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CASE 12.302

REPORT ON MERITS

CASIERRA BROTHERS AND FAMILY
ECUADOR

Approved by the Commission at its session No. XX held on XX XX, 201x
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I. INTRODUCTION

1. On June 27, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Alejandro Ponce Villacís (hereinafter “the petitioner”) alleging that the Republic of Ecuador (hereinafter “the State of Ecuador,” “the State,” or “Ecuador”) bore international responsibility for the killing of Luis Eduardo Casierra Quiñonez and the injuries caused to Alejandro Casierra Quiñonez by State agents, as well as the impunity for what occurred.

2. The Commission adopted Report on Admissibility No. 16/09 on March 19, 2009.¹ On April 1, 2009, the Commission notified the parties of that report and placed itself at their disposal with a view to initiating a friendly settlement procedure. The parties were afforded the regulation time limits to present additional observations as to merits. All information received was duly relayed between the parties.

3. Based on its determinations as to fact and law, the Inter-American Commission has concluded that the State is responsible for violation of Articles 4(1) (right to life), 5(1) (right to humane treatment), 8(1) (right to a fair trial), and 25(1) (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), taken in conjunction with the obligations set forth in Articles 1(1) and 2 of that instrument. The Commission formulated appropriate recommendations.

II. SUBMISSIONS OF THE PARTIES

A. The Petitioner

4. The petitioner alleged that the brothers Luis Eduardo and Andrés Alejandro Casierra Quiñonez were shot with firearms by Ecuadorian Navy personnel on December 8, 1999, while fishing on the Atacames River in the Province of Esmeraldas. The petitioner explained that while the Casierra brothers and other fishermen were refueling their boat, a launch with Ecuadorian Navy personnel approached them in a violent manner. He said that upon attempting to move away peacefully, the agents opened fire with their weapons. The petitioner argued that the actions of the State agents engaged the State’s international responsibility for violation of the rights to humane treatment and life of Luis Eduardo Casierra and the right to humane treatment of Andrés Alejandro Casierra.

5. In relation to the alleged violation of the rights to a fair trial and judicial protection, the petitioner argued that the investigation was referred to the military criminal jurisdiction, which is contrary to the American Convention. He said that the way in which military criminal proceeding was structured precluded both their participation as a civilian party and their ability to be heard during the proceeding. The petitioner added that the case remains in impunity, as the persons responsible have not been punished.

6. The petitioner also argued that the State breached its duty to adopt provisions under domestic law, given that the rules and regulations on military justice are not compatible with the American Convention. In that regard, he explained that, under the Military Code of Criminal Procedure, military criminal judges of the Ecuadorian Navy report to the military hierarchy and are neither judicial officials nor lawyers. The petitioner states that the military justice (*Servicio de Justicia Militar*) is a part of the organizational structure of the armed forces and that all its members are subject to the discipline and obedience imposed by that structure. He held that, consequently, the military courts are themselves subject to military authority, which curtails their independence.

¹ IACHR, Report No. 16/09, Petition 12.302, Admissibility, Luis Eduardo and Andrés Alejandro Casierra Quiñonez, Ecuador, March 19, 2009.

B. The State

7. The State said that while it recognized that the shots fired at the Casierra brothers were made by State agents, the events occurred in the context of an operation. It explained that the Navy personnel had received information about a vessel that was possibly being used for illegal activities. It said that in that context the boat with the Casierra brothers onboard was spotted and that they began shooting at them and took flight. The State said that the Ecuadorian Navy pursued the launch and fired at its engine. It said that those gunshots struck the Casierra brothers. It added that both were immediately taken to a hospital and that Luis Eduardo died shortly afterwards. The State said that given what had happened, it had not violated the rights to life and humane treatment since the shots were fired in legitimate self-defense against attacks by the individuals on the launch carrying the Casierra brothers.

8. It added that an investigation was opened to clarify what had occurred and apportion appropriate responsibility. It said that the juridical and legal framework in force at the time required the holding of a military criminal proceeding that fully ensured a fair trial and judicial protection. It held that the proceeding constituted a prompt, simple, and efficient process that protected the rights of the alleged victims, including evidentiary due diligence in investigating the facts. The State said that the proceeding concluded with an order to acquit the military personnel because it was found that they were “carrying out their duties in accordance to law and that their actions were devoid of any intent to kill or injure people.” The State also reported that proceedings were instituted in the regular criminal jurisdiction against a civilian who was with the military patrol.

III. FINDINGS OF FACT

A. The Casierra Quiñonez family

20. At the time of the events Luis Eduardo and Andrés Alejandro Casierra Quiñonez were 24 years old and 21 years old, respectively.² They both lived in Atacames, Esmeraldas Province,³ where they worked as fishermen.⁴ The IACHR notes that, according to the documentation in the record of the proceedings in the military criminal jurisdiction, the Casierra brothers’ relatives are: (i) their mother, Maria Quiñonez Bone; (ii) their father, Sipriano Casierra; and (iii) their siblings Jhonny Jacinto Casierra Quiñonez, Darlin Sebastián Casierra Quiñonez, and Shirley Lourdes Quiñonez Bone.

21. The Commission finds that in a statement given in 1999, the neighbor and former employer of Luis and Andrés said: “The Casierra family (...) have a fishing boat,” that he had “known them for 20 years (...) and that [he had] never had any trouble with them, which is why they are held in very high regard by the people of Atacames.”⁵ Likewise, the sister of Luis and Andrés said that her brothers, along with other locals, would go fishing every 21 days in a boat that they owned. She added that her family had never been in any kind of trouble with the law, much less any run-ins with Ecuadorian Navy personnel.⁶

B. The events of December 8, 1999

22. Shirley Quiñonez, the sister of Luis and Andrés, said that her brothers went out fishing on December 7, 1999, setting off from Puerto Prado on the Atacames River at approximately 6:30 p.m. She said that with Andrés and Luis were seven other fishermen, including her two other brothers, Jhonny and Darlin.⁷

² Annex 1, Citizenship Card of Luis Eduardo Casierra Quiñonez, Annex 1, record 07-2000, p. 95. Annex 1, Official letter from the Atacames Chief of Police, December 8, 1999, p. 58.

³ Annex 1, Citizenship Card of Luis Eduardo Casierra Quiñonez, Annex 1, record 07-2000, p. 95. Annex 2, original petition

⁴ Annex 1, Death certificate of Luis Eduardo Casierra Quiñonez, undated, Annex 1, record 07-2000, p. 118. Annex 2, original petition

⁵ Annex 1, Statement of Eddy Rene Montaña Jijon, December 15, 1999, Annex 1, record 07-2000, p. 52.

⁶ Annex 1, Statement of Shirley Lourdes Quiñonez, December 14, 1999, Annex 1, record 07-2000, p. 23.

⁷ The names of the other fishermen were Freddy Zambrano Quiñonez, Cristian Jesús Sosa Quiñonez, Eguberto Arselio Padilla, Orlando Olaya Sosa, and Jorge Olguín Ortiz. Annex 1, Complaint of Shirley Lourdes Quiñonez, December 13, 1999, Annex 1, record 07-2000, p. 7.

23. Calixto Saldarriaga Corral, who was working as a fisherman in Atacames at the time of the events, stated the following:

[O]n December 7, I saw the crew of the Casierra brothers' boat heading off to fish; I live one block away from them; I have never seen them with firearms, not even on that day as they were going off to fish.⁸

24. The IACHR notes that the fishermen who were in the boat with the Casierra brothers stated that they were not carrying firearms when they went out to fish.⁹

25. The Commission also finds that, that day, the Ecuadorian Navy issued an operational order with the instructions "to establish a naval presence, gather intelligence, and detain any vessels (...) that [did] not have their documentation in order." That order stated that the purpose was "to establish a naval presence and counter the continuous attacks and robberies at sea and at Puerto Pesquero (...) [by] possible pirate vessels." It also mentioned the length of the operation, from 10:00 p.m. on December 7 until 2:00 a.m. on December 8, 1999, as well as the following procedure: "Sound the siren, turn on the police lights, identify yourselves as maritime police; in the event of any eventuality, shout "halt"; in the event of an imminent threat, fire shots into the air, and in the event of an attack, repel the attack."¹⁰

26. In relation to the events of the early hours of December 8, 1999, the Commission notes that the parties offer contradictory accounts.

27. On one hand, there are the statements of the sister of the Casierra brothers and those of the other fishermen who were in the boat. Shirley Quiñonez stated that at around 1:30 a.m. on December 8, 1999, her brothers and the other fishermen were switching "the fuel can" when "a privately owned launch suddenly appeared and made straight for (the boat)." She said that because her brothers thought "it was a pirate boat ... they had to get away immediately, ... since in the dark of the night it was impossible to make out its crew clearly." She added that the other vessel began firing "in bursts, killing ... Luis (...) and wounding Andrés ... in the left thigh." Ms. Quiñonez also stated that as a result of the gunfire, Darlin Casierra was wounded in the left hand and Cristian Sosa struck his knees on the engine when he jumped out of the boat. Ms. Quiñonez said that Andrés Casierra and the other wounded were taken to Esmeraldas, where they were sent to medical post, while Luis Eduardo was taken to the morgue.¹¹

28. The statements provided by the seven fishermen who were in the boat with the Casierra brothers are consistent with Shirley Quiñonez's account.¹² In that connection, Jhonny Casierra stated the following:

[A] boat was approaching without any kind of identification or signals, and it had no lights or loudhailers of the kind a navy vessel should have, so when we saw that the boat did not identify itself and they started shooting at us, we turned off our lights, thinking it was a pirate boat, and got under way to escape from the hail of bullets. It was only when the engine was hit by a bullet and boat stopped that they identified themselves, saying "HALT, WE ARE THE NAVY."¹³

29. With regard to what happened after the officers identified themselves, Freddy Zambrano said following:

⁸ Annex 1, Statement of Calixto Saldarriaga Corral, December 15, 1999, Annex 1, record 07-2000, p. 50.

⁹ Annex 1, Statements of Freddy Zambrano Quiñonez, Jhonny Jacinto Casierra Quiñonez, and Orlando Olaya Sosa. Annex 1, record 07-2000, pp. 26-28.

¹⁰ Annex 1, Anti-crime operation, Official letter RAD-DIGMER-DOP-P-222000ZNOV-99, of December 7, 1999, p. 153.

¹¹ Annex 1, Complaint of Shirley Lourdes Quiñonez, December 13, 1999, Annex 1, record 07-2000, p. 7.

¹² Annex 1, Statement of Darlin Sebastián Casierra Quiñonez, December 13, 1999, Annex 1, record 07-2000, p. 27; Statement of Cristian Jesús Sosa Quiñonez, December 13, 1999. Annex 1, record 07-2000, p. 53; Statement of Jorge Olguín Ortiz Bone, December 13, 1999. Annex 1, record 07-2000, p. 46; Statement of Johnny Jacinto Casierra Quiñonez, December 13, 1999 Annex 1, record 07-2000, p. 50; Statement of Freddy Eloy Zambrano Quiñonez, December 13, 1999 Annex 1, record 07-2000, p. 28.

¹³ Annex 1, Statement of Johnny Jacinto Casierra Quiñonez, December 13, 1999. Annex 1, record 07-2000, p. 50.

[T]hey swore at us and made us get on the launch One of them boarded our boat and he recognized the deceased, saying "Shoot! This is the Casierra." He crossed back onto their boat and they made a movement as if they wanted to get away, but one of them who seemed older than the others said that they should not run and that it would be better if they waited. Then, as we were there with the dead man, we asked them to take us to Atacames, which was closer than Esmeraldas. They did not want that and preferred to tow us. Later we came across two boats that were fishing and they transferred the wounded, including me, onto one of them, while the other took our boat under tow. Upon arriving at the port, one of them went to look for the pickup truck. They took us from the port to the hospital. At the hospital they dropped off the three wounded, me included, and they went with the others to the morgue. They did not return and I never saw them again."¹⁴

30. For its part, the State held in its most recent brief, of July 2016, that, "according to the investigations done by the internal authorities," in the framework of the military system of justice, it was determined:

On December 8, 1999, ... Messrs. Angulo Cuero José, Espinoza Zurita Freddy, and Franco Estrada Manuel, all of whom are Navy personnel, were taking part in an anti-crime operation ordered by the Esmeraldas harbormaster's office in response to an alert from the Esmeraldas fishermen's committee regarding the presence of a vessel that was reportedly being used for illegal activities. In that context, the Navy patrol spotted the vessel that Luis Eduardo Casierra Quiñonez, Andrés Casierra Quiñonez, and other individuals were on, whereupon they proceeded to sound the siren and turn on their lights, in response to which they started receiving small arms fire from the vessel, which then made to get away. In response to that aggression, the navy patrol repelled the attack by shooting at the boat's engine with the aim of disabling it; in consequence, the driver was hit and the boat eventually came to a stop as a result. Next, the Navy personnel proceeded to board the boat in order to detain the vessel and its crew. The vessel and its crew were immediately taken to the harbormaster's office in the port of Esmeraldas, from where the wounded, including Luis and Andrés Casierra Quiñonez were taken to hospital ... where it was verified that Luis Eduardo Casierra Quiñonez was dead.¹⁵

31. The Ecuadorian State also reported that three of the fishermen who were in the boat with the Casierra brothers were handed over to the judicial police in Esmeraldas. It added that they were released on December 10, 1999, after a habeas corpus petition was filed with the office of the mayor.¹⁶ The IACHR has no information as to whether or not criminal proceedings were instituted against the fishermen who were in the boat with the Casierra brothers.

C. The investigation of the incident

32. On December 8, 1999, a medico-legal autopsy was performed on Luis Eduardo Casierra Quiñonez, in which it was concluded that the cause of his death was "acute internal hemorrhage caused by ... the impact of a firearm projectile that entered in the lumbar vertebrae region."¹⁷

33. The following day, at Eugenio Espejo Hospital it was determined that Andrés Alejandro's condition was stable.¹⁸

34. On December 13, 1999, a visual inspection was conducted in which it was concluded that: (i) the vessel used by the Ecuadorian Navy had "two holes in the upper part of the bow and another in the lower part of the kennel hatch next to the seat;" (ii) in the boat that the Casierra brothers were on "one could see a large number of holes caused by firearms projectiles"; and (iii) that the following fishing equipment was found: a gray tub; a rusty machete, and a buoy.¹⁹ The IACHR notes that that inspection did not find any firearms on the vessel that the Casierra brothers were on. There is also no information in the record to suggest that weapons were confiscated from the fishermen on the day of the incident.

¹⁴ Annex 1, Statement of Freddy Eloy Zambrano Quiñonez, December 13, 1999, Annex 1, record 07-2000, p. 28.

¹⁵ State's communication of July 15, 2016.

¹⁶ State's communication of July 15, 2016.

¹⁷ Annex 1, Medico-legal autopsy, December 8, 1999, Annex 1, record 07-2000, p. 88.

¹⁸ Annex 1, Medical certificate from Eugenio Espejo Hospital, December 9, 1999, Annex 1, record 07-2000, p. 99.

¹⁹ Annex 1, Police report No. 1385-P.J.-E, December 17, 1999, Annex 1, record 07-2000, pp. 15-16.

35. From December 10 to 15, 1999, the National Police took statements from the fishermen who were on the boat with the Casierra brothers, as well as from the three Ecuadorian Navy personnel and the boat driver who was with them. The contents of the fishermen's statements can be found above. With respect to the statements of the Navy personnel, the IACHR notes that Navy serviceman Goen Franco Estrada said:

I was on watch and at 20:00 hrs. the gentlemen from the fisherman's defense committee arrived to report that a boat had left San Lorenzo with a crew of nine; ... as there was no driver, the committee provided us with a driver; ... we left at approximately 22:30 hours; ... when we drew level with Punta Gorda, we spotted a boat with a red light and nine people on board; we approached to a distance of 200 meters and confirmed that they were pirates; immediately, the driver turned on the lights and the siren and as soon as they realized, they took off at great speed, firing at us; we proceeded to repel the attack and managed to escape as the vessel was very fast; we then headed toward the Ojonera sector and whenever we came upon a boat, we turned on the signals that identified us as the naval police, the fishermen's vessel would stop, and we informed them that there was a boat in the area with nine people on board that was attacking others Eventually a boat approached us and told us the following: here around Tonsupa, a boat with a crew of nine chased us and we managed to get away by speeding off; ... we proceeded to approach; ... from about 100 meters away we noticed that there were two boats: in one there were nine and we do not know how many there were in the other as the weather was bad and visibility poor; when we turned on the lights and the siren, they immediately illuminated us, identified us, fired shots at us and the two boats made off in different directions; we proceeded to fire into the air and ordered them to stop; they continued shooting at us; we went in rapid pursuit of the vessel with nine crewmembers with everyone shooting at the motor, where the driver was unfortunately hit.²⁰

36. The other two navy personnel and the boat driver made statements similar to that of Goen Franco.²¹

37. On December 13, 1999, Shirley Quiñonez filed a complaint with the Esmeraldas Fifth Lower Criminal Court. Ms. Quiñonez said that the Navy personnel were responsible for the killing and wounding of her brothers in the events of December 8 that year. The Commission notes that the complaint filed by Shirley Quiñonez also made reference to the injuries caused to Darlin Sebastián Casierra and Cristian Sosa Quiñonez.²²

38. The State said that on December 14, 1999, military criminal proceedings were instituted ex officio against the three Navy personnel before the Military Criminal Tribunal of the Third Naval Zone in Esmeraldas.²³ The judge issued the order to initiate proceedings the following day.²⁴ The State said that the vessels involved were inspected, and witness statements taken from the Navy personnel and the person in charge of the port of Esmeraldas.²⁵ The IACHR does not have the documents relating to those procedures.

39. On February 10, 2000, the Esmeraldas Fifth Lower Criminal Court conducted an examination in which it found that the launch used by the Casierra brothers had 49 holes in it. The Commission highlights that the record of that procedure also contains no mention of the discovery of any firearms on the fishermen's launch. At the same time, it was found that the vessel used by the Navy had two holes in it.²⁶

40. On February 16, 2000, the Esmeraldas Fifth Lower Criminal Court sent an official letter to the Esmeraldas Harbormaster informing that statements were going to be taken from the three Navy

²⁰ Annex 1, Statement of Goen Franco Estrada, December 15, 1999, Annex 1, record 07-2000, p. 38.

²¹ Annex 1, Statement of Freddy Enrique Espinosa Zurita, December 15, 1999, Annex 1, record 07-2000, p. 41. Statement of José Angulo Cuero, December 15, 1999, Annex 1, record 07-2000, p. 34. Statement of Fausto Segundo Caicedo, December 15, 1999, Annex 1, record 07-2000, p. 32.

²² Annex 1, Complaint of Shirley Lourdes Quiñonez, December 13, 1999, Annex 1, record 07-2000, p. 7.

²³ State's communication of July 15, 2016.

²⁴ Annex 5. Order to initiate proceedings by the Military Criminal Tribunal of the Third Naval Zone in Esmeraldas, December 15, 1999. Enclosed with the State's communication of July 19, 2001.

²⁵ State's communication of July 15, 2016.

²⁶ Annex 1, Record of examination of physical evidence, February 10, 2000, Annex 1, record 07-2000, p. 151.

personnel and boat driver.²⁷ On February 22 of that year, the Esmeraldas Harbormaster replied to the court, saying:

I would like to bring to your attention that the persons mentioned are active-service members of the Navy of Ecuador and were on active duty on December 8, 1999, carrying out a military anti-crime operation Accordingly, proceedings have been instituted in the Military Criminal Tribunal of the Third Naval Zone ... by virtue of the fact that they are under military jurisdiction; therefore, they will only appear in these proceedings before their appropriate judge By official letter ... the Military Criminal Judge requested that you refrain from continuing to process the criminal proceeding ... and refer the entire record to the Military Criminal Judge of the Third Naval Zone, which request I insist be complied with in accordance to law.²⁸

41. That same day the Esmeraldas Fifth Lower Criminal Court issued an order of recusal, bearing in mind the official letter from the Esmeraldas Harbormaster's Office, and ordered that the processing of the case continue and that the entire record be referred to the Military Criminal Court of the Third Naval Zone in Esmeraldas.²⁹ On March 3, 2000, the Military Criminal Court of the Third Naval Zone in Esmeraldas sent a communication to the Esmeraldas Fifth Lower Criminal Court, enclosing "the legalized copy of the whole record in order to continue the common criminal proceeding" against the boat driver who was on the Ecuadorian Navy vessel, owing to his civilian status.³⁰

42. On April 18, 2000, the Esmeraldas Fifth Lower Criminal Court continued the proceeding only in respect of the boat driver due to the fact that "he [was] not an active-service member of the armed forces."³¹ The IACHR does not have any information about the status of this proceeding.

43. On May 24, 2000, the Military Criminal Court of the Third Naval Zone in Esmeraldas issued an order to dismiss with prejudice in favor of the Navy personnel.

44. The IACHR notes that the following provisions of law governed the military criminal jurisdiction at the time:

Political Constitution of the Republic of Ecuador, 1998

Article 187. Members of the security forces shall be subject to special jurisdiction for the prosecution of infractions committed in the exercise of their professional duties. In the case of common infractions, they will be subject to the regular courts.³²

Military Code of Criminal Procedure

Article 2. The jurisdiction includes: (a) the power to investigate infractions committed by armed forces military personnel that are punished by the Military Criminal Code and other laws on such matters, provided that they are infractions of a military nature. Common infractions correspond to the regular judges and courts; and (b) the power to prosecute them and enforce decisions³³

45. The judge found that the operational order of December 7, 1999,³⁴ "constituted an official military document indispensable for the military patrol to operate, the contents of which accorded legal power for the military personnel to use firearms in attack, as well as to repel an attack, as indeed was necessary, given the circumstances of the events of December 8, 1999."

²⁷ Annex 1, Record of examination of physical evidence, February 10, 2000, Annex 1, record 07-2000, p. 160.

²⁸ Annex 1, Official letter No. CAPESM-JUR-144-0, February 22, 2000, Annex 1, record 07-2000, p. 162.

²⁹ Annex 1, Order of the Fifth Lower Criminal Court of Atacames, February 22, 2000, Annex 1, record 07-2000, p. 163.

³⁰ Annex 1, Order of the Military Criminal Court of the Third Naval Zone, Official letter No. TERZÓN- JUZ-201-0, March 1, 2000, Annex 1, record 07-2000, p. 169.

³¹ Annex 1, Order of the Military Criminal Court of the Third Naval Zone, Official letter No. TERZÓN- JUZ-201-0, March 1, 2000, Annex 1, record 07-2000, p. 172.

³² Political Constitution of the Republic of Ecuador, 1998 Legislative Decree No. 000. RO/ 1, August 11, 1998.

³³ Military Code of Criminal Procedure of November 6, 1961. Official Record No. S-356.

³⁴ Annex 1, Anti-crime operation, Official letter RAD-DIGMER-DOP-P-222000ZNOV-99, of December 7, 1999, p. 153.

46. The judge also said that an expert inspection of the Navy vessel identified three holes "that presumably correspond to impacts by firearm projectiles." The judge added that the three Navy personnel and the boat driver "have recounted the truth of the events that occurred on December 7 and 8, 1999." That, because "a collective examination of those testimonies having been performed, as well as in relation to the evidence collected, they establish a consistency in all the details and circumstances that occurred and that were experienced by them."³⁵

47. The judge found that the Navy personnel acted in accordance with "the rules of engagement, first by identifying themselves as a military patrol and, in responding to the unexpected attack with firearms upon them, by using their firearms for the purposes by firing into the air; and, faced with the persistent disobedience by the vessel's crew members ... who failed to stop, the military personnel used the weapons to neutralize said vessel's means of propulsion." The judge concluded that "consequently, the accused ... have not committed any crime and bear no responsibility, since it has been confirmed that that they were carrying out their duties in accordance to law and that their actions were devoid of any intent to kill or injure the individuals named."³⁶

48. The State said that on May 31, 2000, the judge of the Third Naval Zone referred the order to dismiss to the Court of Military Justice in Quito.³⁷

49. On June 21, 2001, the Court of Military Justice in Quito confirmed the order to dismiss the case with prejudice and acquitted the accused³⁸ based on the same conclusions as the Military Criminal Tribunal of the Third Naval Zone in Esmeraldas.

IV. LEGAL ANALYSIS

A. **Rights to life and humane treatment of Luis Eduardo Casierra and right to humane treatment of Andrés Alejandro Casierra (Articles 4.1³⁹ and 5.1⁴⁰ of the American Convention in connection with Article 1.1 thereof)**

50. The Commission recalls that the right to life is a prerequisite for the enjoyment of all other human rights and if it is not respected all other rights are meaningless.⁴¹ Compliance with Article 4, in combination with Article 1(1) of the American Convention, "not only requires that no person be deprived of his life arbitrarily, but also that the States take all appropriate measures to protect and preserve the right to life, as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction."⁴² Those obligations apply equally to the right to humane treatment.

51. Both the Commission and the Court have stated that any use or deployment of force in which State agents cause the death of, or injuries to, an individual, must be analyzed to determine its legitimacy.⁴³ In that regard, when a death is alleged to have occurred as a consequence of the use of force, the organs of the inter-American system have laid down clear rules as to the burden of proof. The Inter-American Court has held that "whenever the use of force [by state agents] results in the death or injuries to one or more

³⁵ Annex 4, Order to dismiss of the Military Criminal Court of the Third Naval Zone, May 24, 2000. Enclosed with the State's communication of July 15, 2016.

³⁶ Annex 4, Order to dismiss of the Military Criminal Court of the Third Naval Zone, May 24, 2000. Enclosed with the State's communication of July 15, 2016.

³⁷ State's communication of July 15, 2016.

³⁸ State's communication of July 15, 2016.

³⁹ Article 4.1. 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.

⁴⁰ Article 5.1. Every person has the right to have his physical, mental, and moral integrity respected.

⁴¹ IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 185.

⁴² 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.

⁴³ I/A Court H.R., *Case of Landaeta Mejías Brothers et al v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 27, 2014. Series C. No. 281, par. 123; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 123.

individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.”⁴⁴

52. In that connection, for an explanation for the use of lethal force to be considered satisfactory, it must be the result of an investigation that is compatible with the guarantees of independence, impartiality, and due diligence; moreover, it must address all the elements that, according to inter-American case law, have to be present for such use of force to be justified:

- i. Legitimate purpose: the use of force must be addressed at achieving a legitimate purpose.
- ii. Absolute necessity: [I]t is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that it is sought to protect, according to the circumstances of the case.
- iii. Proportionality: the level of force used must be in accordance with the level of resistance offered, which implies establishing a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused.⁴⁵

53. Likewise, the Commission finds that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials allow law enforcement officials to use firearms “to arrest a person presenting such a danger and resisting their authority.”⁴⁶ That notwithstanding, as part of the requirements for use of force to be permissible, the Principles say that: (i) it may be made only when less extreme means are insufficient to achieve these objectives; (ii) it “may only be made when strictly unavoidable in order to protect life”; (iii) law enforcement officials must give a “clear warning of their intent to use firearms”; and (iv) said warning must be given with sufficient time, unless to do so would endanger the law enforcement officials or other persons.

54. Based on the foregoing, the State must demonstrate the legitimate purpose, absolute necessity, and proportionality of the use of lethal force in the specific circumstances of each case. In addition, as a result of those principles, the Commission recalls that state agents who take part in operations must apply the criteria of “differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.”⁴⁷

55. In the instant case, there is no dispute over the fact that, as a result of use of lethal force by agents of the Ecuadorian Navy, Luis Eduardo was wounded and later died and Andrés Alejandro was wounded. The dispute is over whether the death and injuries were the result of an armed confrontation between State agents and the fisherman, including the Casierra brothers, as the State argues, or if they were actually caused by a misuse of lethal force, given that the fisherman did not have any firearms, as the petitioners contend.

56. According to the standards described above, the Commission must analyze if the State has satisfactorily explained that the killing and wounding of the Casierra brothers was the result of a legitimate use of lethal force to repel an attack.

57. The Commission finds that the explanation offered by the State is essentially based on the conclusions reached by the authorities in the framework of the military criminal jurisdiction, where it was decided to dismiss the matter in favor of the state agents involved.

⁴⁴ 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. 108; *Case of Cruz Sánchez et al. v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of April 17, 2015, Series C. No. 292, par. 291; and *Case of Landaeta Mejías Brothers et al v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 27, 2014. Series C. No. 281, par. 132.

⁴⁵ I/A Court H.R., *Case of Landaeta Mejías Brothers et al v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 27, 2014. Series C. No. 281, par. 134.

⁴⁶ Principles 9 and 10 of the United Nations’ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁴⁷ I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, par. 85.

58. The IACHR notes that that investigation, as the next section of the report indicates, fell short of the standards of independence and impartiality required by the American Convention for the investigation and punishment of acts of the kind that occurred in this case. In relation to the accounts provided by those officials, the Commission considers it relevant to point out that when it comes to clarifying whether or not lethal force was legitimately used, the testimonies of the agents involved cannot automatically be presumed true; rather, they must be weighed against all the evidence contained in the record, which the State has an obligation *ex officio* to gather with due diligence, which did not occur in the instant case. On the contrary, the Commission finds that the determinations of the criminal courts in the military jurisdiction were essentially based on the operational orders and on the versions of events provided by the Navy personnel who were involved in the events themselves. Furthermore, the Commission notes that the testimonies gathered and their respective appraisal without minimum guarantees of independence and impartiality, as well as the determinations of a jurisdiction *per se* incompatible with the Convention, cannot constitute a satisfactory explanation of strict compliance with the principles of legitimate purpose, necessity, and proportionality of use of lethal force in a specific case.

59. The foregoing is sufficient to conclude that the State has not provided a satisfactory explanation of the use of lethal force based on an independent, impartial investigation conducted with due diligence. That aside, the IACHR notes various elements in the record that confirm that the use of lethal force was incompatible with the State's international obligations.

60. First, the examinations and inspections of the scene turned up none of the supposed firearms that the Casierra brothers and other fishermen had allegedly used on their vessel. Nor is there anything in the record to show that on December 8, 1999, any firearms were confiscated from the fishermen, notwithstanding the fact that those individuals were in the custody of the State. Thus, the Commission finds that the only basis for arguing that there was a prior attack were the statements of the agents involved and the existence of holes in the state vessel, of which no evaluation was done to determine the type of firearm or the possible age of those hole.

61. Second, as regards the issues of legitimate purpose and absolute necessity, the information provided by the State to the IACHR, the statements of the agents involved, and the authorities in the military criminal jurisdiction all agree that the state agents discharged their firearms at the engine of the vessel carrying the Casierra brothers while it was fleeing. Despite what the State said, the IACHR notes that, according to the record, the shots were aimed at the vessel's superstructure and struck the individuals on board, as was effectively demonstrated by Luis Eduardo's death and Andrés Alejandro's wounds. The Commission also highlights that flight can never be considered the basis of legitimate purpose and strict necessity in the use of lethal force, unless there are signs that another person's life is in danger. As the Court has stated, "it cannot be concluded that the requirement of 'absolute necessity' to use force against a person has been met when such a person does not represent a direct danger, 'even when the failure to use force results in the loss of the opportunity to capture them.'"⁴⁸

62. As mentioned, in this case, there is nothing that minimally shows that there was a prior armed attack from the vessel that was carrying the Casierra brothers, since no weapons were confiscated from the fishermen and no evidence was found to that effect in the subsequent investigative procedures. In any event, even if one accepts, for the sake of discussion, that there was a prior attack, several sources concur that the objective of the gunfire on the part of the State agents was to prevent the flight of the vessel following the alleged attack. In other words, there is nothing in the State's own version to conclude that the supposed attack remained ongoing at the time that lethal force was used; therefore, the only acceptable purpose—to protect life—remained valid. On the contrary, the IACHR reiterates that several sources agree that at the time that lethal force was used, the fishermen's vessel was taking flight and the objective of the use of force was to prevent that situation.

⁴⁸ I/A Court H.R., *Case of Landaeta Mejías Brothers et al v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 27, 2014. Series C. No. 281, par. 134.

63. Finally, with regard to proportionality, according to the visual inspection contained in the record, the Casierra brothers' vessel had a total of 49 holes caused by the use of firearms. The Commission considers that, in addition to the preceding elements, that suggests a disproportionate use of lethal force by the State.

64. Based on the foregoing, in the instant case the State has not demonstrated that it used legitimate force and the grave consequences of that were that Luis Eduardo Casierra was killed and Andrés Alejandro Casierra's physical integrity was violated. The use of force in a disproportionate manner and without legitimate purpose or necessity is attributable to the State of Ecuador as a result of the actions of its agents.⁴⁹ Thus, the Commission concludes that Ecuador is responsible for violation of Luis Eduardo Casierra's rights to life and humane treatment recognized in Articles 4(1) and 5(1) of the American Convention, taken in conjunction with the obligations contained in Article 1(1) of that instrument, bearing in mind his death and his suffering prior thereto as a consequence of the gunshot wounds. The Commission also finds that Ecuador is responsible for violation of Andrés Alejandro Casierra's right to humane treatment recognized at Article 5(1) of the American Convention taken in conjunction with the obligations contained in Article 1(1) of the same instrument.

B. Rights to a fair trial and judicial protection (Articles 8.1⁵⁰ and 25.1⁵¹ of the American Convention, in connection with Articles 1.1 and 2 of the same instrument)

65. Both the IACHR and the Court have determined that in cases concerning violent deaths, especially those in which state agents may be involved, the investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the deeds.⁵² In addition, states are required to provide a simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and the victims obtain reparations for the harm suffered.⁵³

66. Furthermore, in cases where death may have been the consequence of the use of lethal force by state agents, the European Court has found that the "most careful scrutiny" must be used, taking into consideration "not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination."⁵⁴ Thus, "[a]ny deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard."⁵⁵

67. The Commission recalls that special jurisdictions, such as the military criminal justice system, should have a restricted and exceptional scope and be designed to protect special juridical interests associated with the entity itself.⁵⁶ Thus, the Inter-American Court has also had occasion to analyze the structure and composition of special tribunals, such as military courts, in the light of the United Nations Basic Principles on the Independence of the Judiciary. A number of relevant factors are: (i) that they are made up of active-duty officers who are hierarchically subordinate to higher-ranked officers through the chain of

⁴⁹ I/A Court H.R., *Case of Nadege Dorezma v. Dominican Republic*, Merits, Reparations and Costs, Judgment of October 24, 2012. Series C. No. 251, par. 91.

⁵⁰ Article 8.1. 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.

⁵¹ Article 25.1. 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.

⁵² IACHR, Report No. 41/15, Cases 12.335, 12.336, 12.757, and 12.711, Merits, Gustavo Giraldo Villamizar Durán et al. Colombia, July 28, 2015, par. 195. See also I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*, Judgment of September 15, 2005, Series C. No. 122, par. 219; and *Case of Mendoza et al. v. Argentina, Preliminary Objections, Merits and Reparations*, Judgment of May 14, 2013. Series C. No. 260, par. 218.

⁵³ I/A Court H.R., *Loayza Tamayo Case v. Peru*, Reparations. Judgment of November 27, 1998. Series C. No. 42, par. 169.

⁵⁴ ECHR, *McCann and Others v. the United Kingdom*, Application no. 27229/95, September 1995, § 36.

⁵⁵ ECHR, *Milkchalkova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42. 42.

⁵⁶ IACHR, Report 53/01, Case 11.565, Ana, Beatriz, and Cecilia González Pérez, Mexico, April 4, 2001, par. 81.

command; (ii) that their designation does not depend on their professional skills and qualifications to exercise judicial functions; and (iii) that they do not have sufficient guarantees that they will not be removed. This has led to the conclusion that such tribunals lack the necessary independence and impartiality to take cognizance of human rights violations.⁵⁷

68. Taking the above criteria into account, the Inter-American Court has referred to the incompatibility with the American Convention of the use of military criminal tribunals in cases involving potential human rights violations, noting that the fact that the very same military forces are those “charged with prosecuting their peers for executing civilians” is problematic for the guarantee of independence and impartiality.⁵⁸ Accordingly, the Inter-American court has found as a special jurisdiction, military courts “should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system.”⁵⁹

69. In the instant case, the Commission notes that the investigation of the Ecuadorian Navy personnel who took part in the killing and wounding of the Casierra brothers was conducted in the military criminal jurisdiction. Given that the facts concern human rights violations, specifically violations of the rights to life and humane treatment, they cannot be regarded as possible offenses committed in the line of duty and, therefore, the investigation should have been carried out in the regular jurisdiction.

70. Furthermore, the Commission also finds that the application of military justice in this particular case was due to the fact that Articles 187 of the Constitution and 2 of the Military Code of Criminal Procedure were in force; those provisions did not clearly establish that acts such as those that occurred in the instant case could not be considered as falling under the jurisdiction of the military criminal courts, even if they were committed by military personnel in the course of their duties. As a result, in this specific case, the military courts assumed jurisdiction solely on the basis of those factors and without taking into account the nature of the acts and the legal interests involved.

71. In addition, the petitioner alleged that the relatives of the Casierra brothers were repeatedly prevented from participating in the proceedings in the military criminal jurisdiction as a civilian party or from being heard in same. The petitioner added that, in addition, there was no progress in the criminal proceeding against the civilian who was on the Ecuadorian Navy vessel. The Commission finds that the State has not contested those facts or furnished any information in that regard.

72. Based on the above, the Commission concludes that, by applying military criminal justice in the instant case, the Ecuadorian State violated the rights to a fair trial and judicial protection, specifically the right to a competent, independent, and impartial tribunal and the right to effective recourse to a competent court or tribunal, in accordance with Articles 8(1) and 25(1) of the American Convention, taken in conjunction with Articles 1(1) and 2 thereof, to the detriment of the Casierra brothers’ relatives.

C. Right to humane treatment of the relatives of the Casierra brothers (Article 5.1 of the American Convention, in connection with Article 1.1 of that instrument)

73. Article 5(1) of the American Convention on Human Rights provides, “Every person has the right to have his physical, mental, and moral integrity respected.” In relation to the relatives of victims of gross human rights violations, the Inter-American Court has held that in certain instances it may be presumed that their right to humane treatment has been violated based on the suffering and anxiety generated by the circumstances of such cases.⁶⁰ Furthermore, the Commission has determined that “the single loss of a loved one as a consequence of the arbitrary use of force by security forces, in an ongoing context of threats and

⁵⁷ I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Merits, Reparations and Costs. Judgment of November 22, 2005, Series C, No. 135, pars. 155-156.

⁵⁸ I/A Court H.R., *Las Palmeras v. Colombia*, Merits, Judgment of December 6, 2001. Series C. No. 90, par. 53.

⁵⁹ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009. Series C. No. 209, par. 272.

⁶⁰ I/A Court H.R., *Case of Blake v. Guatemala*, Merits, Reparations and Costs, Judgment of January 24, 1998. Series C. No. 36, par. 114.

defenselessness, followed by the further lack of clarification and impunity, permits the inference of an adverse effect on the physical and psychological integrity of the immediate family unit of those killed.”⁶¹

74. In addition, the Court has held:

[T]he absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.⁶²

75. In the instant case, the Commission considers it established that Luis Eduardo Casierra lost his life and Andrés Alejandro Casierra was wounded in circumstances in which state agents used lethal force in an illegitimate, unnecessary, and disproportionate way without justification for doing so. Added to that, there was no investigation by a competent, independent, and impartial authority.

76. Therefore, the Commission considers that the loss of a loved one and the wounding of another in circumstances such as those described in this report, coupled with the absence of truth and justice, caused suffering and anguish to the relatives of the Casierra brothers identified hereinabove (see par. 20). The foregoing violated their right to have their mental and moral integrity respected, as recognized at Article 5.1 of the American Convention, in connection with the obligations set out in Article 1(1) thereof.

V. CONCLUSIONS AND RECOMMENDATIONS

77. Based on its determinations as to fact and law, the Inter-American Commission has concluded that the State is responsible for violation of Articles 4(1) (right to life), 5(1) (right to humane treatment), 8(1) (right to a fair trial), and 25(1) (right to judicial protection) of the American Convention on Human Rights, taken in conjunction with the obligations set forth in Articles 1(1) and 2 of that instrument.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE ECUADORIAN STATE:

1. Provide full reparation for the human rights violations found in this report, including both material and nonpecuniary dimensions and encompassing measures of just satisfaction and economic compensation.
2. Take steps to provide the physical and mental health care necessary for the rehabilitation of Alejandro Casierra Quiñonez and his relatives, should they wish it, in a manner agreed upon with them.
3. Initiate a diligent and effective investigation in the regular criminal jurisdiction, carried out within a reasonable time, in order to completely clarify the events, identify all those who bear possible responsibility, and impose the appropriate penalties for the human rights violations found in this report. Taking into account the seriousness of the violations found and the inter-American standards in that respect, the Commission underscores that the State may not invoke the principle of *non bis in idem*, *res judicata*, or the statute of limitations to justify failure to implement this recommendation.
4. Adopt non-repetition measures that include (i) training for all Ecuadorian Navy personnel in international standards on the use of force, including lethal force; (ii) adequate accountability mechanisms with respect to abuses committed by members of such security forces; (iii) strengthening investigative capacities in relation to cases involving the use of lethal force in

⁶¹ IACHR, Report No. 11/10. Case 12.488, Merits, Barrios Family, Venezuela, July 26, 2010, par. 227.

⁶² I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations and Costs, Judgment of November 27, 2008, par. 102.

order to ensure that such investigations are consistent with the standards described in this report; and (iv) ensuring that domestic legal provisions and their interpretation are compatible with the standards described in this report where application of military criminal justice is concerned.