledging "its objective liability in respect of the human rights violations documented by the Truth Commission."

<sup>2</sup> Note by the State of Ecuador of August 25, 2014.

## II. PROCESSING BY THE COMMISSION

6. On March 9, 1995, the IACHR received a complaint lodged by María Esther Gomero Cuentas de Vásquez, the wife of the alleged victim. On April 7 of that same year it received a petition signed by the wife and by the Asociación Pro Derechos Humanos (APRODEH). In both documents it is alleged that Mr. Jorge Vásquez Durand, a Peruvian merchant, <sup>3</sup>had been detained by Ecuadorian State agents, since when his whereabouts were unknown.

7. On April 25, 1995, the IACHR forwarded the pertinent parts of the petition to the State of Ecuador and requested its observations. On the same date, it advised the petitioners that initial processing had begun and requested further information from them. Both the petitioners and the State presented information on May 22, 1995.

8. On June 1, 1995, the IACHR asked the Ecuadorian State to adopt precautionary measures designed to investigate the whereabouts and protect the life and personal integrity of Mr. Vásquez. On July 6, 1995, the State presented information which was forwarded [to the petitioners] on July 10. On September 25, 1995, the IACHR received observations from the petitioners, which were forwarded to Ecuador on October 31, 1995, with a request for information. On that same date, the IACHR also asked the petitioners for information. The State and the petitioners presented information on November 28 and 29, 1995, respectively.

9. On November 30, 1995, the IACHR reiterated its concern to the State regarding the situation of Mr. Vásquez as well as its request that the precautionary measures be adopted. On December 28, 1995, the Ecuadorian State provided information, which was forwarded on February 1, 1996. The petitioners replied on February 14, 1996 and their reply was forwarded [to the State] on February 23. On March 11, 1996, the petitioners submitted their observations. On April 2, 1996, the IACHR forwarded the petitioners' observations to the State and asked it to report on implementation of the precautionary measures requested.

10. On August 23, 1996, the IACHR told the petitioners that it was interested in convening a hearing during its 93rd regular session. On September 5, 1996, the petitioners provided information and on September 9 the IACHR convened the parties to a hearing to be held on October 10, 1996. On October 7, 1996, the petitioners sent the IACHR a summary of the case for the purposes of the hearing. On October 10, 1996, the hearing was canceled because the petitioners did not show up.

11. On December 11, 2001, the IACHR asked the petitioners for information and told them that if it was not received within 30 days, the IACHR might suspend its hearing of the case. On January 21, 2002, the petitioners repeated information already provided and asked that a friendly settlement procedure be started. On February 27, 2001, the petitioners' observations were passed on to the State.

12. On April 8 2002, the Commission informed the petitioners that, pursuant to Article 37.3 of the Rules of Procedure then in force, it had decided to defer its treatment of admissibility until the debate and decision on the merits. On June 6, 2003, the petitioners presented their additional observations on the merits. On July 7, 2003, the IACHR informed the State that, pursuant to Article 37.3 of its Rules of Procedure, it had decided to defer its treatment of admissibility until the debate and decision on the merits and it forwarded to the State the petitioners' observations on the merits.

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<sup>3</sup>During the processing of the case by the IACHR, the Permanent Mission of Peru to the OAS presented information. Because of the special circumstances surrounding the alleged facts of the case, in the early stages of its processing by the IACHR, the Commission requested information from the Peruvian State with a view to clarifying certain aspects, but without initiating a petition against that State. Thus, on May 12, 1995, the Peruvian State submitted a list of Peruvian citizens detained in Ecuador, whose release it was negotiating. That list included the name of the alleged victim in this case. On June 1, 1995, the IACHR asked the State of Peru to supplement the information provided and to adopt certain measures to investigate the whereabouts of Mr. Vásquez. On July 10, 1995 and November 3, 1995, the IACHR reiterated its request to the State of Peru to adopt special measures. On November 15, 1995, the Peruvian State remitted documents referring to Mr. Vásquez's situation and the IACHR acknowledged receipt of them on December 1, 1995.

13. On October 31, 2003, the IACHR received additional observations from the State regarding admissibility and merits, which were passed on to the petitioners on September 9, 2005. For their part, the petitioners submitted additional observations on October 5, 2005. On November 29, 2007, the IACHR requested the parties to provide it with updated information. On February 2, 2011, the petitioners asked for information about the status of the complaint and on February 28, 2011, the IACHR replied and requested updated information, warning them that it might contemplate shelving the file.

14. The petitioners furnished the information on March 24, 2011. That information was relayed to the State on April 5, 2011. On May 20, 2011, the State of Ecuador asked for a copy of the file on the case. It was remitted a copy on August 23, 2011. On April 13, 2012, the Commission reiterated the request to the State for information made on April 5, 2011.

15. On March 19, 2014, Mr. Jorge Vásquez, the son of the alleged victim expressed his interest in "re-taking up" the case and asked for it to be resolved. That information was relayed to the State on April 21, 2014. On May 2, the State requested extra time, which the IACHR granted on May 5, 2014, setting a deadline of June 5, 2014. On September 16, the State submitted information, which was passed on to the petitioners on September 22, 2014. On September 29 and October 30, 2014, the IACHR received requests from Mr. Jorge Vásquez that it issue a report on the case and, on December 3, 2014, a request from APRODEH for copies of the case file.

### **III. POSITIONS OF THE PARTIES**

#### **A. The petitioners**

16. The petitioners reported that Mr. Jorge Vásquez Durand, 45 years of age, of Peruvian nationality, married and the father of a boy and a girl, was a merchant selling craft work between Peru and Ecuador. For that reason, he had traveled to Ecuador several times between May 1993 and January 1995, when, during that last trip, he had disappeared.

17. They reported that he had left for Ecuador on January 26, 1995 and had gone to Otavalo, in the province of Imbabura, which is well-known for its production of handicrafts. Having finished his business, he reportedly visited Huaquillas, a town on the border with Peru, where, according to a witness, he had crossed the International Bridge on January 30, 1995 to arrange for the transportation of his merchandise to Tumbes, Peru. According to the petitioners, it was then that he again crossed the border back into Ecuador in order to have his Peruvian passport stamped in the Ecuadorian migration office. They assert that it was in that unit that he had been detained, without any reason being given. They pointed out that the Ecuadorian authorities did not inform the Peruvian Consulate in Machala of the reasons for his arrest or his whereabouts and they did not acknowledge his arrest.

18. They pointed out that, given the conflict between Ecuador and Peru at the time of Mr. Vásquez Durand's detention, as well as alleged incidents of violence against Peruvians in Ecuadorian territory, they had reason to fear for Mr. Vásquez's safety. For that reason, they had asked the IACHR for measures to protect Mr. Vásquez and argued that the facts described constituted violations of the rights protected under articles 5, 7, and 22 of the American Convention.

19. In subsequent communications, the petitioners reported that they had not been able to obtain information as to Mr. Vásquez's whereabouts. They reiterated that the State had not reported or acknowledged his detention. They also described a series of steps taken by both his wife and APRODEH to ascertain his situation, by contacting officials at the Peruvian Ministry of Foreign Affairs, religious organizations, and human rights organizations in Peru and Ecuador.

20. With regard to the requirement that domestic remedies be exhausted, they reported that due to the state of emergency that had been declared in Ecuador, when the National Security law was in force, the right to bring habeas corpus or similar actions (*acciones de garantía*) had been suspended. Later on, they explained that it was not that the right to bring actions like habeas corpus had been suspended, but it had

been materially impossible to do so because a prerequisite was naming the place in which the person concerned had been detained.

21. They also informed the IACHR that Ecuador's Truth Commission, established in 2007, had included Mr. Jorge Vásquez Durand 's case in its Final Report entitled "Sin Verdad no hay Justicia" [Without the Truth There is No Justice], under the heading "Forced Disappearance of Peruvian Citizen." They likewise reported that, as a result of the Truth Commission's Final Report, the Office of the Attorney General (*Fiscalía General del Estado*) had established a Special Unit to investigate the cases referred to in that Commission's Report.<sup>4</sup>

## B. The State

22. Ecuador denied having detained Mr. Jorge Vásquez Durand and any State liability for his disappearance. Specifically, it reported that its police and military authorities had no record of his detention and that exhaustive inquiries had been made to ascertain his whereabouts, but they had not been able to obtain information about his presence in Ecuador.

23. In response to the request for precautionary measures filed on June 1, 1995, the Ecuadorian State indicated that there was no record of his detention, only of his departure from the country on January 30, 1995, "without any further migratory movements. Moreover, it has been verified that there is no record of the aforementioned foreign national ever having been detained." The State further reported that its Government had publicly committed to full cooperation "to bring about new investigations aimed at clarifying the situation of Peruvian citizens whose whereabouts the Government of Peru claims to be unaware of, on the understanding that Peru likewise investigates to see whether said citizens are in its own territory."<sup>5</sup>

24. As regards requirements for admissibility of the petition, the State adduced failure to exhaust domestic remedies and argued that the petitioners should have brought the habeas corpus action provided for in the Political Constitution at that time as a measure to challenge improper detentions and achieve the release of the victims. In 2014, the State argued that, in addition to habeas corpus, a "protection of liberty" action (*amparo de libertad*) had yet to be brought, which was an action "that any accused could file if he or she considered that his/her arrest violated the precepts contained in the Code of Criminal Procedure."<sup>6</sup>

25. In addition, the State argued that the petition did not state facts tending to establish a violation of the rights guaranteed by the American Convention. The reason for this was that it transpired from the reports prepared by police and military intelligence

that no right guaranteed in the Convention or in any other human rights treaty ratified by Ecuador had been violated to the detriment of Peruvian citizen Jorge Vásquez Durand, since he had not been detained by any Ecuadorian authority. Consequently, no international liability could be assigned to Ecuador for a fact under such circumstances, as that would be to distort the inter-American system for the protection of human rights, which comes into play when there is a violation that can be attributed to a particular State Party."<sup>7</sup>

26. With respect to assessment of the evidence, the State of Ecuador argued that in the instant case there is no circumstantial evidence, prima facie presumption, or material or documentary evidence conducive to a firm conclusion that Jorge Vásquez was either detained or disappeared, with the support or

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<sup>4</sup> See below: V. Establishment of the Facts

<sup>5</sup> Note of the State of Ecuador of July 6, 1995.

<sup>6</sup> Note of the State of Ecuador of August 25, 2014.

<sup>7</sup> Note of the State of Ecuador of October 29, 2003.

tolerance of government authorities. That being so, there was no way the State could be held liable for facts that have never been credibly proven.

27. In 2014, the State referred to the Truth Commission and stated that, based on information as of June 2014; the case was at a "preliminary investigation" phase.

It added that the National Directorate of Crimes against Life, Violent Deaths, Disappearances, Extortion and Kidnappings (DINASED) had conducted exhaustive inquiries nationwide into the disappearance of Mr. Jorge Vásquez Durand, to no avail. However, the State would continue to be attentive to any investigations that unit may undertake.<sup>8</sup>

28. The State added that,

in the instant case, it had not been proven that State agents had participated in the alleged disappearance of Mr. Jorge Vásquez, so that the Ecuadorian State could not be held liable. The Office of the Chief Public Prosecutor (*Procuraduría General del Estado*) had asked the Ministry of the Interior and the Office of the Attorney General for a report regarding the detention of Mr. Jorge Vásquez Durand, and had concluded that the citizen had never been detained, which meant that there were no legal or factual grounds for the petitioner's complaint.<sup>9</sup>

29. In light of the above, the State of Ecuador considered, throughout processing by the IACHR, that the petition was manifestly groundless and out of order and did not state facts that end to establish a violation of the fundamental human rights protected by a number of international instruments. It added that the petition did not meet the requirements established in the American Convention and in the Rules of Procedure of the IACHR. It therefore requested that it be declared inadmissible and immediately archived.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

30. The petitions are entitled under Article 44 of the American Convention to lodge complaints on behalf of Mr. Jorge Vásquez Durand, who is alleged to have been under the jurisdiction of the State of Ecuador at the time of the alleged facts. To that respect, the IACHR notes that the State sustains that its agents did not detain Mr. Jorge Vásquez Durand. Also, it takes into account that both parties referred to the incorporation of the case of Mr. Vásquez in the report of the Truth Commission and indicated that through the Law for Reparation of Victims and Prosecution in 2013, the State pledged to repair the "grave violations of human rights and crimes against humanity committed in Ecuador between October 4, 1983 and December 31, 2008", documented in said report. In this regard, the Commission understands that the State does not question the jurisdiction *ratione loci* of the IACHR to hear the facts alleged in the petition that would have occurred in the Ecuadorian territory.

31. To that respect, Ecuador has been a State Party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Ecuador. The Commission is likewise competent *ratione temporis* to examine the complaint because the obligation to observe and ensure the rights protected in the Convention was already binding upon the State at the time the events described in the petition are alleged to have occurred.

<sup>8</sup> Note of the State of Ecuador of August 25, 2014.

<sup>9</sup> Note of the State of Ecuador of August 25, 2014.

32. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention and because they could also constitute violations of the Inter-American Convention on Forced Disappearance of Persons (IACFDP), whose instrument of ratification was deposited by Ecuador on July 27, 2006.

## **B. Admissibility requirements**

### **1. Exhaustion of domestic remedies**

33. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding. Article 46.2 of the Convention in turn establishes three circumstances in which the rule of exhaustion of domestic remedies does not apply: a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) when the party alleging violation of his rights has been denied access to the remedies under domestic law, or has been prevented from exhausting them; and c) when there has been unwarranted delay in rendering a final judgment under the aforesaid remedies. These exceptions do not refer only to the formal existence of such remedies, but also to the fact that they are adequate and effective.

34. The State argued failure to exhaust domestic remedies and indicated that the appropriate remedy would have been to bring a habeas corpus action, which was provided for in the Political Constitution of Ecuador in force at the time. For their part, the petitioners argued that it had been impossible to pursue domestic remedies because the alleged detention and disappearance of Mr. Vásquez purportedly took place during an international armed conflict, during which Ecuador was under a constitutional state of emergency, when the National Security law was in effect, and the presentation of habeas corpus and similar actions was in practice suspended. They added that hostilities toward Peruvian citizens were evident at the time, which is why they had not been able to travel from Peru to Ecuador. Without prejudice thereto, they reported on other steps they had taken to ascertain the whereabouts of Mr. Vásquez.

35. As the Commission has pointed out, to analyze compliance with the requirement to exhaust domestic remedies, the Commission must determine the appropriate remedy to exhaust under the circumstances, meaning the remedy best suited to resolving the legal infringement.<sup>10</sup>

36. With respect to the State's argument that the petitioners should have brought a habeas corpus action, the IACHR considers that although, in principle, it might have been the appropriate remedy in the case of an alleged arbitrary detention, two obstacles are to be noted: The first is a matter of fact: at the time of the alleged detention of Mr. Vásquez Durand, as pointed out in greater detail below, Ecuador and Peru were engaged in an armed conflict. Mr. Vásquez had purportedly been detained in Ecuador and both his family members and the petitioners were living in Peru. Accordingly, the Commission deems it reasonable for the petitioners to argue that they were prevented from resorting to domestic remedies, such a habeas corpus action.

37. The second obstacle has to do with domestic legal provisions. The habeas corpus action applicable at the time of the alleged arbitrary detention of Mr. Jorge Vásquez Durand -- provided for in Article 19 (16)(j) of the Political Constitution at that time --<sup>11</sup> required that the action be filed with the Mayor or

<sup>10</sup> IACHR. Report No. 23/07. Petition 435-06. Admissibility. Eduardo José Landaeta Mejías et al. Venezuela. March 9, 2007, paragraph 43. IACHR. Report No. 156/10. Petition 1368-04. Admissibility. Daniel Gerardo Gómez, Aida Marcela Garita et al. Costa Rica. November 1, 2010, paragraph 53.

<sup>11</sup> Article 19 of the Political Constitution of Ecuador of 1979 establishes: "Everyone is entitled to the following guarantees: [...] No. 16: personal liberty and security. [...] Consequently: [...]j) Anyone who believes that he has been illegally deprived of his liberty may  
[continues ...]



President of the Council in whose jurisdiction the detainee was being held, or with someone representing them. As is to be noted, this requirement cannot possibly be met in cases of arbitrary detention followed by forced disappearance. The petitioners did not know where Mr. Vásquez Durand was detained. Under that same rationale, it would be unfeasible to require the alleged victim to file a protection of liberty (*amparo de libertad*) action (paragraph 24, above), when the allegations refer to arbitrary detention followed by forced disappearance.

38. In this regard, according to the [inter-American] system's jurisprudence, filing a petition for *habeas corpus* or similar relief constitutes the appropriate remedy in the search for an allegedly disappeared person.<sup>12</sup> However, the Inter-American Court of Human Rights (hereinafter the I/A Court H.R. or "the Inter-American Court" has also found that procedural requirements can make the writ of *habeas corpus* ineffective, if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not applied impartially.<sup>13</sup>

39. Without prejudice to the above, in cases involving alleged arbitrary violations of the right to life, the appropriate remedy is an investigation and criminal proceedings initiated and promoted ex officio by the State with a view to identifying the perpetrators and imposing the corresponding punishments, in addition to paving the way for other forms of pecuniary reparation.<sup>14</sup> On this, the IACHR has established that whenever an alleged crime has been committed with the participation of State agents, the State is obliged to initiate and promote criminal proceedings, which, in such circumstances, shall constitute the appropriate way to throw light on the facts of the case, assign responsibility where applicable, and establish the applicable criminal sanctions, as well as other forms of reparation.<sup>15</sup> It is through such criminal proceedings that internal remedies are best and most effectively pursued.

40. The Commission notes that, as of the date of this ruling, the State of Ecuador has reported, on the one hand, that, according to the Director of the Truth and Human Rights Commission, the case was barely at the "preliminary investigation"<sup>16</sup> phase, while pointing out in a general manner that the National Directorate of Crimes against Life, Violent Deaths, Disappearances, Extortion and Kidnappings had conducted exhaustive inquiries into the case, without coming up with any findings. The State did not report, furthermore, whether any possibility of reparation for family members had been found.

41. Accordingly, the IACHR considers that, in the instant case, the exceptions provided for under Article 46 (2) (a and b) of the American Convention apply, in that (a) the domestic legislation does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

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[... continuation]

invoke *habeas corpus*. This right is exercised by the person himself or through an intermediary, without the need for a written mandate, before the Mayor or President of the Council in whose jurisdiction he is located or before someone representing them.

<sup>12</sup> The Inter-American Court has found that: " showing the person or *habeas corpus* would normally constitute the appropriate remedy or finding an allegedly disappeared person, ascertaining whether he or she is legally detained, and, where applicable, obtaining his or her release." I/A Court HR. Velásquez Rodríguez Case v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraph 65.

<sup>13</sup> See I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraph 65. I/A Court H.R., Godínez Cruz Case v. Honduras. Judgment on the merits, January 20, 1989, para. 69.

<sup>14</sup> See, IACHR. Report No. 23/07. Petition 435-06. Admissibility. Eduardo José Landaeta Mejías et al. Venezuela. March 9, 2007, paragraph 43. IACHR. Report No. 48/13 Petition 880-2011. Admissibility. Nitzza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Ángel Alvarado Herrera et al. July 12, 2013, paragraph 31. IACHR. Report No. 92/13. Petition 843-07. Admissibility. Agapito Pérez Lucas, Nicolás Mateo, Macario Pú Chivalán, Luis Ruiz Luis and family members. Guatemala. November 4, 2013, paragraph 25.

<sup>15</sup> See IACHR, Report N° 52/97, Case 11.218, Argues Sequeira Mangas, Nicaragua, paragraphs 96 and 97; Report No. 57/00, Case 12.050, La Granja - Ituango, Colombia, October 2, 2000, paragraph 40; Report No. 88/09, Petition 405-99, Patricio Fernando Roche Azaña et al (Admissibility) Nicaragua, August 7, 2009.

<sup>16</sup> Note of the State of Ecuador of October 29, 2003. p. 3.

42. At the same time, the invocation of the exceptions to the prior exhaustion rule, provided for in Article 46(46.2) of the Convention is closely linked to the determination of possible violations of substantive rights set forth in the Convention, such as the guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Therefore, the determination as to whether the exceptions to the rule on the exhaustion of domestic remedies stipulated in that provision apply in this case should be made separately, and prior to the examination on the merits, since it depends upon a standard of judgment distinct from that used to determine the violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

## **2. Deadline for presentation of a petition before the Commission**

43. Article 46.1.b. of the Convention establishes that a petition may be admitted if it is lodged within a period of six months from the date on which the interested party was notified of the final judgment that exhausted domestic jurisdiction.

44. In the foregoing section, the Commission established that the exceptions provided for in Article 46 (2) (a and b) of the Convention applied to this case. Moreover, for purposes of analyzing its admissibility, the Commission noted that the State had not provided information about any progress with respect to criminal investigation into the alleged facts.

45. Under these circumstances, and considering that there is still no criminal investigation into the alleged arbitrary detention of Mr. Jorge Vásquez Durand, the Commission considers that the petition was presented within a reasonable period of time and therefore meets the requirements of Article 46 of the American Convention.

## **3. Duplication of international proceedings and res judicata**

46. The case records do not show that the subject of the petition is pending other international settlement procedures, or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are considered as having been met.

## **4. Characterization of the facts alleged**

47. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the petition states facts that could constitute a violation of same, or, pursuant to paragraph (c) of the same article, whether the petition is “manifestly groundless” or “obviously out of order.” The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. The IACHR must perform a *prima facie* evaluation and determine whether the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, not whether the violation has in fact occurred. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits.

48. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petitioners identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. Rather, it is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

49. In light of the evidence presented, the IACHR considers that the alleged forced disappearance of Mr. Vásquez Durand and the fact that the deeds involved have purportedly gone unpunished could constitute violations of articles 3, 4, 5, 7, 8, and 25 of the American Convention, in conjunction with the obligations established in article 1.1 of said instrument, as well as of article I and III of the IACFDP, all to the detriment of Mr. Jorge Vásquez Durand. Likewise, the Commission considers that these deeds could constitute violations of articles 5, 8, and 25 of the American Convention, in conjunction with the obligations established in articles 1.1 and 2 of said instrument, to the detriment of the family members of Mr. Jorge Vásquez Durand. At the same time, the IACHR considers that the petitioners failed to present sufficient evidence to justify a possible analysis of violation of article 22 of the Convention.

50. Since the petitioners' complaints are not manifestly baseless or out of order, the Commission considers the requirements set forth in Articles 47(b) and (c) of the American Convention to be met. It likewise concludes that the petition meets the requirements for admissibility set forth in article 46 of the Convention and proceeds now to analyze the facts and merits of the case.

## **V. ESTABLISHMENT OF THE FACTS OF THE CASE**

### **a. Assessment of the evidence**

51. With respect to the evidence, the State of Ecuador argued that "in the instant case there is no circumstantial evidence, prima facie presumption, or material or documentary evidence conducive to a sound conclusion that Jorge Vásquez was either detained or disappeared, with the support or tolerance of government authorities. That being so, there was no way the State could be held liable for facts that have never been credibly proven."<sup>17</sup>

52. Here, it is necessary to consider that international jurisprudence has established that, in order to determine the international liability of a State for human rights violations, international human rights tribunals that have ample powers in the assessment of evidence presented before them regarding the relevant facts, pursuant to the rules of logic and on the basis of experience, taking into account the limits imposed by respect for legal security and the procedural balance of the parties.<sup>18</sup> In keeping with that, in addition to direct evidence, be it testimonial, expert or documentary, particular importance attaches to the assessment and scope of the whole set of presumptions arising out of the facts that, based on experience, prove to be valid and logical.<sup>19</sup>

53. In light of the above, pursuant to Article 43.1 of its Rules of Procedure<sup>20</sup>, the Commission will examine the facts alleged by the parties and the evidence produced during the processing of the instant case. It will also take into account information in the public domain, including resolutions of the universal human rights system committees, reports of the IACHR itself on petitions and cases, and on the overall human rights situation in Ecuador, publications by nongovernmental organizations, laws, decrees, and other regulatory

<sup>17</sup> Note of the State of Ecuador of October 29, 2003.

<sup>18</sup> See I/A Court H.R., Miguel Castro Castro Prison Case. Judgment of November 25, 2006. Series C No. 160, paragraph 184, citing the Almonacid Arellano case. Judgment of September 26, 2006, Series C No. 154, paragraph 69; Case of Servellón-García et al. Judgment of September 21, 2006. Series C No. 152, paragraph 36; and Ximenes Lopes case. Judgment of July 4, 2006. Series C No. 149, paragraphs 44 and 48. See also I/A Court H.R., Case of Juan Humberto Sánchez. Request for Interpretation of the Judgment on Preliminary Objections, Merits and Reparation (Article 67 of the American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, paragraph 42.

<sup>19</sup> See I/A Court H.R. Velásquez Rodríguez Case, Judgment of August 18, 2000, paragraph 47; I/A Court H.R. Case of the "Street Children" (Villagrán Morales et al), Judgment of November 19, 1999, paragraph 69; See I/A Court H.R., Case of Castillo Petruzzi et al, Judgment of May 30, 1997, par. 62; and I/A Court H.R., Caracazo Case, Reparation, Judgment of August 29, 2002, paragraph 55.

<sup>20</sup> Article 43(1) of the Commission's Rules of Procedure provides as follows: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

provisions in force at the time of the facts alleged by the parties. The IACHR is including the Final Report of the Ecuadorian Truth Commission, entitled "Without the Truth There is No Justice," in the body of evidence in the instant case, which was published in Quito, Ecuador on June 7, 2010.<sup>21</sup>

54. Below, the IACHR will pronounce on the context surrounding the facts of the instant case and the facts that have been finally established, with a view to determining by means of legal analysis the liability of the Ecuadorian State.

## **B. Facts**

### **1. Context: The Cenepa War or Upper Cenepa Valley Conflict between Ecuador and Peru**

55. The so-called Cenepa War or Upper Cenepa Valley Conflict between Ecuador and Peru<sup>22</sup>, purportedly over a border dispute, began in January 1995.<sup>23</sup> As a consequence of the conflict in the border region, on January 27, 1995, Ecuadorian President Sixto Durán Ballén issued Executive Decree No. 2487, declaring a national state of emergency,<sup>24</sup> which gave the authorities the special powers contemplated in the Constitution and the National Security Law in force at the time.

56. While the hostilities lasted, both countries' armies mobilized and clashed. Both military and civilian personnel were killed,<sup>25</sup> wounded, and detained.<sup>26</sup> In addition, several<sup>27</sup> Peruvian citizens were detained in Ecuador by police and soldiers.<sup>28</sup> On October 24, 1998, in the Peace Agreement of Brasilia,<sup>29</sup> the

<sup>21</sup> On this, see Colectivo PRODH on the "Without the Truth There is No Justice" report. Posted at: <http://prodh.org/blog/?p=259>

<sup>22</sup> On February 17, 1995, Ecuador and Peru signed the Declaration of Peace of Itamaraty in Brazil, in which both countries agreed to withdraw troops. On February 28, 1995, through the Declaration of Montevideo, they reiterated that commitment by agreeing to "an immediate and effective ceasefire." Appendix 1. Peru – Ecuador. On the path to peace and development. Electronic book. 2nd Edition. Volume I Posted at: <http://www.congreso.gob.pe/biblio/libros/libro1/1volum/indice.htm>

<sup>23</sup> Appendix 2. Ministry of National Defense of Ecuador. "Armed Forces Commemorate XIXth Anniversary of the Heroic War of the Cenepa," Quito, January 24, 2014. Available at: <http://www.defensa.gob.ec/ff-aa-conmemoraron-xix-aniversario-de-la-gesta-heroica-del-cenepa/>

<sup>24</sup> "Eventually, this decree was revoked by the Constitutional Guarantees Tribunal through Resolution No. 201-95-CP, issued in October 1995, following its finding that the grounds for the special measures adopted no longer existed and therefore the curtailment of individual restrictions could no longer be justified." Appendix 8. IACHR, Report on the Human Rights Situation in Ecuador, April 24, 1997, Chapter II, Introduction, A. Legal and Institutional Guarantees in the Republic of Ecuador. 4. Suspension of Constitutional Guarantees. Available at: <http://www.cidh.org/countryrep/Ecuador-sp/Capitulo%202.htm>

<sup>25</sup> "The official death count varied, according to country. Ecuador officially acknowledged the death of 33 soldiers. That figure was contested at the time by the Joint Chiefs of Staff of the Peruvian Armed Forces, which claimed that 350 Ecuadorian soldiers had been killed. Peru acknowledged the death of 60 of its soldiers. It is difficult to know whether the two countries were telling the truth. Estimates by some nongovernmental organizations out the total number of dead at 500, while other think tanks talk of 120 dead." Appendix 5. BBC Mundo, "Así fue la última guerra", March 3, 2008. Available at: [http://news.bbc.co.uk/hi/spanish/latin\\_america/newsid\\_7274000/7274638.stm](http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7274000/7274638.stm)

<sup>26</sup> During the conflict, the Commission was informed by the Ecuadorian and Peruvian States, by petitioners, and by information in the public domain, that several Peruvians had been detained in Ecuador. On this, see: Appendix 6. Detainees whose release is being negotiated (AI 11-05-95 4.00 P.M.) Appended to the Note of the Permanent Mission of Peru to the Organization of American States of May 12, 1995. Appendix 7. Writ of the State of Ecuador, dated May 22, 1995, presenting information to the IACHR regarding Cases 11.456, 11.457, 11.458, and 11.462, all alleging detentions of Peruvian citizens in Ecuador during the Cenepa Valley conflict. In that same note, the State indicates that "the Government of Ecuador proposed an exchange of detainees, accused of spying, to the Peruvian Government several weeks ago."

<sup>27</sup> During processing of the case by the IACHR, the Permanent Mission of Peru to the OAS presented a list of Peruvian citizens allegedly detained in Ecuador whose release was being sought. The list contained information as of May 11, 1995 and referred to detentions in: Guayaquil, Loja, Machala, and Quito, Ecuador.. Appendix 6. Detainees whose release is being negotiated (AI 11-05-95 4.00 P.M.) Appended to the Note of the Permanent Mission of Peru to the Organization of American States of May 12, 1995.

<sup>28</sup> Appendix 9. Poster of the International Committee of the Red Cross and the Ecuadorian Red Cross. Appended to a writ submitted by the petitioners on May 22, 1995.

<sup>29</sup> A new round of negotiations led to the Agreement or Act of Brasilia of October 24, 1998, under which the Presidents of Peru and Ecuador concluded that all disputes between the two countries had been definitively settled. Appendix 4. Peru – Ecuador. On the

[continues ...]

Presidents of Peru and Ecuador declared that the differences between the two countries<sup>30</sup> had been fully and definitively overcome.

## 2. Detention and forced disappearance of Jorge Vásquez Durand

57. Jorge Vásquez Durand, a Peruvian national,<sup>31</sup> was a merchant<sup>32</sup> and, by profession, a journalist and public relations officer.<sup>33</sup> He was married to María Esther Cristina Gomero Cuentas<sup>34</sup> and the father of Jorge Luis<sup>35</sup> and Claudia Esther Vásquez Gomero<sup>36</sup>. Since 1993, he had been trading handicrafts between Peru and Ecuador,<sup>37</sup> and, to that end, traveled two or three times a month from Lima, Peru to Ecuador.<sup>38</sup> In 1993 and 1994, Mr. Vásquez Durand visited Ecuador on numerous occasions.<sup>39</sup>

[... continuation]

path to peace and development. Electronic book. 2nd Edition. Volume 2 Available at: <http://www.congreso.gob.pe/biblio/libros/libro1/2avolum/02acta.htm>

<sup>30</sup> Appendix 3. El País. "Los presidentes de Perú y Ecuador firman la paz en Brasilia y delimitan su frontera". Available at: [http://elpais.com/diario/1998/10/27/internacional/909442811\\_850215.html](http://elpais.com/diario/1998/10/27/internacional/909442811_850215.html)

<sup>31</sup> Appendix 10. Voting I.D. No. 07185940. Issued by Peru's Electoral Registry. Appended to the comments of the petitioners received on April 7, 1995.

<sup>32</sup> Appendix 11. Simple statement signed in February 1995 by 11 merchants at stalls in the "Polvos Azules" market in Lima, Peru. Appended to the comments of the petitioners received on April 7, 1995. Appendix 12. Simple statement signed in February 1995 by 10 merchants at stalls in the "Polvos Azules" market in Lima, Peru. Appended to the comments of the petitioners received on April 7, 1995. Appendix 13. Letter signed by Luis Fernández Castañeda S.J., Rector of the Colegio de la Inmaculada, Lima, dated March 1, 1995 and addressed to the Director of APRODEH. Appended to the comments of the petitioners received on April 7, 1995.

<sup>33</sup> Appendix 14. Journalist-Public Relations Officer Diploma Certificate issued by the Ministry of Education, Peru, on April 21, 1976. Appended to the comments of the petitioners received on April 7, 1995.

<sup>34</sup> Appendix 15. Marriage Certificate No. 2083, issued by the Bishop's Office in Huaraz on August 10, 1989. The document certified that Jorge Vásquez Durand and María Esther Cristina Gomero Cuentas got married on August 1, 1980. Appended to the comments of the petitioners received on April 7, 1995.

<sup>35</sup> Appendix 16. Baptism certificate No. 76880, issued by the Archbishop's Office in Lima on June 18, 1988. The document certifies that Jorge Luis Vásquez Gomero, born in Lima on January 14, 1983, is the son of Jorge Vásquez Durand and María Esther Cristina Gomero Cuentas. Appended to the comments of the petitioners received on April 7, 1995.

<sup>36</sup> Appendix 17. Communication from the Council for Peace received on December 15, 1997. Dacts, 1.1.

<sup>37</sup> Appendix 18. Simplified customs declaration No. 6186, dated December 6, 1994, presented by Jorge Vásquez Durand to the Customs Authority in Tumbes, Peru, declaring merchandise from Ecuador, transported overland from Huaquillas, Ecuador. Appended to the comments of the petitioners received on April 7, 1995. Appendix 19. Simplified customs declaration No. 3186, dated Tuesday, August 23, 1994, presented by Jorge Vásquez Durand to the Customs Authority in Tumbes, Peru, declaring merchandise from Ecuador, transported overland from Huaquillas, Ecuador. Appended to the comments of the petitioners received on April 7, 1995. Appendix 20. Simplified customs declaration No. 2924, dated Tuesday, August 09, 1994, presented by Jorge Vásquez Durand to the Customs Authority in Tumbes, Peru, declaring merchandise from Ecuador, transported overland from Huaquillas, Ecuador. Appended to the comments of the petitioners received on April 7, 1995. See also Appendix 21. Receipt No. 0458, dated January 11, 1995, issued by "Artesanías Tesoro del Sipan" to Jorge Vásquez and Invoice No. 000156, dated January 13, 1996, issued to Jorge Vásquez by "Artesanías de Mates Burilados." Appended to the comments of the petitioners received on April 7, 1995. Appendix 22. Receipt No. 0547, dated September 6, 1994, issued by Nicolasa Araujo Rojas to Jorge Vásquez; Receipt No. 255 of September 2, 1994, issued by Nicolasa Araujo to Jorge Vásquez; Receipt No. 0302 of September 3, 1994, issued by "Artesanías Tesoro del Sipan" to Jorge Vásquez; Receipt No. 0331 (date illegible), issued by "Artesanía Elva" to Jorge Vásquez. Appended to the comments of the petitioners received on April 7, 1995. Appendix 23. Receipt No. 191, dated July 18, 1994, issued by (illegible) to Jorge Vásquez; Receipt No. 0253 of August 10, 1994, issued by Nicolasa Araujo Rojas to Jorge Vásquez; Receipt No. 00065 of August 26, 1994, issued by "Artesanías Veramendi" to Jorge Vásquez; Receipt No. 0373 of August 12, 1994, issued by "Artesanía Elva" to Jorge Vásquez. Appended to the comments of the petitioners received on April 7, 1995.

<sup>38</sup> On this, see Appendices 18, 19, and 20. See also Appendix 24. Letter from Carlos Cardó Franco S.J., dated May 9, 1995, addressed to Father Jorge Carrión S.J. Appended to the comments of the petitioners received on April 7, 1995.

<sup>39</sup> Appendix 25. Migration Control document, issued on June 21, 1996 in Huaquillas, Ecuador, by the Head of the Ecuadorian Migration Control Authority. Appended to Brief of the State of Ecuador dated November 28, 1995. In their communication of March 11, 1996, the petitioners pointed out that the Migration Control document furnished by the State of Ecuador suffered from "patent" contradictions, a reference to the fact that, according to the document, in 1993 Mr. Jorge Vásquez Durand was registered as having entered Ecuador six times and as having left it nine times.

58. On January 26, 1995, Jorge Vásquez Durand traveled overland from Lima, Peru to Ecuador to fulfill orders from his customers. He entered Ecuador at Huaquillas on January 27 and from there had travelled to the city of Otavalo. On January 28, because of "the border conflict and the tension in the atmosphere he decides to return to Peru."<sup>40</sup> On January 30, he called his wife, María Esther Gomero de Vásquez, twice from Aguas Verdes, the town on the Peruvian side of the border adjoining Huaquillas on the Ecuadorian side, to set her mind at rest and to tell her that he was worried "about getting his merchandise through customs in Huaquillas to Peru."<sup>41</sup>

59. Mrs. Gomero de Vásquez learned -- from Peruvian merchants Abel Jara and Juan Bustamante -- that on that same day, January 30, Mr. Vásquez crossed over to Huaquillas to pass migration control and to bring over his merchandise, and "just as he was setting about having his passport stamped in the Ecuadorian Migration Office," he was arrested by members of the Ecuadorian Intelligence Service.<sup>42</sup>

60. Mario Jesús Puente Olivera, a Peruvian merchant and friend of Mr. Vásquez, reported that -- toward the end of January 1995 -- that they had both traveled to Otavalo in Ecuador and had shared a room in a hostel. He added that "after we had done our business with our merchandise," he had left for a village called Ibarra, where he was detained by a civilian, who took him to a police station. During his detention, he asked a policeman -- and offered him money -- to call Mr. Vásquez at the hostel in Otavalo and ask him to "look out for me," "because there are many people where we leave our merchandise who know us."<sup>43</sup>

61. The next day he was told in the police station that they had gone to take statements from the merchants where he had left his merchandise and that he would be released that same day. However, he states that military personnel arrived at the police station in a pickup truck, placed a hood over his head and drove him in a vehicle for several hours, apparently to a military barracks, where he was interrogated. He was again transported for several hours, handcuffed and with his face in a hood, to what appeared to be somewhere far away, where they took him to a room and interrogated and tortured him.<sup>44</sup>

62. In his account, he states that he was again taken to a distant place where they put him in an underground cell. "There were lots of cells in that corridor, lots of Peruvians." In his statement, he indicates that the torture continued. In one torture session, a soldier told him: "You came with someone else, that Mr. Jorge Vásquez has been arrested at the border."<sup>45</sup>

63. For his part, Ernesto Humberto Albedo Maulen, a Peruvian citizen, told APRODEH staff that he had been detained in Ecuador for 36 days, from May 14 until June 19, 1995. He stated that he had been detained in Manta, the city where he worked, and was subsequently taken to Portoviejo, where first they put him in police barracks 102, then police barracks 101, and then in the Teniente Ortiz military barracks at the

<sup>40</sup> In María Esther Gomero de Vásquez's initial petition, dated March 9, 1995.

<sup>41</sup> The border between Peru and Ecuador at Aguas Verdes/Huaquillas amounted in 1995 to a bridge used by merchants, with pedestrians and cars freely crossing the bridge. In María Esther Gomero de Vásquez's initial petition, dated March 9, 1995.

<sup>42</sup> In María Esther Gomero de Vásquez's initial petition, dated March 9, 1995. Appendix 26. Handwritten letter from Mrs. María Esther Gomero de Vásquez, signed February 13, 1995, addressed to the Director General of Consular Affairs in the Ministry of Foreign Affairs of Peru. Appended to a writ submitted by the State of Peru on November 10, 1995.

<sup>43</sup> Appendix 27. Statement on a DVD by Mario Jesús Puente Olivera. Appended to a writ submitted by the petitioners on June 6, 2003.

<sup>44</sup> See Appendix 27 (Statement on a DVD by Mario Jesús Puente Olivera. Attached to the writ presented by the petitioners on June 6, 2003), in which the declaration reads as follows:

They begin torturing me [...]. I was still hooded and two of them begin beating me, asking me who I was and why I had come to Ecuador. They asked me what military personnel had sent me there and what information I had been sending back. But I told them, Sir, I am a craftsman, all I have is my craftwork. At one point in tears I tell them if I have nothing what can I tell you. As they did not agree with that, they tied my hands and put me under some showers [...] with electricity in the water. Take me out, take me out, I begged them.

<sup>45</sup> (See Annex 27. Statement on a DVD by Mario Jesús Puente Olivera. Appended to a writ submitted by the petitioners on June 6, 2003.

request of the military intelligence service, where he was thrown into a dungeon. On June 19, 1995 he had been released and taken to the border between Ecuador and Peru at Aguas Verdes-Huaquillas.<sup>46</sup>

64. Mr. Alcedo Maulen declared that some 30 Peruvians were detained at the Teniente Ortiz military barracks and he said he had seen Mr. Vásquez Durand in the patio of the barracks at least six times, when they took the roll call. Asked, "How did Mr. Vásquez Durand look when you saw him?" His answer was "he was looking pretty down and out"<sup>47</sup>. He went on to say: "I saw Mr. Vásquez Durán on several occasions -- 6 times --and could not talk to him because they forbade us to do so. He came out of his cell squatting with his hands behind the nape of his neck. I heard his name called out during the roll call and later recognized his photograph"<sup>48</sup>. In his statement he added that the last time he saw him [Mr. Vásquez Durán] was 3 or 4 days prior to his [Mr. Maulen's] release on June 19, 1995<sup>49</sup>.

65. In a note dated July 24, 1995, addressed to the Director of Consular Affairs at the Ministry of Foreign Affairs of Peru, Mr. Alcedo Maulen described his detention in Ecuador in detail, stating that while he was in the Teniente Ortiz Military Barracks "they would take us out of our cells every day to interrogate us and ask us -- *especially those of us who had done compulsory military service* -- for information; they wanted to know the names of military bases and of Army officers." The note adds that "throughout our stay in the barracks we were beaten and mistreated"<sup>50</sup>.

66. On this it is to be noted that the documents submitted by the petitioners contain a copy of Mr. Vásquez Durand's Electoral I.D.<sup>51</sup>, which at the time served as a person's I.D. in Peru.<sup>52</sup> Mr. Vásquez Durand's Electoral I.D. cites his "Military Service I.D. No. 117235150"<sup>53</sup>.

67. In its Report on the Human Rights Situation in Ecuador in 1997, the IACHR reported that the United Nations Working Group on Enforced or Involuntary Disappearances had mentioned the transmission of information regarding three new cases of enforced disappearances in 1995. According to the United

<sup>46</sup> Appendix 28. Testimony of Mr. Humberto Alcedo Maulen (Detained in Ecuador, currently free). Appended to a writ submitted by the petitioners on July 24, 1995.

<sup>47</sup> Appendix 28. Testimony of Mr. Humberto Alcedo Maulen (Detained in Ecuador, currently free). Appended to a writ submitted by the petitioners on July 24, 1995.

<sup>48</sup> (See Appendix 29). Communication signed by Ernesto Humberto Alcedo Maulen on July 24, 1995, addressed to the Director of Consular Affairs of the Ministry of Foreign Affairs of Peru. Appended to a writ submitted by the petitioners on July 24, 1995.

<sup>49</sup> In his testimony (Appendix 28), Mr. Alcedo Maulen claims that he was beaten and mistreated during the 36 days of his detention.

What kind of treatment was there after entering the barracks?

You were beaten and mistreated from day one.

Where did they hit you?

All over one's body, they didn't care if someone would see us later, just like we thought we would never get out [...], because, -- and I am not exaggerating - it was pretty bad from the outset.

<sup>50</sup> Appendix 29. Communication signed by Ernesto Humberto Alcedo Maulen on July 24, 1995, addressed to the Director of Consular Affairs of the Ministry of Foreign Affairs of Peru. Appended to a writ submitted by the petitioners on July 24, 1995.

<sup>51</sup> See Appendix 10. Voting I.D. No. 07185940 Issued by Peru's Electoral Registry. Appended to the comments of the petitioners received on April 7, 1995.

<sup>52</sup> The Electoral I.D. was first replaced by the D.N.I. (National Identity Document) in Peru in 1996, a change that was reinforced in 2003. Appendix 30. Legal services for Peruvians abroad. Available at: <http://www.servicioslegales.pe/2012/03/canje-de-libreta-electoral-por-dni/>

<sup>53</sup> The Military I.D. card serves in Peru as a certificate of registration in the military registry and it was obligatory for all Peruvians of both sexes as of their 17th birthday. Appendix 31. Office of the Consul General of Peru. Available at: <http://www.consuladodelperu.com.mx/index.php?id=1&let=4&ses=12>. Having a Military I.D. number did not imply that a person had done compulsory military service or that he or she was a member of the Peruvian Armed Forces. In 2008, the plenary of the Peruvian Congress abolished the Military I.D. (*Libreta Militar*). Perú21.pe "Pleno del Congreso acordó eliminar la Libreta Militar", May 30, 2008. Available at: <http://peru21.pe/noticia/89034/pleno-congreso-acordo-eliminar-libreta-militar>

Nations Working Group each of them involved the alleged detention of Peruvian citizens by the Ecuadorian authorities during the period of the undeclared border conflict between the two countries. Two of those cases had been resolved and one remained pending<sup>54</sup>. In that same report, the IACHR pointed out that it had before it a series of petitions alleging the disappearance and purported detention of Peruvians on Ecuadorian soil during the period of the border conflict and that it "is still attempting to throw light on the status of one person allegedly detained toward the end of January 1995, whose whereabouts apparently had still not been ascertained<sup>55</sup>.

68. The Truth Commission in Ecuador was established on May 3, 2007 through Executive Decree\ No. 305, published in the official gazette (*Registro Oficial*) No. 87 of May 18, 2007<sup>56</sup>, in order to investigate human rights violations between 1984 and 1988, and other special cases<sup>57</sup>. Once it was installed, the Truth Commission extended its remit to cover 2008<sup>58</sup>, based its analyses and conclusions on 118 cases,<sup>59</sup> and on June 6, 2010 presented its Final Report: "WITHOUT TRUTH THERE IS NO JUSTICE" (hereinafter: the Report of the TC").

69. Among the cases listed is Case No. 86: Jorge Vazquez, with the following headings/annotations:

**Place and date of the events:** Huaquillas, January 30, 1995

**Case file No.:** 232328

**Total number of victims:** 1

**Alleged perpetrators:** N/A

**Victim:** Vásquez Durand Jorge

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**Violations committed against him:** Torture, forced disappearance, illegal deprivation of liberty

70. The Truth Commission details the facts of the case as follows:

<sup>54</sup> Appendix 38. Report of the Working Group on Enforced or Involuntary Disappearances. E/CN.4/1996/38, January 15, 1996, paragraphs 160-165. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/102/18/PDF/G9610218.pdf?OpenElement>

<sup>55</sup> Appendix 39. IACHR, Report on the Situation of Human Rights in Ecuador, April 24, 1997, Chapter IV, Right to Life. E. Complaints regarding disappearances. Available at: <http://www.cidh.org/countryrep/Ecuador-sp/Capitulo%204.htm>

<sup>56</sup> "The Truth Commission of Ecuador was established as the outcome of a historical process driven by a number of organizations of victims of human rights violations and their family members over the course of more than 20 years (the Committee of Family Members of Political Prisoners, the Committee of Family Members against Impunity, and, in recent years, the No to Impunity Ecuadorian Committee - CENIMPU -- to which not only family members but also some direct victims belonged), which had been demanding that the Ecuadorian State fully acknowledge and satisfy their rights to truth, justice, and reparation." Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary: Introduction, p. 17. Available at: <http://www.alfonsozamorano.com/comision-verdad/index.htm>

<sup>57</sup> The Ecuadorian Peace Commission's objectives were to: 1. To conduct an in-depth and independent investigation into human rights violations between 1984 and 1988, as well as other special cases, such as the so-called Fybeca case, and their underlying causes and circumstances. 2. Request declassification of State archives marked confidential or national security-related. 3. Foster recognition for the victims of those violations and devise reparation policies. 4. Recommend the necessary legal and institutional reforms, and effective mechanisms for preventing and punishing human rights violations. 5. Determine the existence of probable circumstantial evidence of civil, criminal, and administrative liabilities and to pass it on to the pertinent authorities. (see Appendix 37). Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 17.

<sup>58</sup> " Given the demand for the Commission to address cases of human rights violations after the 1984-1988 period, the commissioners decided not to discriminate against any cases presented, provided that the violations were alleged to have been committed by State agents and fell into one of the five aforementioned categories," that is to say: a. extrajudicial execution, homicide, death while in custody; b) enforced disappearance; c. torture; d. sexual violence; e. arbitrary detention. (see Appendix 37). Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 25.

<sup>59</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 50.



### Forced disappearance of Peruvian citizen

On January 26, 1995, Jorge Vásquez Durand, a Peruvian merchant, left Lima to travel to Ecuador, because his occupation was selling both countries' traditional handicrafts. On January 28, he reached Otavalo and two days later, as he was preparing to return to Peru, he was detained in Huaquillas on the border with Peru. In her testimony, his wife María Esther Gomero declares:

He traveled twice a month, for several months, which is why his passport had several stamps showing him entering and leaving Ecuador. It is to be noted that before one could cross over from Peru to Ecuador and vice versa without a passport, but he had one and did everything formally. Around that time the conflict with Ecuador broke out, so Peruvians in Ecuador quickly came back. It took my husband a bit longer because he was far from the border. In any event, he got out on January 30 and called me from Aguas Verdes (a town on the Peruvian side of the border), to tell me not to worry as he was leaving Ecuador (...). He called again at around 11:30 a.m., sounding very worried because he told me they were not working in customs as they were more concerned about the conflict (...). I insisted that he should just leave everything and he replied that he was going back in to leave his merchandise with someone and then he would come back. NEVER (...) HE NEVER CAME BACK (...) AND I HAVE HEARD NOTHING MORE FROM HIM TO THIS DAY..."

According to María Gomero, Mr. Abel Jara, who was also a merchant, told her that he saw Jorge Vásquez, when they called him to Huaquillas to stamp his passport and it was there that he appears to have been arrested.

Mario Puente Olivera, who shared a hotel room with Jorge Vásquez, told the latter's wife that they had also been looking for him in the hotel room where they had stayed. Mario Puente had been detained and interrogated under torture, so that he had had to give them Jorge's first name, since he could not remember his family name: Vásquez.

On May 15, 1995, Peruvian citizen Ernesto Alcedo Maulen was detained in Manta by members of the Ecuadorian army. According to his testimony, he had been treated like a prisoner of war: "...they took me to Puerto Viejo [the town of Puertoviejo the capital of Manabí province in Ecuador], to Barracks No. 102 where they examined us, well it was what they called a medical examination, but they filled in everything and did not let us say anything. From there they took us to Barracks 101, where the dungeons were (...) They were civilian cells where they put robbers..." They then took them to cells in the Teniente Hugo Ortiz barracks in Manabí, where he was held along with approximately 30 Peruvian citizens. As regards Jorge Vasquez he states that he saw him "...on several occasions, six times. I could not talk to him because we were forbidden to talk, he came out of his cell in a squatting position with his hands behind the nape of his neck. I heard his name when they were making the roll call and later I recognized him when I saw his photo..." Ernesto Alcedo was held until June 20, 1995.

[...]

Through the Ministries of Foreign Affairs, National Defense, and Interior, the Government of Ecuador reported that Jorge Vásquez was registered as having entered and left the country several times since 1993, whereby the last immigration record showed him "entering Ecuador on January 27, 1995 and leaving it on January 30, 1995." The report added that they were no records of any detention orders or actual detentions involving him.

In response to the Truth Commission's request to the Ministry of Defense for information, the head of the cabinet of ministers, Gustavo Martínez Espíndola, remitted Official Letter No.

2009-130-G-2-3-b3 of July 29, 2009, signed by General Fabián Varela, Head of the Joint Chiefs of Staff of the Armed Forces, in reply to the request for information, which states that the Navy and Air Force Intelligence Directorates "have no information regarding Peruvian citizens detained in the country between January and August 1985 [Tr. sic]" along with Official Letter No.2009-243-Ñ-D-c4-c of July 27, 2009, in which Colonel Jaime Castillo Arias, (Acting) Director of Army Intelligence provides a list of Peruvian citizens detained between January and August 1995, in which Jorge Vásquez Durand's name does not appear.<sup>60</sup>

71. In its analysis, the Truth Commission had this to say regarding the Ecuadorian Government at the time of the events:

"During the administration of Durán Ballén, the repression of social protest was fiercer and the security forces were given carte blanche in operations against criminals [...]. Durán Ballén resorted to the National Security Law<sup>61</sup> and decreed states of emergency both to handle the armed conflict with Peru and to repress indigenous uprisings, [...] He also issued a decree exempting members of the security forces from any criminal liability for actions taken during the state of emergency.<sup>62</sup>

72. Since January 30, 1995, the whereabouts of Mr. Jorge Vásquez Durand remains unknown.<sup>63</sup> According to testimony cited in the file with the IACHR, and in the file of the Ecuadorian Truth Commission, the last place in which Mr. Jorge Vásquez Durand was seen alive was in an Ecuadorian military facility, the Teniente Hugo Ortiz barracks. According to the Ecuadorian Truth Commission most human rights violations committed by police or military personnel have not been punished. Nor have their perpetrators been brought to trial and sentenced.<sup>64</sup>

73. At the time of the forced disappearance of Mr. Jorge Vásquez Durand, his son Jorge Luis was 12 years old and his daughter Claudia Esther 11. Mr. Vásquez Durand's mother died in Trujillo, Peru, in the months following his disappearance. The letter from Carlos Cardó Franco S.J., dated May 9, 1995, addressed to Father Jorge Carrión S.J. states that: "During this long absence, Jorge Vásquez Durand's mother died in Trujillo, and his family members were unable to pass on the sad news to Jorge. Their suffering is therefore all the greater."<sup>65</sup>

74. His wife, Mrs. María Esther, put it this way:

With this letter, I want to convey to you the enormous sorrow that I and all my family feel, after three and a half months (exactly 115 days) have gone by without any word of my husband's whereabouts and with his status described as disappeared (*no habido*).<sup>66</sup>

<sup>60</sup> Appendix 40. Report of the Truth Commission of Ecuador. 2007. Volume 4 Accounts of cases. 1988-2008 period, pp. 82-84. Available at: [http://www.alfonsozambano.com/comision\\_verdad/index.htm](http://www.alfonsozambano.com/comision_verdad/index.htm)

<sup>61</sup> Different governments used the National Security law issued by the military dictatorship to maintain what they called order and peace in the Republic. This Law, issued in a Cold War context, and with strongly anti-Communist content, remained in force throughout the 1988-2007 period. Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 40.

<sup>62</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 39.

<sup>63</sup> Mr. Vásquez's wife received information to the effect that he had been transferred to Quito and, later on, to Machala. On this, see Appendix 26. Handwritten letter from Mrs. María Esther Gómero de Vásquez, signed February 13, 1995, addressed to the Director General of Consular Affairs in the Ministry of Foreign Affairs of Peru. Appended to a writ submitted by the State of Peru on November 10, 1995.

<sup>64</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 43.

<sup>65</sup> See Appendix 24. Letter from Carlos Cardó Franco S.J., dated May 9, 1995, addressed to Father Jorge Carrión S.J. Appended to the comments of the petitioners received on April 7, 1995.

<sup>66</sup> See Appendix 32. Note from María Esther Gómero de Vásquez, dated Monday, May 22, 1995. Appended to a writ submitted by the petitioners on May 22, 1995.

I know I have to wait patiently despite the overwhelming economic problems I face. As you know, I have two children of school-going age and I have had to take on the responsibilities of a father toward them.<sup>67</sup>

Now that months have passed since my husband's detention, my family and I are in a desperate situation, because I don't know exactly where my husband is, every day I am tormented by worries about how he is and what state he is in both physically and emotionally.<sup>68</sup>

### **3. Investigations and other steps taken on account of the disappearance of Mr. Jorge Vásquez Durand**

75. The family members and petitioners took numerous steps to ascertain the whereabouts of Mr. Vásquez Durand. Given the alleged impossibility of going to Ecuador because of the armed conflict at that time,<sup>69</sup> those actions were undertaken before the Peruvian authorities, for them to make inquiries with their Ecuadorian counterparts, and through religious and human rights organizations that could likewise make inquiries in Ecuador.

76. As noted in the Truth Commission's report,

[...] When she had no more news of her husband, María Gomero filed complaints with the Peruvian National Congress, the Asociación Pro Derechos Humanos del Perú (APRODEH), the Council for Peace (Consejo por la Paz), the International Committee of the Red Cross, the Inter-American Commission on Human Rights, the foreign ministries of Ecuador, Brazil, and Argentina, and the Episcopal Conference, but failed to elicit any information.

Several moves were undertaken by Ecuadorian authorities in Ecuador to try and locate Jorge Vásquez. Those inquiries were addressed to the Military Brigade in El Oro, the Archbishopric in Cuenca, the Command Headquarters of the Tarqui Division, the highest military body in El Oro, and the Office of the Archbishop of the Armed Forces. All these efforts also came to nothing.<sup>70</sup>

77. In the IACHR file, there are letters sent by Mr. Vásquez Durand's wife to the Director General of Consular Affairs of the Ministry of Foreign Affairs of Peru, asking her to take steps to secure his release.<sup>71</sup> Likewise, there is a note in the file from the Director of Consular Affairs of the Ministry of Foreign Affairs of Peru, dated November 27, 1995, to the Director of APRODEH, informing him that a communication had been received from the Office of the Consul General of Peru in Machala, Ecuador, regarding the situation of "Peruvian citizen JORGE VASQUEZ DURAND, detained on January 30, 1995 by Ecuadorian army personnel in Huaquillas and later taken to Quito." The note details the inquiries made by the Bishop of Machala with Ecuadorian military and religious authorities with a view to ascertaining his whereabouts.<sup>72</sup>

<sup>67</sup> See Appendix 32. Note from María Esther Gomero de Vásquez, dated Monday, May 22, 1995. Appended to a writ submitted by the petitioners on May 22, 1995.

<sup>68</sup> See Appendix 33 (Letters from Mrs. María Esther Gomero de Vásquez, dated February 13, and May 29, 1995, respectively, addressed to the Director General of Consular Affairs in the Ministry of Foreign Affairs of Peru. Appended to the note from the State of Peru, dated November 10, 1995) concerning Mrs. María Esther Gomero de Vásquez's letter dated May 29, 1995.

<sup>69</sup> Appendix 32. Note from María Esther Gomero de Vásquez, dated Monday, May 22, 1995. Appended to a writ submitted by the petitioners on May 22, 1995.

<sup>70</sup> Appendix 40. Report of the Truth Commission of Ecuador. 2007. Volume 4 Accounts of cases. 1988-2008 periods, pp. 82-84. Available at: [http://www.alfonsozambrano.com/comision\\_verdad/index.htm](http://www.alfonsozambrano.com/comision_verdad/index.htm)

<sup>71</sup> Appendix 33. Letters from Mrs. María Esther Gomero de Vásquez, dated February 13, and May 29, 1995, respectively, addressed to the Director General of Consular Affairs in the Ministry of Foreign Affairs of Peru. Appended to Brief of the State of Ecuador dated November 10, 1995.

<sup>72</sup> Appendix 34. Note from the Director of Consular Affairs of the Ministry of Foreign Affairs of Peru, dated November 27, 1995. Appended to the petitioners' brief of November 29, 1995.

78. There are also records of moves made by the Government of Peru with Ecuadorian authorities. In fact, on May 12, 1995, the Peruvian State sent the IACHR a list, as of May 11 of that year, of the names of Peruvian citizens allegedly detained in Ecuador. The list contains the name of Jorge Vásquez Durand "detained on 30.1 in Huaquillas by the Ecuadorian army." The note adds: "He would appear to be been taken to Quito."<sup>73</sup>

79. The file also records inquiries made by the Superior of the Society of Jesus in Peru to his counterpart in Ecuador.<sup>74</sup> The file also contains the copy of an International Red Cross and Ecuadorian Red Cross poster calling for the public to help find Jorge Vásquez Durand and other Peruvian citizens.<sup>75</sup> The poster read as follows:

**HELP US FIND THEM**

DUE TO TENSIONS CREATED BY THE ARMED CONFLICT, CONTACT AND COMMUNICATION HAVE BEEN LOST WITH SOME PERUVIAN CITIZENS WHO EITHER LIVED OR TRAVELED FREQUENTLY TO OUR COUNTRY.

IN ORDER TO HELP LOCATE THEM, THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE ECUADORIAN RED CROSS ASK ALL INTERESTED PARTIES O WHOEVER KNOWS THE WHEREABOUTS OF THE FOLLOWING PERSONS TO GET IN TOUCH WITH OUR INSTITUTION TO HELP US RESTORE TIES WITH THEIR CLOSE FRIENDS AND FAMILY MEMBERS.

SAMUEL JIMENEZ ROSALES  
WILLIAM MARQUEZ CAMPOS  
ANGELITA MORALES

**JORGE VASQUEZ DURAND**<sup>76</sup>

ADAN CORDOVA  
GUILLERMO CHAVEZ  
GIOVANNI MENDOZA  
JAVIER RIVAS  
QUESADA  
QUIROGA ZAPATA  
CARLOS MENDOZA

IF YOU ARE ONE OF THESE PERSONS OR KNOW ANY OF THEM,, PLEASE COMMUNICATE WITH THE INTERNATIONAL COMMITTEE OF THE RED CROSS IN QUITO AT 505436 OR THE NEAREST RED CROSS OFFICE.

With the support of the daily newspaper HOY.  
International Committee of the Red Cross  
Ecuadorian Red Cross

80. In addition, through a human rights organization in Ecuador, the petitioners attempted to bring a habeas corpus action but they were told by phone that it was impossible because the victim's whereabouts were not known,<sup>77</sup> and knowing them was a prerequisite for bringing the action.

<sup>73</sup> See above, Footnote 2 and Appendix 35. Note from the Permanent Mission of Peru to the Organization of American States, dated May 12, 1995.

<sup>74</sup> See Appendix 24. Letter from Carlos Cardó Franco S.J., dated May 9, 1995, addressed to Father Jorge Carrión S.J. Appended to the comments of the petitioners received on April 7, 1995.

<sup>75</sup> See Appendix 9. Poster of the International Committee of the Red Cross and the Ecuadorian Red Cross. Appended to a writ submitted by the petitioners on May 22, 1995.

<sup>76</sup> Emphasis added

<sup>77</sup> Appendix 36. Letter from APRODEH to the Ecumenical Human Rights Commission of Ecuador, dated June 9, 1995. Appendix to the petitioners' brief of Wednesday, February 14, 1996.

81. According to the Ecuadorian Truth Commission, most human rights violations committed by police or military personnel have not been punished. Nor have their perpetrators been brought to trial and sentenced.<sup>78</sup>

82. The IACHR had no information regarding the outcome of the efforts undertaken to investigate the whereabouts of the alleged victim until 2014, when the State reported that:

In response to the request by members of the Truth Commission appointed by the Executive, on July 29, 2009, the Ministry of Defense, through the head of the cabinet of ministers, Mr. Gustavo Martínez Espíndola, remitted Official Letter No. 2009-130-G-2-3-b3 of July 29, 2009, signed by General Fabián Varela, Head of the Joint Chiefs of Staff of the Armed Forces, in reply to the request for information, which states that the Navy and Air Force Intelligence Directorates "have no information regarding Peruvian citizens detained in the country between January and August 1995" along with Official Letter No.2009-243-Ñ-D-c4-c of July 27, 2009, in which Colonel Jaime Castillo Arias, (Acting) Director of Army Intelligence provides a list of Peruvian citizens detained between January and August 1995, in which Jorge Vásquez Durand's name does not appear.

On September 6, 2011, through Personnel Action No.2744-ORH-FGE, dated August 21, 2011, signed by Dr. Galo Chiriboga Zambrano, Attorney General, [the inquiry?] was transferred to the Prosecutor's Office for Miscellaneous Matter and Traffic in the Huaquillas district, which was run at the time by Prosecutor/Attorney Bolívar Enrique Figueroa Arévalo, who states that his Office was processing Preliminary Investigation No. 178-2010 into the alleged disappearance of Peruvian citizen Mr. Jorge Vásquez Durand.

That action requested the migration record for Peruvian citizen Jorge Vásquez Durand and others for the year 1995, which was sent in Official Letter No. 094-SJMH-PN, dated February 17, 2011, by Police Second Lieutenant Willington Gómez Echeverría, with the migration records of Peruvian citizen Mr. JORGE VÁSQUEZ DURAND, showing that he last left Ecuador on January 30, 1995, that is to say, on a date after his alleged disappearance.

Subsequently, the Provincial Director of Tourism in Imbabura was asked to certify the existence of the "Hotel La Posada," at which, purportedly, Peruvian citizen Jorge Vásquez Durand had been staying at the time of his alleged disappearance. The certification obtained indicates that there is no such "Hotel La Posada"; rather there was an establishment called "La Posada del Quinde." Also requested was the list of names of the policemen on guard at the Migration Office for the district of Huaquillas on January 30, 1995, the date on which Peruvian citizen Jorge Vásquez Durand is registered as having left the country. No reply was received to that request.

On June 16, 2014, Dr. Diego Peñafiel,, Director of the Truth and Human Rights (E) Commission, reported that the case of Mr. Jorge Vásquez Durand was being investigated by Dr. Gina Gómez de la Torre and was at the Preliminary Investigation phase.

On June 19, 2014, attorney Cristina Margarita Silva, a cabinet advisor in the Ministry of the Interior, reported that the National Directorate of Crimes against Life, Violent Deaths, Disappearances, Extortion and Kidnappings (DINASED) had conducted exhaustive inquiries nationwide into the disappearance of Mr. Jorge Vásquez Durand, to no avail. However, the State would continue to be attentive to any investigations that unit may undertake.<sup>79</sup>

<sup>78</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 43.

<sup>79</sup> Note of the State of Ecuador, dated August 25, 2014. pp. 2-3.

#### 4. Law on the Reparation of Victims and Prosecution

83. On November 26, 2013, the National Assembly of Ecuador passed the "Law for Reparation of Victims and Prosecution of Human Rights Violations and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008,"<sup>80</sup> published on December 13, 2013 (hereinafter Law on Reparation for Victims and Prosecution).

84. In Article 2 of the Law, the Ecuadorian State acknowledges its liability for the human rights violations documented by the Truth Commission.

Article 2. Acknowledgment of the liability of the State: The Ecuadorian State acknowledges its objective liability for the human rights violations documented by the Truth Commission and that the victims suffered unwarranted violations against their life, liberty, integrity, and dignity, so that they and Ecuadorian society must be guaranteed, without delay, the right to recognition of the truth of the facts, to justice, and reparation, and to certainty that what happened will never happen again.

85. As for the scope of the acknowledgment of liability, Article 2 also provides that:

The Ecuadorian State shall be liable for judicial errors, unwarranted delays or inappropriate administration of justice, violation of the right to effective judicial protection, and for violations of principles and rules of due process documented by the Truth Commission and shall make full reparation to persons who suffered impairment and violations of their human rights.<sup>81</sup>

86. Included among the reparation measures provided for in the Law (Article 6.3) are looking for, locating, and releasing disappeared persons, and in cases in which they died, exhuming, identifying, and returning their remains.

The National Police will be responsible for looking for, locating, and releasing disappeared persons under the direction of the Office of the Attorney General. In cases in which the disappeared person is dead, the aforementioned institutions shall be responsible for exhuming, identifying, and returning their remains to their next of kin, who shall be entitled to information as to progress made with the search and to take part in actions undertaken to that end.<sup>82</sup>

87. With respect to investigating and prosecuting the perpetrators of human rights violations documented by the Truth Commission, Article 10 establishes the following:

Article 10: General rules of proceedings in the event of grave violations of human rights documented by the Truth Commission. The Ecuadorian State shall adopt, during the pretrial and criminal proceedings, such constitutional, legal, administrative, and judicial measures as are necessary to enforce the rights and guarantees of victims and their family members in the investigation and prosecution of the human rights violations documented by the Truth

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<sup>80</sup> Appendix 41. Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. Dated November 26, 2013, published in the Official Gazette No. 143 of December 13, 2013. Available at: <http://www.asambleanacional.gob.ec>.

<sup>81</sup> Article 2 of the Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. See Appendix 41.

<sup>82</sup> Article 6.3 of the Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. See Appendix 41.

Commission, pursuant to domestic legislation and international instruments on human rights and the prosecution of crimes against humanity.<sup>83</sup>

88. During the processing of the case, the State made no specific reference to this law or to its implementation in the instant case.

## VI. ANALYSIS OF LAW

### A. Preliminary consideration regarding the acknowledgment of liability contemplated in the Law for the Reparation of Victims and Prosecution.

89. As indicated supra para. 68, on May 3, 2007, the Truth Commission in Ecuador was established by Executive Decree No. 305, published in the Official Gazette No. 87, of May 18, 2007,<sup>84</sup> with a view to investigating human rights violations between 1984 and 1988, and other special cases.<sup>85</sup> As the Report of the Truth Commission points out, it "was established at the behest of a group of victims of human rights violations, who had been demanding from the Ecuadorian State that it duly satisfy their rights to the truth, justice, and reparation."<sup>86</sup> The report further established that:

Ever since it was installed, the Commission was backed by the National Government headed by Rafael Correa, who assigned and guaranteed the ongoing budget allocation needed to perform the task entrusted to the Commission. His constant support of its work made it possible, inter alia, to access confidential information, and police and military installations [...].<sup>87</sup>

[...]

Based on Article 6 of the Decree establishing the Commission, which indicated that proposals should be put forward for mechanisms for following up on recommendations, the Commission included in its Final Report a draft law outlining the institutional mechanisms needed to continue the efforts to overcome impunity with regard to the grave violations of human rights and crimes against humanity committed in Ecuador, for which the State bore responsibility.<sup>88</sup>

<sup>83</sup> Article 10 of the Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. See Appendix 41.

<sup>84</sup> "The Truth Commission of Ecuador was established as the outcome of a historical process driven by a number of organizations of victims of human rights violations and their family members over the course of more than 20 years (the Committee of Family Members of Political Prisoners, the Committee of Family Members against Impunity, and, in recent years, the No to Impunity Ecuadorian Committee - CENIMPU -- to which not only family members but also some direct victims belonged), which had been demanding that the Ecuadorian State fully acknowledge and satisfy their rights to truth, justice, and reparation." Appendix 46. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 17. Available at: [http://www.alfonsozambrano.com/comision\\_verdad/index.htm](http://www.alfonsozambrano.com/comision_verdad/index.htm)

<sup>85</sup> The Ecuadorian Peace Commission's objectives were to: 1. To conduct an in-depth and independent investigation into human rights violations between 1984 and 1988, as well as other special cases, such as the so-called Fybeca case, and their underlying causes and circumstances. 2. Request declassification of State archives marked confidential or national security-related. 3. Foster recognition for the victims of those violations and devise reparation policies. 4. Recommend the necessary legal and institutional reforms, and effective mechanisms for preventing and punishing human rights violations. 5. Determine the existence of probable circumstantial evidence of civil, criminal, and administrative liabilities and to pass it on to the pertinent authorities. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 17. See Appendix 37.

<sup>86</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Introduction, p. 13.

<sup>87</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Introduction, p. 17.

<sup>88</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Introduction, p. 22.

90. In addition, the State underscored the nature of its commitment and the State's obligations when it enacted the Law for Reparation of Victims and Prosecution in 2013,<sup>89</sup> Article 2 of which acknowledged the Ecuadorian State's objective liability for the human rights violations documented by the Truth Commission. The same Article specifies the scope of that acknowledgment, that is to say, the State's liability for judicial errors, unwarranted delay or improper administration of justice, violation of the right to effective judicial protection, and for violations of the principles and rules of due process documented by the Truth Commission.<sup>90</sup>

91. Even though the State made no reference to this recognition, the Commission takes a positive view of it and determines that it has legal effects in the proceedings. One of the documented cases is that of Jorge Vásquez Durand. In light of the above, the Commission understands that the State of Ecuador accepts the truth of the facts of the instance case and acknowledges -- to the extent indicated -- its liability in the arbitrary arrest and subsequent forced disappearance of Mr. Jorge Vásquez Durand.

## **B. Analysis**

### **1. Right to life, humane treatment, and personal liberty (articles 4.1, 5.1, 5.2, and 7 of the American Convention, in conjunction with articles 1.1 and 1.2 of the same instrument and with the obligation set forth in article 1 of the IACFDP).**

92. Article 4(1) of the American Convention on Human Rights provides, "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

93. For their part, numbered paragraphs 1 and 2 of article 5 of the same instrument establish that every person has the right to have his physical, mental, and moral integrity respected and that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

94. The initial paragraphs of Article 7 of the American Convention provide:

1. Every person has the right to personal liberty and security.
  2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
  3. No one shall be subject to arbitrary arrest or imprisonment.
  4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
  5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
- [...]

<sup>89</sup> Article 1 of the aforementioned Law specifies that its purpose is to "regulate comprehensive reparation to the victims of the grave violations of human rights and crimes against humanity committed in Ecuador between October 4, 1983 and December 31, 2008, that were documented by the Truth Commission; and to guarantee their prosecution."

<sup>90</sup> In Article 2013 of the Law, the Ecuadorian State acknowledges its liability for the human rights violations documented by the Truth Commission. Article 2 of the Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008 establishes:

The Ecuadorian State shall be liable for judicial errors, unwarranted delays or inappropriate administration of justice, violation of the right to effective judicial protection, and for violations of principles and rules of due process documented by the Truth Commission and shall make full reparation to persons who suffered impairment and violations of their human rights.



95. For its part, Article 1.a of the Inter-American Convention on Forced Disappearance of Persons establishes that the States Parties to that Convention undertake not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees. They also undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

96. Before analyzing the liability of the Ecuadorian State with respect to the provisions transcribed above, it is incumbent upon the Commission to pronounce on the legal characterization of the facts established in the instant case. For that, it will take into account the definition given in Article II of the Inter-American Convention on Forced Disappearance of Persons (IACFDP). According to that instrument,

forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees..

97. As established above, , during the period of hostilities the armed forces of Ecuador and Peru mobilized and clashed. People were killed and wounded and several Peruvian citizens were detained in Ecuador by police and armed forces personnel. Under those circumstances, on January 30, 1995, Mr. Vásquez contacted his wife, Mrs. María Esther Gomero de Vásquez, [by phone] for the last time and told her he was worried "about getting his merchandise through customs" and into Peru. His family has had no contact with him since that call.

98. Later, at least one witness saw Mr. Vásquez Durand in the Teniente Ortiz military barracks in mid-June, 1995, detained and apparently in poor physical shape. The Ecuadorian military and police authorities repeatedly denied that Mr. Vásquez Durand had been detained and they failed to conduct a serious and effective investigation into that matter. However, Mr. Vásquez Durand was not alone and the detentions of Peruvian citizens in Ecuador prompted the Peruvian State to request the Ecuadorian State to release at least 21 people, who been arrested in a number of different regions in Ecuador, such as: Guayaquil, Loja, Machala, and Quito in May 1995<sup>91</sup>.

99. Based on the analysis performed in this chapter, the Commission considers that the foregoing material is sufficient to conclude that Mr. Vásquez Durand was detained by Ecuadorian army personnel on January 30, 1995 and taken to various different military facilities. The IACHR likewise considers that what happened to Mr. Jorge Vásquez Durand must be characterized as forced disappearance, under the terms set forth in Article II of the IACFDP. Along the same lines, as pointed out above, the Ecuadorian Truth Commission describes Mr. Jorge Vásquez Durand's status as one of forced disappearance through the Law for Reparation of Victims and Prosecution in 2013, the State pledged to repair the "grave violations of human rights and crimes against humanity committed in Ecuador between October 4, 1983 and December 31, 2008", documented in said report. To that respect, the IACHR reiterates that, even though the State made no reference to this recognition, the Commission takes a positive view of it and determines that it has legal effects in the proceedings.

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<sup>91</sup> During the conflict, the Commission was informed by the Ecuadorian and Peruvian States, by petitioners, and by information in the public domain, that several Peruvians had been detained in Ecuador. On this, see: Appendix 6. Detainees whose release is being negotiated (AI 11-05-95 4.00 P.M.) Appended to the Note of the Permanent Mission of Peru to the Organization of American States of May 12, 1995. Appendix 7. Writ of the State of Ecuador, dated May 22, 1995, presenting information to the IACHR regarding Cases 11.456, 11.457, 11.458, and 11.462, all alleging detentions of Peruvian citizens in Ecuador during the Cenepa Valley conflict. In the same Note, the State indicates that "the Government of Ecuador already proposed to the Government of Peru, several weeks ago, that the two countries swap detainees accused for spying,. See also Appendix 9. Poster of the International Committee of the Red Cross and the Ecuadorian Red Cross. Appended to a writ submitted by the petitioners on May 22, 1995.

100. In its consistent case law on cases of forced disappearance of persons, the inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The international liability of the State is exacerbated when the disappearance is part of a systematic pattern or practice implemented or tolerated by its authorities. It amounts, in short, to a crime against humanity, entailing a crass departure from the core principles upon which the inter-American system is founded.<sup>92</sup>

101. Among the distinctive characteristics of disappearance are the means used to carry it out, which are designed to conceal any evidence of the facts, the corresponding responsibility, and the fate of the victim. That applies to the instant case in which the authorities repeatedly denied the detention of Mr. Vásquez Durand. Another feature is the manner in which the failure to elucidate the facts and identify those responsible affects not only the direct victim, but also their family and society in general.<sup>93</sup>

102. When a state ratifies the Inter-American Convention on Forced Disappearance of Persons it undertakes “[n]ot to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees,” in accordance with Article I (a) of that instrument. The Commission notes that even though the facts of the instant case occurred prior to ratification of the aforementioned Convention by Ecuador, given the ongoing or permanent nature of the crime of forced disappearance, its effects are prolonged over time until the fate or whereabouts of the victim is ascertained, so that the State is in a situation of ongoing violation of its international obligations.<sup>94</sup>

103. The Commission has adopted an integral approach to this human rights violation, understanding it as a continuing violation. This approach enables it to analyze and determine the full extent of the State’s responsibility. It should be borne in mind that so long as the whereabouts of the victim are not determined or their remains located, the family and the rest of society must endure the experience of a forced disappearance with all the attendant consequences.<sup>95</sup>

104. The Inter-American Court has stated that in cases of forced disappearance it is unnecessary to perform a detailed analysis of the detention in relation to each of the guarantees recognized in Article 7 of the American Convention. In the opinion of the Inter-American Court, when it is demonstrated that deprivation of freedom was a step prior to achieving the disappearance of the victims, it is not necessary to determine whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the legislation in force at the time of the events; or whether the acts of the detention were unreasonable, unpredictable or disproportionate.<sup>96</sup> The reason for the above is that when examining an alleged forced disappearance it should be taken into account that the deprivation of liberty of the individual is just the beginning of the

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<sup>92</sup> IACHR, Report No. 101/01, Case 10.247 et al, Extrajudicial Executions and Forced Disappearances, Peru, October 11, 2001, paragraph 178. Available at [www.cidh.oas.org/annualrep/2001sp/Peru10247.htm](http://www.cidh.oas.org/annualrep/2001sp/Peru10247.htm).

<sup>93</sup> IACHR, Application to the Inter-American Court of Human Rights in the Case of Narciso González Medina et al. (Case 11.324) v. Dominican Republic, May 2, 2010, paragraphs 106 and 107 and IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. (Cases 12.494, 12.517, and 12.518,) v. Republic of El Salvador, June 28, 2010, paragraphs 134 and 135. Documents posted at: [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>94</sup> IACHR, Application to the Inter-American Court of Human Rights in the Case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña (Case 12.529) v. Republic of Bolivia, May 12, 2009, paragraph 15, posted at: [www.cidh.oas.org/demandas/demandasESP2009.htm](http://www.cidh.oas.org/demandas/demandasESP2009.htm).

<sup>95</sup> IACHR, Application to the Inter-American Court of Human Rights in the Case of Narciso González Medina et al. (Case 11.324) v. Dominican Republic, May 2, 2010, paragraphs 106 and 107 and IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. (Cases 12.494, 12.517, and 12.518,) v. Republic of El Salvador, June 28, 2010, paragraphs 134 and 135. Documents posted at: [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>96</sup> I/A Court H.R., Case of La Cantuta v. Peru. Judgment of November 29, 2006. Series C No. 162, paragraph 109.

constitution of a complex violation that is prolonged over time until the fate and whereabouts of the victim are established.<sup>97</sup>

105. In the instant case, the IACHR considers it demonstrated that on January 30, 1995 Jorge Vásquez Durand was deprived of his liberty by Ecuadorian army personnel. That arrest was the first step in his forced disappearance and, therefore, it is irrelevant to analyze if the circumstances that surrounded his disappearance were in accordance with each of the particulars of Article 7 of the American Convention. On the contrary, the fact that Jorge Vásquez Durand was forcibly disappeared after his arrest is enough to conclude that it was illegal and arbitrary and ignored the guarantees set forth in the aforementioned provision of the Convention.

106. As to the right to humane treatment, the Inter-American Court has recognized that “a person illegally detained [...] is in a situation of heightened vulnerability in which there is a high risk of his/her rights being violated, such as the right to physical integrity and to be treated with dignity.”<sup>98</sup> Indeed, as the IACHR has pointed out, there are numerous examples in the inter-American system in which arrests carried out with no regard for the law constituted the first step for extrajudicial executions, forced disappearances, or individual acts or systematic patterns of torture.<sup>99</sup> Furthermore, the Inter-American Court has held that forced disappearance violates that right since “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment [...] which violates the right of every detainee under Article 5(1) and 5(2).”<sup>100</sup> Specifically, the Court has determined that it is clear that in the case of a forced disappearance, the victim’s personal integrity is affected in all its dimensions.<sup>101</sup>

107. In the instant case, apart from the physical and mental suffering inflicted by a forced disappearance, the IACHR has considered it established that Jorge Vásquez Durand was detained arbitrarily and illegally from January 30, 1995 until -- at least -- the middle of June of that same year, when he was last seen alive. According to information from petitioners and family members, he had purportedly been held in several military facilities, one of which was the Teniente Ortiz military barracks, where he was last seen “in poor shape.” During the processing of this case, it was noted from testimony received that persons held in military barracks under circumstances similar to those of Mr. Vásquez Durand were tortured. The victim in the instant case was held or over four months in the custody of military personnel who committed deliberate acts of violence.

108. Ever since the Velásquez Rodríguez and Godínez Cruz cases, the Court has deduced the existence of torture before death in instances of prolonged detention without any judicial oversight mechanism.<sup>102</sup>

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<sup>97</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 56.

<sup>98</sup> I/A Court H.R., Bámaca Velásquez Case v. Guatemala. Judgment of Saturday, November 25, 2000. Series C No. 70, paragraph 90.

<sup>99</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc 64. December 31, 2011, paragraph 124.

<sup>100</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraphs 156 and 187; Case of the Miguel Castro-Castro Prison. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 323; I/A Court H.R. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 58. On this, see also IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc 64. December 31, 2011, pars. 142-145.

<sup>101</sup> I/A Court H.R., Case of Ticona Estrada et al v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 58.

<sup>102</sup> I/A Court H.R., Case of Velásquez Rodríguez, Judgment on the merits of July 29, 1988, Series C No. 4, paragraph 156; I/A Court H.R., Godínez Cruz Case. Judgment of January 20, 1989. Series C No. 5, paragraph 164. See also IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc 64. December 31, 2011, paragraph 145.

109. According to the jurisprudence of the Inter-American Court of Human Rights, the Inter-American Convention to Prevent and Punish Torture (hereinafter: "IACPPT") forms part of the inter-American body of law (*corpus iuris*) to be used to establish the content and scope of the general provision contained in Article 5.2 of the Convention.<sup>103</sup> Article 2 of the first instrument defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

110. In the light of Inter-American and Inter-American Court precedents, for a conduct to be characterized as torture the following three elements must be present: i) the act is intentional; ii) it causes intense physical or mental suffering; and iii) it is committed to achieve a specific goal or purpose.<sup>104</sup> The aforementioned Court has established that "the threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture."<sup>105</sup> Likewise, the Court has pointed out that persons who are deprived of liberty are in a situation of special vulnerability. Therefore, the competent authorities have a duty to adopt measures to protect their physical integrity and their dignity as human beings.<sup>106</sup> It has also asserted that the State may be considered liable for torture, and cruel, inhuman and degrading treatment if the competent authorities do not conduct a serious investigation into acts of that nature committed to the detriment of persons in their custody.<sup>107</sup>

111. Consequently, taking into account all the information available. *inter alia*, the eye witness's account, the conclusions of the Truth Commission's Report, and, in particular, the clandestine nature of the deprivation of liberty, the IACHR considers that during his prolonged detention under military custody, in facilities without judicial oversight, Mr. Jorge Vásquez Durand was subjected to acts constituting torture under the terms of Article 5.2 of the American Convention.

112. With respect to the right to life, the Inter-American Court has held that said right is a fundamental human right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.<sup>108</sup> The foregoing means that States have both the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur, as well as the duty to prevent the

<sup>103</sup> I/A Court H.R., Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, paragraph 145.

<sup>104</sup> IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martin Mejía, Peru, March 1, 1996, section 3. Analysis, posted at [www.cidh.oas.org/annualrep/95span/cap.III.peru10.970.htm](http://www.cidh.oas.org/annualrep/95span/cap.III.peru10.970.htm). I/A Court H.R., Case of Bueno-Alves. Judgment of May 11, 2007. Series C. No. 164 par. 79.

<sup>105</sup> I/A Court H.R., Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 272. Baldeón García Case v. Peru. Merits, Reparations and Costs. Judgment of April 06, 2006. Series C No. 147 par. 119; Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, paragraph 147, and Case of Maritza Urrutia v. Guatemala. Judgment of November 27, 2003. Series C No. 103, paragraph 92.

<sup>106</sup> See also U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), Human Rights Committee, General Comment 21, par. 3; European Court on 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.

<sup>107</sup> I/A Court H.R., Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147 par. 120; and The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, paragraph 170. Along the same lines, see Eur.C.H.R., Yavuz v. Turkey, Judgment of 10 January 2006, App. No. 67137/01, paragraph 38; Eur.C.H.R., Aksoy v. Turkey, Judgment of 18 December 1996, App. No. 100/1995/606/694, paragraphs 61 and 62; and Eur.C.H.R., Tomasi v. France, Judgment of 27 August 1992, Series A no. 241-A, paragraphs 108-111.

<sup>108</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, par. 78; and The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

infringement of the said right by its officials or private individuals.<sup>109</sup> According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).<sup>110</sup>

113. The Court has also reiterated that “compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.”<sup>111</sup> Hence,

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.<sup>112</sup>

114. According to the Court’s case law, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>113</sup> The jurisprudence of the Inter-American system has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he has been killed.<sup>114</sup>

115. In the instant case, the facts took place in the context of an international armed conflict in which, even though there was no declaration of war by the countries in conflict hostilities were declared and troops were mobilized and clashed. Within that context, the victim in this case was a civilian, a merchant by trade, and a foreign national inside the territory of one of the parties to the conflict.

116. On this, the IACHR notes that the 1949 Geneva Convention (IV) relative to the protection of civilian persons in time of war,<sup>115</sup> ratified by Ecuador in 1954,<sup>116</sup> applies “to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”<sup>117</sup> Article 4 states that “Persons protected by the Convention are

<sup>109</sup> I/A Court H.R., The “Street Children” Case (Villagrán Morales et al.) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

<sup>110</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of Wednesday, July 4, 2007. Series C No. 166, paragraph 79; and Baldeón García Case v. Peru. Judgment of April 6, 2006. Series C No. 147, par. 83.

<sup>111</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 80; and The “Street Children” Case (Villagrán Morales et al.) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

<sup>112</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 04, 2007. Series C No. 166, paragraph 81; I/A Court H.R., Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Judgment of July 5, 2006. Series C No. 150, paragraph 66.

<sup>113</sup> I/A Court H.R., Case of the 19 Merchants v. Colombia. Judgment of July 5, 2004. Series C No. 109, paragraph 154; Case of Bámaca Velásquez v. Guatemala. Judgment of November 25, 2000. Series C No. 70, paragraph 130.

<sup>114</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraph 188.

<sup>115</sup> Adopted on August 12, 1949 by the Diplomatic Conference held at Geneva from 21 April to 12 August 1949, for the purpose of establishing a Convention for the Protection of Civilians in Time of War. Entry into force: October 21, 1950. Available at: <http://www.icrc.org/spa/war-and-law/treaties-customary-law/index.jsp>

<sup>116</sup> Treaties and customary law. International Committee of the Red Cross. Available at: <http://www.icrc.org/spa/war-and-law/treaties-customary-law/index.jsp>

<sup>117</sup> Article 2 of the 1949 Geneva Convention (IV) relative to the protection of civilian persons in time of war. Available at: <http://www.icrc.org/spa/war-and-law/treaties-customary-law/index.jsp>

those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."

117. Article 27 of the same Convention establishes that: "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." And Article 29 adds that "The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred."

118. Article 32 expressly prohibits corporal punishment and torture, when it establishes that "The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents."

119. With respect to aliens in the territory of a Party to the conflict, the Convention establishes their right to leave the territory in the following terms: "All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use."

120. As one can see, at the time of the alleged facts in the instance case, there were special and general duties of the Ecuadorian State to provide protection for the civilian population that Ecuador did not fulfill in respect of Mr. Jorge Vásquez Durand. Pursuant to Article 29.b of the American Convention<sup>118</sup> and as the Inter-American Court of Human Rights pointed out in the *Mapiripán Massacre v. Colombia* case, "with regard to establishment of the international responsibility of the State in the instant case, the Court cannot set aside the existence of general and special duties of the State to protect the civilian population, derived from International Humanitarian Law."<sup>119</sup>

121. According to the established facts, Mr. Jorge Vásquez Durand was the victim of a forced disappearance perpetrated by Ecuadorian army personnel who arrested him in Huaquillas on April 30, 1995. To this day his whereabouts are unknown. For that reason, and based on the foregoing considerations, the IACHR concludes that the Ecuadorian State failed to fulfill its obligations to respect and guarantee the rights established in articles 4.1, 5.1, 5.2, and 7 of the American Convention, in conjunction with article 1.1 of the same instrument, and it also violated article 1.a of the IACFDP, all to the detriment of Mr. Jorge Vásquez Durand.

## **2. The right to recognition as a person before the law**

122. As regards the right to recognition of juridical personality, the Commission recalls that this right is an essential and necessary prerequisite in order to hold and exercise all rights, since without it, a

<sup>118</sup> Article 29(1) of the American Convention on Human Rights - Restrictions Regarding Interpretation: "No provision of this Convention shall be interpreted as: [...] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party [...]"

<sup>119</sup> I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, paragraph 114.

person does not enjoy the protection and guarantees that the law offers, simply because he or she is invisible to it.<sup>120</sup>

123. By its very nature, forced disappearance of persons seeks the juridical annulment of the individual precisely in order to remove him or her from the protection that the laws and justice afford them. Thus, the apparatus of repression ensures that persons may be deprived of their rights with impunity by placing them beyond the reach of any possible judicial protection. The aim of those who perpetrate forced disappearance is to operate outside the law and conceal any evidence of crime, thereby seeking to avert its investigation and punishment, and prevent the person or their next-of-kin from filing suit or, in the event suit is filed, from accomplishing a positive result.<sup>121</sup>

124. The Human Rights Committee has concluded that one of the rights that may be violated in cases of forced disappearance of persons is the right to recognition as a person before the law.<sup>122</sup> By the same token, Article 7(2)(i) of the 1998 Rome Statute provides that “Enforced disappearance of persons” means “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

125. Similarly, the definition contained in article II of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance<sup>123</sup> establishes that the consequence of refusal to acknowledge the deprivation of liberty and of concealment of the whereabouts of the disappeared person, along with the other elements entailed in disappearance “*place such a person outside the protection of the law.*” Equally, the United Nations Independent Expert on Enforced or Involuntary Disappearance of Persons has stated that forced disappearance can also entail violation of the right to recognition as a person before the law on the basis that acts of enforced disappearance are aimed at removing the victim from the protection of the law.<sup>124</sup>

126. The Inter-American Commission has consistently held that a person who has been detained and disappeared is “necessarily placed outside of and excluded from the juridical and institutional order of the State, which ha[s] the effect of denying recognition of their very existence as human beings entitled to be recognized as such before the law,” and, therefore, has found that Article 3 of the Convention has been violated.”<sup>125</sup> In the Anzualdo Castro case, the Inter-American Court upheld the reasoning historically argued by the Commission, the European Court, and quasi-judicial bodies in the universal human rights system and

<sup>120</sup> IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. (Cases 12.494, 12.517, and 12.518,) v. Republic of El Salvador, June 28, 2010, paragraph 174. Available at: [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>121</sup> IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. (Cases 12.494, 12.517, and 12.518,) v. Republic of El Salvador, June 28, 2010, paragraph 175. Available at: [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>122</sup> Human Rights Committee of the International Covenant on Civil and Political Rights. Communication 1327/2004. Grioua v. Algeria, paragraphs 7.8 and 7.9.

<sup>123</sup> Adopted by United Nations General Assembly resolution A/RES/61/177 of 20 December 2006.

<sup>124</sup> United Nations, Independent Expert Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, E/CN.4/2002/71, 8 January 2002, paragraph 70.

<sup>125</sup> IACHR, Report 11/98, Case 10.606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, paragraph 57. Available at [www.cidh.oas.org/annualrep/97span/Guatemala10.606.htm](http://www.cidh.oas.org/annualrep/97span/Guatemala10.606.htm). IACHR, Report 55/99, Merits. Case 10.815 and others, Juan De La Cruz Núñez Santana et al., Peru, April 13, 1999, paragraph 111. Available at [www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.815.htm](http://www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.815.htm). IACHR, Report 3/98, Case 11.221, Merits, Tarcisio Medina Charry, Colombia, April 7, 1998, paragraph 64. Available at: [www.cidh.oas.org/annualrep/97span/Colombia11.221.htm](http://www.cidh.oas.org/annualrep/97span/Colombia11.221.htm). IACHR, Report 30/96, Case 10.897, Merits, Arnoldo Juventino Cruz, Guatemala, October 16, 1996, paragraph 23 and IACHR, Report 55/96, Case 8076, Merits, Arnoldo Juventino Cruz,, Guatemala, December 6, 1996, paragraph 24. Available at: [www.cidh.oas.org/casos/96sp.htm](http://www.cidh.oas.org/casos/96sp.htm).

recognized that forced disappearance entails suppression of the right to be recognized as a person before the law.<sup>126</sup>

127. According to the established facts in the instant case, Mr. Jorge Vásquez Durand was the victim of a forced disappearance perpetrated by Ecuadorian army personnel. For that reason, and based on the foregoing considerations, the IACHR concludes that the Ecuadorian State failed to fulfill its obligations to respect and guarantee the rights established in article 3 of the American Convention, in conjunction with article 1.1 of the same instrument, to the detriment of Mr. Jorge Vásquez Durand.

**3. Right to due guarantees and judicial protection (American Convention on Human Rights) in connection with the obligation to respect human rights and the duty to adopt measures under domestic law (Article 1.1 and 2 of the same Convention) and article 1.b of the Inter-American Convention on Forced Disappearance of Persons**

128. The articles of the American Convention referred to in the heading to this section establish the following:

Article 8.1. Judicial Guarantees 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.

Article 25.1 Judicial Protection 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.

Article 1.1 Obligation to Respect Rights 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.

Article 2. Domestic Legal Effects [duty to adopt measures under domestic law]: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

129. Article I (b) of the Inter-American Convention on Forced Disappearance of Persons establishes that the States Parties to this Convention undertake "to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories."

130. Furthermore, the Inter-American Convention on Forced Disappearance of Persons obliges the States to "ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons" (article VIII). As the IACHR has established, this provision is also pertinent with respect to the training of police and (civilian or military) penitentiary personnel, "especially because one of the risks incurred by an illegally detained person is precisely that he or she may become a victim of forced

<sup>126</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru. Judgment of September 22, 2009, Series C No. 202, paragraph 90.



disappearance. Even without that hypothesis, it is necessary that penitentiary personnel be trained to prevent possible forced disappearances [...].<sup>127</sup> this becomes vital in cases such as the one addressed here in which the detention and subsequent disappearance of Mr. Vásquez Durand constituted a grave violation of his rights, characterized by concealment and denial of his detention, which result, inter alia, in the victim being deprived of judicial protection and guarantees.

131. The Inter-American Court has considered the content of the right to the truth in its case-law, especially in cases of forced disappearances. In the case of Velásquez Rodríguez the Court confirmed the existence of “the right to inform the relatives of the fate of the victims and, if they were killed, the location of their remains.”<sup>128</sup> In this type of cases, it is considered that the relatives of the disappeared victims are victims of the deeds constituting forced disappearance, by which they are entitled to have the facts investigated and those responsible prosecuted and punished.<sup>129</sup> The Court has recognized that the right to the truth of the relatives of victims of serious human rights violations is framed within the right to access to justice.<sup>130</sup>

132. The right to know the truth has been also recognized by several treaties of the United Nations and recently, by the General Assembly of the Organization of American States (OAS).<sup>131</sup>

133. According to the case-law of the Inter-American Court:

...the right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, on the one hand, by means of the obligation to investigate human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to building and safeguarding historical memory, to clarifying the events and to determining institutional, social and political responsibilities at certain periods of time in a society.<sup>132</sup>

134. With respect to the rights of the next-of-kin of victims of human rights violations to obtain justice and reparation, the Court has found that

[f]rom Article 8 of the Convention it is evident that the victims of human rights violations, or their next-of-kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.<sup>133</sup>

<sup>127</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc 64. December 31, 2011, paragraph 203.

<sup>128</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C. No. 4 paragraph 181.

<sup>129</sup> I/A Court H.R., Case of Blake v. Guatemala. Judgment of January 24, 1998. Series C No. 36, paragraph 97.

<sup>130</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru. Judgment of September 22, 2009, Series C No. 202, paragraph 118.

<sup>131</sup> Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Report of Professor Diane Orentlicher on the updating of the set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102, of February 18, 2005). Study by the Office of the United Nations High Commissioner for Human Rights on the right to the truth (E/CN.4/2006/91 of January 9, 2006). OAS General Assembly Resolutions on the Right to the Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/ 2267, and AG/RES. 2406 (XXXVIII-O/08)

<sup>132</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru. Judgment of September 22, 2009, Series C No. 202, paragraph 119.

<sup>133</sup> I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 102; The “Street Children” Case (Villagrán Morales et al.) v. Guatemala. Judgment of [continues ...]

135. By the same token, the Court has ruled that the next-of-kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next-of-kin repaired.<sup>134</sup> Accordingly, State authorities, once they become aware of an act of violation of human rights, especially the rights to life, humane treatment and personal liberty,<sup>135</sup> have a duty to initiate ex officio and without delay, a serious, impartial and effective investigation,<sup>136</sup> which must be conducted within a reasonable period of time.<sup>137</sup>

136. In addition, the Court has held that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”<sup>138</sup>

137. As to the substance of the duty to investigate with due diligence, the Inter-American Court has held that the investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.<sup>139</sup> In that same vein, the Court has found that the State has the duty to ensure that everything necessary is done to learn the truth about what happened and for those responsible to be punished,<sup>140</sup> involving all State institutions to that end.<sup>141</sup> The Court has also said that the authorities should adopt all reasonable measures to secure the necessary probative material in order to carry out the investigation.<sup>142</sup>

[... continuation]

November 19, 1999. Series C No. 63, paragraph 227; and Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, paragraph 63.

<sup>134</sup> I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 103; Case of Bulacio v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, paragraph 114, and Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>135</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 100.

<sup>136</sup> I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court H.R., Case of the Gómez Paquiyaury Brothers v. Peru. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

<sup>137</sup> I/A Court H.R., Case of Bulacio v. Argentina. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., Case of the Rochela Massacre v. Colombia. Judgment of Friday, May 11, 2007. Series C. No. 163 paragraph 146, and Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>138</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 124; I/A Court H.R., Case of the Rochela Massacre v. Colombia. Judgment of May 11, 2007. Series C. No. 163 paragraph 145; Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, paragraph 381; and Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru. Judgment of November 24, 2006. Series C No. 158, paragraph 106.

<sup>139</sup> I/A Court H.R., Case of García-Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101.

<sup>140</sup> I/A Court H.R., Case of Bulacio v. Argentina. Judgment of September 18, 2003. Series C No. 100, paragraph 114; Case of the Rochela Massacre v. Colombia. Judgment of May 11, 2007. Series C. No. 163 paragraph 146, and Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>141</sup> I/A Court H.R., Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130; Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140, paragraph 120 and the Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, paragraph 66.

<sup>142</sup> I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 122.

138. Although the duty to investigate is one of means, not results, it must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective,<sup>143</sup> or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>144</sup>

139. With respect to the state's obligation to investigate complaints of forced disappearance of persons, the Court has held that "faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*."<sup>145</sup> Hence, whenever there are reasonable motives to suspect that a person has been subjected to forced disappearance an investigation should be opened *ex officio*, without delay, and in a serious, impartial, and effective manner. In any case, every state authority, public or private officer who is aware of acts intended to forcibly disappear persons, shall immediately report them.<sup>146</sup>

140. As regards the guarantee of reasonable time, the Court has determined that three elements should be taken into account to determine the fairness of the time incurred: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities.<sup>147</sup> In its more recent cases, the Court has included a fourth element: the effects that a delay in the proceeding might have on the legal situation of the victim.<sup>148</sup>

141. It is appropriate to analyze, in light of the standards set forth in the foregoing paragraphs, whether the Ecuadorian State conducted criminal investigations, and if it did, whether they were conducted with due diligence and within a reasonable period of time, and whether they constituted effective remedies for ensuring the victim's right to have access to justice.

142. Although in cases of forced disappearance it is essential for prosecutors and the judiciary to act immediately, ordering the steps needed to determine the whereabouts of the victim or the place where he or she may be deprived of their liberty,<sup>149</sup> the State has not pointed to, and the case file with the IACHR makes no reference to, any specific action of that nature.

143. Thus, as established in the chapter on proven facts, it transpires from the case file with the IACHR that the Ecuadorian authorities were informed through various channels -- diplomatic, inter-American human rights system, International Red Cross, and others -- regarding the detention of Mr. Jorge Vásquez Durand in January 1995 and his subsequent disappearance.

<sup>143</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraph 177; Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 131; and Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

<sup>144</sup> I/A Court H.R., Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, paragraph 177; and Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

<sup>145</sup> I/A Court H.R., Case of Goiburú et al v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 84; Case of Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 59; and Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 139.

<sup>146</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 65, and Case of Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 143.

<sup>147</sup> I/A Court H.R., Case of Escué-Zapata. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 72; and Case of La Cantuta. Judgment of November 29, 2006, Series C No. 162, paragraph 102.

<sup>148</sup> I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009, paragraph 196; and Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192

<sup>149</sup> I/A Court H.R., Case of Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 134.

144. The Ecuadorian State's response was to state, repeatedly, that its police and military authorities had no record of Mr. Jorge Velásquez Durand's detention and that exhaustive inquiries had been made to ascertain his whereabouts, but they had not been able to obtain information about his presence in Ecuador. Here it is to be noted that the State has not provided the IACHR with consistent information regarding the "exhaustive investigations" referred to.

145. The Truth Commission's Report, entitled "Without Truth There is No Justice," describes the moves made on behalf of Mr. Vásquez Durand as follows:

Meanwhile, when she had no more news of her husband, María Gomero filed complaints with the Peruvian National Congress, the Asociación Pro Derechos Humanos del Perú (APRODEH), the Council for Peace (Consejo por la Paz), the International Committee of the Red Cross, the Inter-American Commission on Human Rights, the foreign ministries of Ecuador, Brazil, and Argentina, and the Episcopal Conference, but failed to elicit any information.

Several moves were undertaken by Ecuadorian authorities in Ecuador to try and locate Jorge Vásquez. Those inquiries were addressed to the Military Brigade in El Oro, the Archbishopric in Cuenca, the Command Headquarters of the Tarqui Division, the highest military body in El Oro, and the Office of the Archbishop of the Armed Forces. All these efforts also came to nothing.<sup>150</sup>

146. In this connection, it is important to stress that, through a human rights organization in Ecuador, the petitioners attempted to bring a habeas corpus action but they were told by phone that it was impossible because the victim's whereabouts were not known,<sup>151</sup> and knowing them was a prerequisite for bringing the action.

147. And in fact, as mentioned earlier, the habeas corpus action established in the laws at the time of Jorge Vásquez Durand's arbitrary detention and forced disappearance was that referred to in Article 19.16.j of the Political Constitution then in effect, which established:

Article 19: "Everyone is entitled to the following guarantees: No. 16 personal liberty and security. Consequently: j) Anyone who believes that he has been illegally deprived of his liberty may invoke habeas corpus. This right is exercised by the person himself or through an intermediary, without the need for a written mandate, before the Mayor or President of the Council in whose jurisdiction he is located or before someone representing them. The municipal authority shall immediately order the appellant to be brought before him with the order for his detention. The authority's instructions shall be obeyed without comments or excuses by those in charge of the prison or place of detention.

Once they have been informed of the circumstances leading up to the detention, the Mayor or President of the Council shall, within 48 hours, order the immediate release of the plaintiff, if the detainee or the order is not presented, or if the order does not meet legal requirements, or if procedural irregularities have been committed, or, finally, if the action has been substantiated and shown to be justified. Any official or employee who fails to obey the order handed down shall be immediately dismissed from his position or job, without more ado, by the Mayor or President of the Council, who shall notify the Office of Comptroller of the dismissal, as well as the authority responsible for appointing a replacement.<sup>152</sup>

<sup>150</sup> Report of the Truth Commission of Ecuador. 2007. Volume 4 Accounts of cases. 1988-2008 period, pp. 82-84. See Annex 40.

<sup>151</sup> See Annex 36. Letter from APRODEH to the Ecumenical Human Rights Commission of Ecuador, dated June 9, 1995. Appendix to the petitioners' brief of February 14, 1996.

<sup>152</sup> Political Constitution of Ecuador, of 1979.

Available at: [http://cancilleria.gob.ec/wp-content/uploads/2013/06/constitucion\\_1978.pdf](http://cancilleria.gob.ec/wp-content/uploads/2013/06/constitucion_1978.pdf)

148. In other words, a requirement for a habeas corpus action was knowledge of the place where the person was detained so as to bring that person before the Mayor or President of the Council in whose jurisdiction the detainee was located. As has been shown, the family members and petitioners, who were in Peru, were not informed by the Ecuadorian authorities of the location where Mr. Vásquez Durand was being held. From witnesses, they had only heard that he had been arrested in Huaquillas, that he had been transferred to different places in Ecuador, and that in June 1995 he had been seen in the Teniente Ortiz military barracks.

149. In the instant case, it is important to underscore the context of impunity in which the military acted at the time of the events. The Truth Commission determined that "During the administration of Durán Ballén, the repression of social protest was fiercer and the security forces were given carte blanche in operations against criminals (...) Durán Ballén resorted to the National Security Law<sup>153</sup> and decreed states of emergency to handle the armed conflict with Peru." He also issued a decree exempting members of the security forces from any criminal liability for actions taken during the state of emergency.<sup>154</sup>

150. In this regard, according to the Ecuadorian Truth Commission most human rights violations committed by police or military personnel had not been punished. Nor had their perpetrators been brought to trial and sentenced. It pointed out that impunity had been possible because of the practice of maintaining special jurisdictions that had allowed policemen and military personnel to be tried in their own courts, in which, generally speaking, they were acquitted. In addition, it pointed to an "esprit de corps," which had been the main obstacle to the truth being revealed and justice done."<sup>155</sup>

151. In this regard, in its country report on Ecuador, the IACHR established the following:

A principal issue raised before the Commission during its visit concerned the practice of trying members of the police and armed forces accused of human rights violations under their respective instances of special jurisdiction rather than the ordinary civilian tribunals. Both institutions are essentially responsible for their own discipline, as special police and military courts are vested with the jurisdiction to try their members in closed sessions. The Commission was informed that verdicts, when reached, are not made public. Civilian authorities have the power to direct these cases to courts of ordinary jurisdiction, but such instances have been rare.<sup>156</sup>

152. In July 1995, with respect to impunity in Ecuador, Amnesty International also claimed that the judicial authorities failed to elucidate human rights offenses. It stated that "members of the Ecuadorian security forces accused of human rights violations were almost never brought to trial" and added:

The impunity surrounding human rights cases has become institutionalized by a judicial system that human rights attorneys and defenders consider seriously ineffective.

<sup>153</sup> Different governments used the National Security law issued by the military dictatorship to maintain what they called order and peace in the Republic. This Law, issued in a Cold War context, and with strongly anti-Communist content, remained in force throughout the 1988-2007 period. Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 40.

<sup>154</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 39.

<sup>155</sup> Appendix 37. Report of the Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 43.

<sup>156</sup> IACHR, Report on the Situation of Human Rights in Ecuador. OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997. Chapter II, Section on "The National Police and the Armed Forces."

The judicial authorities continue to protect the perpetrators of hundreds of cases of torture, forced "disappearances," and summary executions over the past ten years.<sup>157</sup>

153. The Commission reiterates that, in keeping with inter-American jurisprudence, the right of access to justice implies the effective determination of the facts under investigation and, if applicable, of the corresponding criminal responsibilities in a reasonable time; therefore, considering the need to guarantee the rights of the injured parties, a prolonged delay may constitute, in itself, a violation of judicial guarantees. Besides, because it is a forced disappearance, the right of access to justice includes the determination of the fate or whereabouts of the victim.<sup>158</sup>

In these cases, impunity will not be eliminated unless it is accompanied by the determination of the general responsibility- of the State- and individuals- criminal and of its agents or of individuals. In complying with this obligation, the State is required to remove all obstacles, legal and factual, contributing to impunity. The investigations must be conducted in line with the rules of due process of law, which implies that the bodies of administration of justice must be organized in a manner so that its independence and impartiality is guaranteed and the prosecution of grave human rights violations is made before regular courts, in order to avoid impunity and search for the truth. Moreover, given the nature and gravity of the facts, particularly since they occurred in a context of systematic human rights violations, and since the access to justice is a peremptory rule under International Law, the need to eliminate impunity gives rise to an obligation for the international community to ensure inter-State cooperation by which they must adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and the international law to prosecute it and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so.<sup>159</sup>

154. Here, the IACHR appreciates the "Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity committed in Ecuador between October 4, 1983 and December 31, 2008," published on December 13, 2013, which includes in its reparation measures the search for, location, and release of disappeared persons and, in the event of death, exhumation, identification, and return of their remains.<sup>160</sup>

155. Article 10 of the same law establishes that the Ecuadorian State shall adopt, during the pretrial and criminal proceedings, such constitutional, legal, administrative, and judicial measures as are necessary to enforce the rights and guarantees of victims and their family members in the investigation and prosecution of the human rights violations documented by the Truth Commission, pursuant to domestic legislation and international instruments on human rights and the prosecution of crimes against humanity.<sup>161</sup>

<sup>157</sup> Appendix 42. Amnesty International "Ecuador: Judicial authorities fail to clarify human rights crimes", AI Index: AMR 28/06/95, July 11, 1995. Available at: <https://www.amnesty.org/fr/library/asset/DOC33/008/1995/en/9388c8a9-7c15-4526-a70a-5158756b7104/doc330081995en.pdf>

<sup>158</sup> I/A Court H.R, Case of Anzualdo Castro v. Peru Judgment of September 22, 2009, Series C No. 202, paragraph 124.

<sup>159</sup> I/A Court H.R, Case of Anzualdo Castro v. Peru Judgment of September 22, 2009, Series C No. 202, paragraph 125 and Case of La Cantuta v. Peru Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 160.

<sup>160</sup> Article 6.3: The search, location, and release of the disappeared person, will be the responsibility of the National Police, under the direction of the Attorney General's Office, ; and, in the event of death, the aforementioned institutions shall be in charge of exhuming, identifying, and returning their remains to their next-of-kin, who shall be entitled to be kept abreast of progress made in the search for the person and to take part in any moves made in that direction. Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. See Appendix 41.

<sup>161</sup> Article 10 of the Law for Reparation for Victims and Prosecution of Grave Violations of Human Rights and Crimes against Humanity in Ecuador between October 4, 1983 and December 31, 2008. See Appendix 41.

156. Here, the IACHR recalls that Mr. Jorge Vásquez Durand was detained by army personnel on January 30, 1995 and was last seen alive in mid-June of that year in a military barracks. It is also mindful of the fact that the Ecuadorian Truth Commission ratified the facts alleged here in its Final Report, published in June 2010.

157. However, in the case sub judice the State has not provided information on the specific actions undertaken by its authorities to ascertain the whereabouts of Mr. Jorge Vásquez Durand. At the same time, Ecuador has not provided an explanation to justify the absence, so far, of a final judicial decision by a competent organ on the disappearance of the victim.

158. Based on the arguments of the parties, the proven facts, and the analysis conducted in this section, the Commission concludes that -- now that more than 19 years have elapsed since the forced disappearance of the victim, without disclosure of the full truth of what happened, without domestic criminal proceedings being initiated to determine the whereabouts of the victim or guarantee rights of access to justice and to know the truth, through investigation and the possible punishment of the perpetrators and comprehensive reparation for the consequences of the violations -- the State violated the rights recognized in articles 8.1 and 25.1 of the American Convention, in conjunction with article 1.1 of the same instrument, and article 1.b of the IACFDP, to the detriment of Mr. Vásquez Durand and the members of his family.

**4. Obligation to adopt domestic legal provisions relating to the definition of the offense of forced disappearance of persons (article 2 of the Convention and article III of the IACFDP) and to the habeas corpus provisions in effect in 1995.**

159. Article III of the IACFDP provides as follows:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

[...]

160. The preamble of the Comprehensive Organic Criminal Code, adopted on January 28, 2014 and published in Official Gazette No. 180 of February 10, 2014, establishes the need to bring national laws and regulations into line with international commitments and it points out that, for the first time in Ecuador, such offenses are defined as failure to report torture, forced disappearance, and sexual violence in armed conflict.

161. It takes note of the fact that under Article 80 of the Constitution actions brought on account of the genocide, crimes against humanity, war crimes, forced disappearance of persons, and aggression against a State shall not be subject to the statute of limitations. For its part, Article 84 of the Comprehensive Organic Criminal Code defines forced disappearance as follows:

Any State agent/official or someone acting with his or her consent, who deprives someone of his or her liberty, and then fails to inform about or denies said deprivation of liberty and refuses to report the whereabouts or fate of a person, thereby preventing the exercise of constitutional or legal guarantees, shall be punished with imprisonment of between 22 and 26 years.

162. Article 73 of the same Code established that the National Assembly may not grant pardon or amnesty in cases of the forced disappearance of persons. That restriction does not apply to a presidential pardon, according to Article 74 of the same legal Code.

163. In light of the above, the Commission notes and appreciates that, with respect to the definition of the offense of forced disappearance, the State of Ecuador adjusted its norms to the Convention, except as regards express recognition that the offense shall be deemed to be ongoing and permanent until the fate or whereabouts of the victim is established.

164. As noted above, with respect to habeas corpus, the rule in force at the time of the arbitrary detention and subsequent forced disappearance of Jorge Vásquez Durand was that set forth in Article 19.16.j of the Political Constitution of that time, which, among other limitations, required that he be presented before the municipal -- not judicial -- authority, as well as information on the place of detention of the appellant or person on behalf of whom the habeas corpus action was brought. "Anyone who believes he/she has been illegally deprived of his/her liberty may bring a habeas corpus action. This right is exercised by the person himself or through an intermediary, without the need for a written mandate, before the Mayor or President of the Council in whose jurisdiction he is located or before someone representing them.

165. The IACHR has analyzed in several occasions the Ecuadorian regulation that determined that the habeas corpus had to be filed with the Mayor or President of the Council, an administrative authority, responsible for deciding the legality of the arrest. And in that sense it has established for more than a decade that the State has the duty to "take all steps necessary within its domestic legislation to amend the law on habeas corpus [...] so that judges and not mayors shall decide the legality of an arrest, and take immediate steps to give effect to that amendment."<sup>162</sup> In the instant case, although the appeal was not lodged based on the above mentioned reasons, it is important to emphasize that the same regulation was *per sé* contrary to the American Convention and turned the habeas corpus into an ineffective and inappropriate resource, according to the standards of the Convention.

166. Therefore, the IACHR concludes that although Ecuador adopted a new Political Constitution in 2008 and that the habeas corpus rules have been altered substantially,<sup>163</sup> the habeas corpus regulations in force in Ecuador for the events of the instant case, contravened Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons.

<sup>162</sup> See, for example: IACHR; report N° 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, paras. 36, and 37; and IACHR. Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in case 12.091, Juan Carlos Alvarez Chaparro and Freddy Hernan Lapo Iñiguez v. Ecuador. June 23, 2006, para. 16(c).

<sup>163</sup> The text of Articles 89 and 90 of the Political Constitution of 2008 reads as follows:

Article 89: Habeas corpus proceedings are aimed at restoring the freedom of those who are being held illegally, arbitrarily or illegitimately by order of a public authority or any other persons, as well as to protect the life and bodily safety of persons in prison. Immediately after the proceedings are filed, the judge shall convene a hearing, which must be held within the following twenty-four hours, where the warrant of arrest and imprisonment with the legal formalities and the justifications of fact and law that substantiate the measure must be presented. The judge shall order the appearance of the imprisoned person, the authority in whose charge the imprisoned person has been committed, the court-appointed defense attorney and the person who had ordered or caused the imprisonment, depending on the case. If necessary, the hearing shall be held in the place of detention. The judge shall rule within twenty-four hours after completion of the hearing. In the event of illegitimate or arbitrary detention, release from prison shall be ordered. The ruling ordering release from prison shall be complied with immediately. If any kind of torture, inhumane, cruel or degrading treatment is confirmed, the order to release the victim, provide integral and specialized care, and provide measures that are alternative to imprisonment when applicable shall be issued. When the order for imprisonment has been issued in criminal proceedings, the appeal shall be made with the Provincial Court of Justice.

Article 90: When the place of incarceration is unknown and there are indications of interference by some public official or another agent of the State or persons who are acting on the basis of the latter's authorization, support or acquiescence, the judge must call the top representatives of the National Police Force and the competent Minister to a hearing. After listening to them, the measures needed to locate the person and those responsible for his/her imprisonment shall be adopted.

Political Constitution of Ecuador of 2008. Available at: [http://cancilleria.gob.ec/wp-content/uploads/2013/06/constitucion\\_2008.pdf](http://cancilleria.gob.ec/wp-content/uploads/2013/06/constitucion_2008.pdf) [Translator: English text taken from : [https://www.constituteproject.org/constitution/Ecuador\\_2008.pdf](https://www.constituteproject.org/constitution/Ecuador_2008.pdf)



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

167. The right to integrity of the person is enshrined in Article 5(5.1) of the American Convention, which provides “Every person has the right to have his physical, mental, and moral integrity respected.” In that regard, the Commission has recognized 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 their human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect.<sup>164</sup>

168. The case-law of the Inter-American Court has established that the next-of-kin of the victims of human rights violations may, in turn, be victims of abridgment of the right to mental and moral integrity.<sup>165</sup> Thus, the Inter-American Court has considered that the mental and moral integrity of the victims’ next of kin has been violated “in light of the additional suffering experienced as a result of the specific circumstances surrounding the violations committed against their loved ones<sup>166</sup> and of the subsequent acts or omissions by State authorities with respect to the incidents at issue.”<sup>167</sup>

169. The Commission notes that, pursuant to the Court's case law,

in cases of forced disappearance, the Court has held that it can be understood that the violation of the right to mental and moral integrity of the victims’ next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is exacerbated, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.<sup>168</sup>

170. Consequently, and given that, in view of the forced disappearance of Mr. Jorge Vásquez Durand, the State had an obligation to guarantee the right to personal integrity of the family members also by conducting effective investigations, the absence of effective remedies constituted an additional source of suffering and anguish on their part.

171. In addition to the presumption that the personal integrity of family members of a victim of forced disappearance are impaired, in the instant case it has been shown that Mrs. María Esther Gomero de

<sup>164</sup> IACHR. Report No. 38/00, Case 11.743, Merits, Rudolph Baptiste, Grenada, April 13, 2000, paragraph 89, posted at: [www.cidh.oas.org/annualrep/99span/De%20Fondo/Grenada11743.htm](http://www.cidh.oas.org/annualrep/99span/De%20Fondo/Grenada11743.htm).

<sup>165</sup> I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paragraph 101; Case of the “Las Dos Erres” Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraph 206 and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 163.

<sup>166</sup> I/A Court H.R., Case of the Miguel Castro-Castro Prison v. Peru Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 335 and Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, paragraph 96; and Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 96.

<sup>167</sup> I/A Court H.R., Case of Manuel Cepeda Vargas v. Colombia Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, paragraph 195.

<sup>168</sup> I/A Court H.R., Case of Blake v. Guatemala. Merits. Judgment of 24 January 1998 Series C No. 36, paragraph 114; Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 87; Case of La Cantuta v. Peru Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 123 and Case of Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 105.

Vásquez, the spouse of Mr. Jorge Vásquez Durand, went to great lengths to ascertain his whereabouts, In that respect, it is worth reiterating Mrs. Gomero's remarks that (see paragraph 74 above):

With this letter, I want to convey to you the enormous sorrow that I and all my family feel, after three and a half months (exactly 115 days) have gone by without any word of my husband's whereabouts and with his status described as disappeared (*no habido*).<sup>169</sup>

I know I have to wait patiently despite the overwhelming economic problems I face. As you know, I have two children of school-going age and I have had to take on the responsibilities of a father toward them.<sup>170</sup>

Now that months have passed since my husband's detention, my family and I are in a desperate situation, because I don't know exactly where my husband is, every day I am tormented by worries about how he is and what state he is in both physically and emotionally.<sup>171</sup>

172. Bearing in mind that in some cases the Court has considered that ongoing deprivation of the truth regarding the fate of a disappeared person constitutes a form of cruel and inhuman treatment for the next-of-kin,<sup>172</sup> the Commission concludes that in the instant case there was violation of the right to personal integrity of the following family members of Jorge Vásquez Durand: María Esther Cristina Gomero Cuentas (spouse); Jorge Luis Vásquez Gomero (son); Claudia Esther Vásquez Gomero (daughter) and; his mother, who died at some point during the early months of his arbitrary detention.

## VII. CONCLUSIONS

173. In this report, the Inter-American Commission has evaluated all the elements available in the case file, based on the human rights standards of the inter-American system and other applicable instruments, the case law and the literature, in order to decide the merits of the case brought. The IACHR ratifies its conclusions that the Ecuadorian State is responsible for violations of the rights established in articles 3, 4, 5.1, 5.2, 7, 8.1, and 25.1 of the American Convention, in conjunction with articles 1.1 and 2 of that international instrument. It also reiterates that the State is liable for violation of articles I and III of the IACFDP, all to the detriment of Jorge Vásquez Durand. With respect to the family members listed above in paragraph 172, the IACHR confirms its conclusion that the State is liable for violation of articles 5.1, 8.1, and 25 of the American Convention in conjunction with article 1.1 of the same international instrument.

## VIII. RECOMMENDATIONS

174. Based on the analysis and conclusions contained in the instant report, the Inter-American Commission on Human Rights recommends that the Ecuadorian State:

1. Conduct a complete, impartial, and effective investigation into the whereabouts of Jorge Vásquez Durand. Should it be determined that the victim is no longer alive, adopt the necessary measures to deliver his remains to his family, as they wish.
2. Conduct domestic proceedings in connection with the violations of human rights shown in this report and initiate criminal proceedings for the offense of forced disappearance of the person of Jorge

<sup>169</sup> See Appendix 32.

<sup>170</sup> See Appendix 32.

<sup>171</sup> See Appendix 33 on the letter sent by Mrs. María Esther Gomero de Vásquez on May 29, 1995.

<sup>172</sup> I/A Court H.R., Case of Trujillo Oroza. v. Bolivia. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, paragraph 114; Case of La Cantuta v.. Peru Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 125 and Case Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 113.

Vásquez Durand, in an impartial, effective, and timely manner with a view to fully clarifying the facts, identifying those responsible, and imposing the corresponding punishments.

3. Make adequate reparation for the human rights violations shown in this report, both materially and morally, including just compensation, the establishment and dissemination of the historical truth of what happened, and recovering of memories of the disappeared victim. The fact that the family members of Mr. Jorge Vásquez Durand do not live in Ecuador may not constitute an impediment to implementing this and all the recommendations. To that end, the State needs to overcome any and all hurdles to ensure their effective implementation.

4. Adopt such measures as may be necessary to prevent any such events from occurring in the future, in keeping with the duty to protect and ensure the human rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law in the training institutes and academies of the Armed Forces.

5. Make a public acknowledgment of international responsibility and a public apology for the violations declared in the instant report.

Done and signed in the city of Washington, D.C., on the 23<sup>rd</sup> day of the month of March, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.