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**REPORT No. 457/21**  
**CASE 11.444**  
REPORT ON MERITS (PUBLICATION)

AMPARO CONSTANTE MERIZALDE  
ECUADOR

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## I. SUMMARY

1. On November 4, 1994, the Inter-American Commission on Human Rights (hereinafter the “Commission,” “Inter-American Commission,” or “IACHR”) received a petition lodged by the Ecumenical Commission on Human Rights (CEDHU) (hereinafter “the petitioners”) alleging the responsibility of the Republic of Ecuador (hereinafter, “the State,” “the Ecuadorian State,” or “Ecuador”) for the arbitrary and illegal arrest, among other violations of the rights to personal liberty, a fair trial, and judicial protection, and the alleged torture by agents of the State of Amparo Constante Merizalde between January 13 and April 6, 1994, in the city of Quito, in the context of a criminal investigation of a putative robbery.

2. The State, for its part, argued that the alleged victim was detained as part of an investigation into a robbery at the place where she worked. It said that her investigation was conducted in observance of due process guarantees and within a reasonable time. As to the alleged torture, the State said that there was no proof that the injuries were caused by its agents on the date suggested by the petitioners. The State said that the injuries may be explained by the “practice” of detention center inmates of “welcoming” new arrivals. The State provided general information on the constitutional framework in the wake of the events in the case.

3. Having examined the factual and legal submissions of the parties, the Inter-American Commission has concluded that the State of Ecuador is responsible for violation of Articles 5.1, 5.2, 8.1, 8.2 d), e), g), 8.3, 25.1 and 1.1 of the American Convention, and the obligations established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, “IACPPPT”) to the detriment of Amparo Constante Merizalde.

## II. PROCESSING BY THE COMMISSION

4. The original petition was lodged on November 4, 1994. The processing of the petition from the time it was lodged to the decision on admissibility is detailed in Report on Admissibility 69/19,<sup>1</sup> adopted on July 12, 2010. In that report the Commission declared that the case was admissible in relation to a possible violation of Articles 5, 8, and 25 of the American Convention taken in conjunction with the obligations established in Article 1 (1) thereof. It also declared the case inadmissible in relation to the right recognized in Article 7 of the Convention.

5. On July 20, 2010, the Commission notified the parties of the aforementioned report and, pursuant to Article 37 (1) of the Rules of Procedure then in force, gave the petitioners three months in which to submit additional observations on merits. Furthermore, pursuant to Article 48(1)(f) of the American Convention, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement.

6. On September 21, 2010, the petitioners expressed a desire to initiate a friendly settlement procedure. The State was notified as much on October 4, 2010, and it was given one month to submit its observations with respect to such possibility.

7. On February 18, 2011, the petitioners reported that they had contacted the Office of the Attorney General (*Procuraduría General del Estado*) in order to inquire if the State wished to initiate the friendly settlement procedure, to which, they said, they received no reply. Faced with this situation, they submitted their observations on merits, which the Commission relayed to the State of Ecuador on March 29, 2011, with the request that, in accordance with Article 37 (1) of the Rules of Procedure then in force, it submit its observations on merits within three months. The State submitted its observations on merits on October 10, 2011.

8. The petitioners sent additional communications on December 28, 2011, September 11, 2012, and December 12, 2013. For its part, the State presented further communications on July 26, 2012 and September 25, 2013. That information was duly relayed between the parties.

<sup>1</sup> IACHR Report No. 69/10, Petition 11.444, Admissibility, Amparo Constante Merizalde, Ecuador, July 12, 2010, pars. 4 to 12. Available at: <http://www.cidh.org/annualrep/2010eng/ECAD11444EN.DOC>.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

9. The petitioners say that Amparo Constante Merizalde was arrested at 8:00 p.m. on January 13, 1994, and that the police arrest report was submitted the following day to the Chief of Police of Pichincha, who, under the Code of Criminal Procedure in force at the time, acted as the examining magistrate (*Juez de instrucción penal*). According to the petitioners, that official issued a remand order pending investigation at 1:00 p.m. on January 14.

10. The petitioners say that according to the certification issued at Quito Provisional Detention Center, the alleged victim left the Pichincha Criminal Investigation Office on January 14, 15, and 17, 1994. They say that on Saturday, January 15, 1994, agents Castillo and Valverde subjected her to physical and psychological torture with the aim of force her to confess the robbery. They said that agent Castillo applied electricity to her and that agent Valverde slapped her, yanked her hair, and threatened to kill her if she reported the torture. They said that it was in those circumstances that Amparo Constante Merizalde confessed to having taken part in the crime.

11. The petitioners said that the statements given on January 15 and 17, 1994, are not signed by a defense counsel appointed by the detainee or one assigned by the State.

12. The petitioners say that the medical examiner's report of January 18, 1994, found that the injuries that she exhibited were the result of trauma with a hard blunt object and the skin's contact with electricity. According to the petitioners, that report was brought to the attention of the Chief of Police of Pichincha. They stressed that the medical examination was carried out by the state's own medico-legal experts and that, therefore, if the State doubted the credibility of its own officials, it should have opened a criminal investigation, which did not occur.

13. They said that on January 18, 1994, the Chief of Police of Pichincha issued the order to initiate proceedings, remanded the alleged victim in custody pending trial, and instructed that investigative procedures be carried out. They mentioned that the Fifth Criminal Court in and for Pichincha took up the case on February 1, 1994, issued a remand order pending trial, and ordered various investigative procedures as part of the preliminary inquiry opened.

14. They said that it was to the same criminal court in and for Pichincha that on February 17, 1994, the alleged victim submitted a signed statement in which she denounced that she had been tortured by the investigating agents. They say that she also charged that no prosecutor was present at any time and that the statement in which she admitted the offense had been written by the agents themselves, who forced her to sign it, telling her that if she reported the torture to which she had been subjected to anyone, they would have her killed.

15. With regard to the State's submission concerning the creation of the Truth Commission, years after, the petitioners indicated that at no time did the State specify that said Commission had investigated the instant case.

16. They argued that the alleged victim's **right to humane treatment** had been violated on account of the fact that she was subjected to torture, as the medical examination showed. In that connection, they cited jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights relating to the absolute prohibition of torture.

17. They stated that her **right to a fair trial** was violated given that the guarantee of a reasonable time was not observed because, to date, there is no pronouncement by the judge in the judicial record rendering a decision on the charges brought against the alleged victim in January 1994, in spite of the fact that under domestic law the statute of limitations has run. The petitioners provided a detailed description of the contents

of the record of the investigation conducted into the alleged victim, stating that the last item in the record is an official letter dated April 6, 1994, ordering her release. They added that the alleged victim was not assisted by a defense counsel—either appointed by her, or assigned by the State—when she gave her statements to the police on January 15 and 17, 1994, in violation of her right to mount a defense.

18. They also said that the **right to a fair trial and judicial protection** was infringed by the fact that the torture to which the alleged victim was purportedly subjected was reported both to the Chief of Police, who presided over her investigation, and to the Fifth Criminal Court in and for Pichincha, without either of those two authorities ordering the necessary investigation. The petitioners argue that the State had an obligation to open such an investigation because under the domestic regulatory framework in place torture is a publicly actionable criminal offense that should be prosecuted *ex officio* as soon as the criminal courts are aware of its possible commission.

## **B. The State**

19. The State said that the alleged victim was detained as part of an investigation into a robbery at the “Lord Nelson” store, where she worked. It said that the police report was submitted to the Chief of Police on January 14, 1994, in accordance with Articles 172 and 173 of the Code of Criminal procedure then in force. It said that the chief of police, who was also the examining magistrate, in accordance with the law in force at the time, authorized the detention of the accused based on the complaint lodged by the injured party.

20. The State argued that in the criminal proceeding pursued against the alleged victim, which fell under the jurisdiction of the Fifth Criminal Court in and for Pichincha, due process was observed, as was the reasonable-time guarantee.

21. It said that the alleged victim was taken from Quito Provisional Detention Center (hereinafter “CDP”) to the Pichincha Criminal Investigation Office (hereinafter “OID”) on January 14, 15, and 17, 1994, with two days elapsing between January 15, 1994, when the petitioner alleged that the violations occurred, and January 18, 1994, when the medical examiner’s report was issued. In that connection, the State said that it was odd that on January 16, 1994, the petitioner must have been confined in the CDP until the 17th, when she again went to the OID, and yet that there was no testimony from persons deprived of liberty in that same detention facility to confirm that on January 16, 1994, the alleged victim already exhibited injuries, much less any compelling evidence that those injuries were sustained while she was giving her statements at the OID.

22. It said that, the trial having been conducted, on April 6, 1994, the competent authority ordered the alleged victim’s release. The State did not offer any information as to the existence or not of a final decision in that proceeding.

23. As to the alleged violation of the right to have one’s physical integrity respected, the State said that, according to the case law of the Inter-American Court, if a person detained in normal circumstances shows signs of torture or degrading treatment, the State has an obligation to explain the situation. In that regard, the State explained the injuries exhibited by the alleged victim, saying that “we have heard from different sources that when a person, be they a man or woman, charged with committing an offense first arrives at the Provisional Detention Center, they are received at the prison facility with the well-known welcome from the inmates who for one reason or another have been detained there for some time, and presumably this happened to Ms. JANETH CONSTANTE.”

24. The State also said that the statements of the alleged victim and a medical examiner’s report specifying a number of injuries to her without undertaking a thorough analysis cannot, on their own, be taken as proof of torture or cruel, inhuman, or degrading treatment. The State recalled the constituent elements of torture and reiterated that the petitioners did not conclusively demonstrate the existence of such a violation in this case.

25. Referring to the opinion of the medico-legal expert, the State said that it was not contrasted with any other study of a like nature “or one by another expert in the area of health.” It added that in situations of torture,

several “human rights litigators” recommend conducting examinations after the alleged occurrence of the facts in order to verify the existence of torture, of which there is no evidence in this case.

26. The State argued that the facts are “hazy” to the extent that it is not possible to contrast the information as to whether or not Amparo Constante Merizalde sustained injuries while giving statements at the OID.

27. The State provided information about the powers of the chief of police under the 1983 Code of Criminal Procedure and its 1994 reforms. In addition, the State described the criminal procedure in use at the time, mentioning the following stages: Preliminary hearing (*sumario*), order to initiate proceedings (*auto cabeza de proceso*), intermediate stage, (*etapa intermedia*), order to initiate plenary trial proceedings (*auto de apertura del plenario*), and plenary stage (*etapa del plenario*); it also provided an explanation of each.

28. With regard to the alleged violation of the right to a fair trial, the State underscored the system of guarantees envisaged in the Constitution. In relation to the alleged violation of the reasonable-time guarantee, the State said that the criteria that the Inter-American Court has established in its jurisprudence had to be met. It added that in the instant case “a number of procedural incidents may also have existed that had an influence in terms of potential anomalies with respect to a reasonable time” and it said that time frames should be examined taking into account specific circumstances and should not be considered fatal.

29. The Ecuadorian State referred in general terms to the creation of the Truth Commission for the human rights violations that occurred in Ecuador between 1984 and 2008 as a sign of its preoccupation with ensuring access to justice. The State said that the petitioners overlooked the work of that commission. It added that the petitioners also disregarded the 2008 Basic Charter of Montecristi [Tr: the Constitution], the Organic Code of the Judiciary, and other legal and constitutional mechanisms that “define the framework of rights and correlative guarantees.”

30. The State said that it has developed an important body of law to ensure human rights, in keeping with both Article 1(1) and Article 2 of the Convention. It underscored that the 2008 Constitution “promotes or binds together” all rights and insisted that currently one should refer to a State under the constitutional rule of law. The State concluded that at the time of the events, both the Constitution and other bodies of law recognized the individual’s right to protection of their integrity.

#### IV. PROVEN FACTS

##### A. Regarding Mrs. Amparo Constante Merizalde, the events surrounding her arrest, and what happened while she was in the custody of the State

31. At the time of the events, Amparo Constante Merizalde<sup>2</sup> was 20 years old<sup>3</sup> and employed at the Lord Nelson tobacco store, situated at premises 14 in the Quicentro shopping mall in Quito.<sup>4</sup> The proprietor of the store was Mr. Fabián Anda and she had worked there since November 1993.<sup>5</sup>

<sup>2</sup>In the various attached documents from the record, the alleged victim is referred to in a variety of ways, including Janeth Amparo, Amparo Janeth, Janeth Constante, and Amparo. The Commission will refer to the alleged victim as Amparo Constante Merizalde, as that was the name by which the petitioners identified at and how she identifies herself in the documents that bear her signature.

<sup>3</sup> Annex 1. Forensic medical examination report No. 201 by the Department of Forensic Medicine of the National Bureau of Investigations of the National Police, January 18, 1994 (attached to the original petition of November 4, 1994).

<sup>4</sup> Annex 2. Letter from Amparo Constante Merizalde to Elsie Monge dated January 17, 1994. (attached to the original petition of November 4, 1994); Annex 3. Complaint of Mr. Galo Anda to the Chief of Police of Pichincha dated January 14, 1994 (attached to the State’s communication of December 10, 1996); Annex 4. Statement of Amparo Janeth Constante Merizalde in response to additional questioning by the Judge of the Fifth Criminal Court in and for Pichincha, February 17, 1994 (attached to the petitioners’ communication of July 4, 1996).

<sup>5</sup> Annex 3. Complaint of Mr. Galo Anda to the Chief of Police of Pichincha dated January 14, 1994 (attached to the State’s communication of December 10, 1996); Annex 4. Statement of Amparo Janeth Constante Merizalde in response to additional questioning by the Judge of the Fifth Criminal Court in and for Pichincha, February 17, 1994 (attached to the petitioners’ communication of July 4, 1996).

32. According to official information, "at approximately 8:00 p.m. on January 13, 1994, a robbery took place on the premises owned by Mr. Fabián Anda, who called the police in order to have Amparo Constante Merizalde arrested."<sup>6</sup>

33. According to the alleged victim, she was detained at approximately 8:00 p.m. that same day, January 13, 1994, without the relevant arrest warrant, on suspicion of robbery of a watch valued at several million sucres.<sup>7</sup>

34. The alleged victim was admitted as a detainee to the Provisional Detention Center at 8:30 p.m. on January 13, 1994, for investigation in connection with the aforesaid robbery.<sup>8</sup>

35. The day after the arrest, Mr. Galo Anda reported the disappearance of the watch from the store to the chief of police, asking him to investigate the alleged offense and to arrest and investigate Amparo Constante Merizalde and Aurora Díaz Villarreal.<sup>9</sup> Specifically, Mr. Galo Anda reported that:

On Wednesday, January 12, 1994, at around 7:00 p.m. the aforesaid employee reported the disappearance of a Cartier watch the value of US\$3,700, which had been in a display cabinet with the appropriate security measures. According to her, the last time that she had seen the watch was on Monday morning and that that day, Monday, January 10 that year, owing to a biological need, the aforesaid employee had left the store in the care of Ms. Aurora Beatriz Villarreal. In spite of personal efforts on his part he had been unable to recover the aforesaid watch.<sup>10</sup>

36. As a result of the foregoing, that very day, January 14, 1994, the chief of police of Pichincha ordered the arrest and investigation of Aurora Díaz Villarreal and Amparo Constante Merizalde,<sup>11</sup> who, as noted above, had been in the custody of the State since the previous day. The Commission has no information as to what happened to Aurora Díaz Villarreal.

37. On January 15 and 17, 1994, the alleged victim was taken to the Criminal Investigation Office of Pichincha in order to provide statements in response to questions regarding the charges against her.<sup>12</sup> As regards the people who were present when Ms. Constante Merizalde gave her statements, police officer Jorge Castillo himself said:

(...) during the statements on January 15, present were her mother, Lilian Noemí Merizalde, who signed the foot of the statement form presented by Ms. Janeth Constante, and the investigating agent; while the statements of January 17 were given in the presence of the duty prosecutor Mrs. Fabiola Díaz Ruiz, with the foot of the form signed by the investigating agent, the duty prosecutor, and Ms. Constante.<sup>13</sup>

38. On January 17, 1994, the alleged victim sent a letter signed by her and a lawyer to Sister Elsie Monge, President of CEDHU, informing her of her detention and providing the following description of what had happened:

<sup>6</sup> Annex 5. Report No. 2135-OIDP of the Criminal Investigation Office in Pichincha dated October 25, 1996 (attached to the State's communication of November 25, 1996).

<sup>7</sup> Annex 2. Letter from Amparo Constante Merizalde to Elsie Monge dated January 17, 1994 (attached to the original petition of November 4, 1994).

<sup>8</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996).

<sup>9</sup> Annex 3. Complaint of Mr. Galo Anda to the Chief of Police of Pichincha dated January 14, 1994 (attached to the State's communication of December 10, 1996).

<sup>10</sup> Annex 3. Complaint of Mr. Galo Anda to the Chief of Police of Pichincha dated January 14, 1994 (attached to the State's communication of December 10, 1996).

<sup>11</sup> Annex 7. Order for the arrest and investigation of Aurora Beatriz D. Villarreal and Janeth Amparo Constante Merizalde issued by the Chief of Police of Pichincha on January 14, 1994 (attached to the State's communication of December 10, 1996); Annex 5. Report No. 2135-OIDP of the Criminal Investigation Office in Pichincha dated October 25, 1996 (attached to the State's communication of November 25, 1996); Annex 8. Official letter No. 1924-PCSQ-96 from the Office of the President of the Superior Court of Justice to the Office of the President of the Supreme Court of Justice dated October 23, 1996 (attached to the State's communication of December 10, 1996).

<sup>12</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996).

<sup>13</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996).

(...) [she was] in the custody of the Criminal Investigation Office, specifically Agents CASTILLO AND VALVERDE, two bad policemen who, intent on involving [her] in the theft or disappearance of the aforesaid watch on Saturday, January 15, 1994, tortured and abused [her]; Agent CASTILLO applied electrical current to one of [her] arms and Agent Valverde slapped [her] face [and] pulled [her] hair; they threatened to kill [her] if she dared to report them for torturing [her], in the presence of witnesses.

In light of that, if anything happens to me I hereby report the matter for the record, since I am currently detained in the CDP.

It should be mentioned that the aforesaid agents had the utter temerity also to make mother sign in order to make me appear more credible, even though she neither saw nor heard anything.<sup>14</sup>

39. As to the investigation of Amparo Constante Merizalde, on January 17, 1994, the Chief of the Criminal Investigation Office of Pichincha sent the Chief of Police Pichincha Report No. 169-OIDP prepared by Agente Nelson Valverde,<sup>15</sup> which described the results of the inquiries and requested an extension of 48 hours to complete them.<sup>16</sup> The Commission does not have that report in its possession but it has other official documents that refer to such report.

40. On January 18, 1994, the alleged victim underwent a medical examination by medico-legal experts at the Provisional Detention Center.<sup>17</sup> The Commission does not have information regarding the reasons that prompted that medical examination on the above date. However, police report 1873-OIDP of May 1, 1996, prepared after the notification to the Ecuadorian State of the instant petition, (see *infra* párr. 51) refers to a complaint purportedly lodged by Amparo Constante Merizalde that very day, January 18, 1994.<sup>18</sup>

41. The findings of the forensic medical examination carried out on January 18, 1994 were described by the experts as follows:

An area of swelling and light bruising about 2 cm in diameter on the right side of her lower jaw; several circular surface burns each measuring 2 mm in diameter on the middle third of the back of her forearm; an abrasion measuring 1 cm in diameter on the inside of her left ankle; two abrasions each measuring 2 mm in diameter on her right side. These injuries are the result of trauma with a hard blunt object and the skin's contact with electricity, which have rendered her ill and physically incapable of work for three days counted from the date they occurred.<sup>19</sup>

42. That same day, January 18, 1994, the chief of police of Pichincha decided, *inter alia*, that the robbery had been committed by the alleged victim at approximately 11:00 a.m. on January 10, 1994, and that she had confessed those facts to the OIDP investigators.<sup>20</sup> As a result of the foregoing, the chief of police issued an order to institute proceedings against the alleged victim, ordering her to be remanded in custody pending trial at the Public Prison for Women in Quito and that investigative procedures be carried out, including the taking of the

<sup>14</sup> Annex 2. Letter from Amparo Constante Merizalde to Elsie Monge dated January 17, 1994 (attached to the original petition of November 4, 1994).

<sup>15</sup> Annex 9. Official letter No. 815-OIDP from the Chief of the Criminal Investigation Office of Pichincha to the Chief of Police Pichincha dated January 17, 1994 (attached to the State's communication of December 10, 1996). Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>16</sup> Annex 9. Official letter No. 815-OIDP from the Chief of the Criminal Investigation Office of Pichincha to the Chief of Police Pichincha dated January 17, 1994 (attached to the State's communication of December 10, 1996).

<sup>17</sup> Annex 1. Forensic medical examination report No. 201 by the Department of Forensic Medicine of the National Bureau of Investigations of the National Police, January 18, 1994 (attached to the original petition of November 4, 1994).

<sup>18</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996). The annexes to that police report refer to two documents, one of which is described as a "complaint made by Ms. JANETH AMPARO CONSTANTE MERIZALDE dated January 18, 1994." The IACHR does not have said annexes to the police report and its possession.

<sup>19</sup> Annex 1. Forensic medical examination report No. 201 by the Department of Forensic Medicine of the National Bureau of Investigations of the National Police, January 18, 1994 (attached to the original petition of November 4, 1994).

<sup>20</sup> Annex 11. Order to institute proceedings issued by the Chief of Police of Pichincha dated January 18, 1994 (attached to the petitioners' communication of July 4, 1996).



statement of the accused.<sup>21</sup> That order also named Fabián Anda as party and private plaintiff and instructed that the public defender office be notified.<sup>22</sup>

43. In January 19, 1994, a "constitutional act of incarceration" was issued, by which the chief of police of Pichincha ordered Amparo Constante Merizalde to be detained for criminal prosecution for theft to the detriment of Fabián Anda Vallejo until ordered to the contrary.<sup>23</sup>

44. Amparo Constante Merizalde authorized Mr. Flavio Sánchez to be her defense counsel in the proceeding against her and gave his judicial PO box as her domicile.<sup>24</sup> In that letter, Ms. Constante Merizalde said that she did not commit the offense of which she was accused and requested her release, adding that the report issued by the OID revealed no evidence or cause to presume her guilt.<sup>25</sup>

45. On February 1, 1994, the Fifth Criminal Court in and for Pichincha took up the case, assigned it the number 032-94, confirmed the alleged victim's detention order,<sup>26</sup> and requested proof of ownership and preexistence of the property said to have been stolen from the plaintiff.<sup>27</sup> It also summoned the alleged victim to appear to provide additional statements in response to questioning within the next eight days and ordered that the PO box of Mr. Flavio Sánchez, the defense counsel appointed by the alleged victim, to be taken into account.<sup>28</sup>

46. On February 1, 1994, the Judge of the Fifth Criminal Court in and for Pichincha issued a constitutional warrant of incarceration against the alleged victim, instructing that she be held in detention until that authority ordered the contrary and "provided "that there was no other outstanding detention order against her."<sup>29</sup>

47. On February 17, 1994, the alleged victim appeared in the Fifth Criminal Court in and for Pichincha to present additional statements in response to questioning,<sup>30</sup> declaring the following:

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<sup>21</sup> Annex 11. Order to institute proceedings issued by the Chief of Police of Pichincha dated January 18, 1994 (attached to the petitioners' communication of July 4, 1996).

<sup>22</sup> Annex 11. Order to institute proceedings issued by the Chief of Police of Pichincha dated January 18, 1994 (attached to the petitioners' communication of July 4, 1996); Annex 8. Official letter No. 1924-PCSQ-96 from the Office of the President of the Superior Court of Justice to the Office of the President of the Supreme Court of Justice dated October 23, 1996 (attached to the State's communication of December 10, 1996); Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>23</sup> Annex 12. Constitutional act of incarceration of Amparo Constante Merizalde issued by the Chief of Police of Pichincha dated January 19, 1994 (attached to the State's communication of December 10, 1996); Annex 8. Official letter No. 1924-PCSQ-96 from the Office of the President of the Superior Court of Justice to the Office of the President of the Supreme Court of Justice dated October 23, 1996 (attached to the State's communication of December 10, 1996); Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>24</sup> Annex 13. Undated letter addressed to the chief of police by which Amparo Constante Merizalde authorizes Dr. Flavio Sánchez López to be her defense counsel (attached to the State's communication of December 10, 1996).

<sup>25</sup> Annex 13. Undated letter addressed to the chief of police by which Amparo Constante Merizalde authorizes Dr. Flavio Sánchez López to be her defense counsel (attached to the State's communication of December 10, 1996).

<sup>26</sup> Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>27</sup> Annex 14. Decision of February 1, 1994, of the Fifth Criminal Court in and for Pichincha in the alleged victim's criminal proceeding (attached to the State's communication of December 10, 1996); Annex 8. Official letter No. 1924-PCSQ-96 from the Office of the President of the Superior Court of Justice to the Office of the President of the Supreme Court of Justice dated October 23, 1996 (attached to the State's communication of December 10, 1996).

<sup>28</sup> Annex 14. Decision of February 1, 1994, of the Fifth Criminal Court in and for Pichincha in the alleged victim's criminal proceeding (attached to the State's communication of December 10, 1996); Annex 13. Undated letter addressed to the chief of police by which Amparo Constante Merizalde authorizes Dr. Flavio Sánchez López to be her defense counsel (attached to the State's communication of December 10, 1996).

<sup>29</sup> Annex 15. Constitutional warrant of incarceration for Janeth Amparo Constante Merizalde issued by the Fifth Criminal Court in and for Pichincha on February 1, 1994 (attached to the State's communication of December 10, 1996); Annex 8. Official letter No. 1924-PCSQ-96 from the Office of the President of the Superior Court of Justice to the Office of the President of the Supreme Court of Justice dated October 23, 1996 (attached to the State's communication of December 10, 1996); Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>30</sup> Annex 4. Statement of Amparo Janeth Constante Merizalde in response to additional questioning by the Judge of the Fifth Criminal Court in and for Pichincha, February 17, 1994 (attached to the petitioners' communication of July 4, 1996).

I absolutely deny the allegations on which the false accusation is based because they are not true, because the acts of which I am accused [Tr: sic], given that, despite the fact that I worked at the Lord Nelson store since November, I never stole anything from the store or anywhere else. I work honorably and honestly at Mr. Fabian Anda Vallejo's store. I should mention that we were not allowed to go out and leave the store unattended, but that someone always had to be there. Furthermore, a lot of people unknown to us came into the store. I am innocent of the charges and I have always been known for my honesty and good behavior, and I come from a good family that taught me to be responsible in everything I do. I would like to mention, your honor, that the statement I supposedly gave at the OID is false since they prepared that statement themselves; I should mention that the prosecutor, who, as far as I know, was supposed to be present, was not, and the only person present was the owner of the store who was pressing; the agents of the OID, tortured me physically and psychologically, and even threatened me saying that if I said I had been mistreated they would get someone to kill me. Therefore, your honor, I demand my immediate release because I am innocent of everything of which I am accused.<sup>31</sup>

48. In her additional statements she also responded to a variety of questions. The Commission does not have access to the document containing the questions but the following was gathered from the aforementioned testimony:

To [question] 1. I do not know; to [question] 2. Yes, I know him. I had an employee-employer relationship with him; to [question] 3. I was in the store and, yes, there were a lot of people because customers enter and leave the store; to [question] 4. They were OID agents. I do not know them; to [question] 5. I have never been prosecuted on criminal charges; this is the first time. That is all that I can say in honor of the truth.<sup>32</sup>

49. By a decision of April 6, 1994, the Fifth Criminal Court in and for Pichincha revoked the pretrial detention of the alleged victim because she had paid the amount set as bail.<sup>33</sup> In light of the foregoing, in an official letter of that same date, the judge ordered the director of the Prison for Women of Quito to release her immediately.<sup>34</sup> According to information provided by the petitioners,<sup>35</sup> which the State has not contested, that was the last act in the record of the criminal proceeding against the alleged victim. The Commission has no information as to when she was actually released.

## **B. Regarding the steps taken by the State to investigate what happened**

50. The information available suggests that neither the contents of the letter of authorization to her lawyer regarding the falsity of her confession, nor the statement in response to additional questioning, in which Ms. Constante Merizalde denounced having been a victim of torture, gave rise to a criminal investigation in those regards. The only information regarding any kind of inquiry into what occurred is that which appears in the following paragraphs.

51. The Commission notes that after the State was notified of the petition in this case,<sup>36</sup> a report was requested on April 25, 1996, which was prepared by Police Lt. Hector Viteri, investigating officer of the Office of the Chief/Assistant Chief of the OID-P and addressed to the Chief of the Criminal Investigation Office of Pichincha, enclosed in Police Report 1873-OIDP of May 1, 1996.<sup>37</sup> That report indicates that the only investigative measure taken by him was to visit the CDP and review the documentation found there. The report also indicated that one step left pending was to "take a statement from Agent Jorge Catillo." Based on that measure the following conclusions reached:

<sup>31</sup> Annex 4. Statement of Amparo Janeth Constante Merizalde in response to additional questioning by the Judge of the Fifth Criminal Court in and for Pichincha, February 17, 1994 (attached to the petitioners' communication of July 4, 1996).

<sup>32</sup> Annex 4. Statement of Amparo Janeth Constante Merizalde in response to additional questioning by the Judge of the Fifth Criminal Court in and for Pichincha, February 17, 1994 (attached to the petitioners' communication of July 4, 1996).

<sup>33</sup> Annex 16. Decision of April 6, 1994, of the Fifth Criminal Court in and for Pichincha in the criminal proceeding against the alleged victim (attached to the State's communication of December 10, 1996); Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>34</sup> Annex 17. Official letter No. 416/JQPP to the Director of the Prison for Women of Quito dated April 6, 1994. (attached to the State's communication of December 10, 1996); Annex 10. Official letter No. 2746-96-JQPP from the Fifth Criminal Court in and for Pichincha to the Superior Court of Quito dated September 27, 1996 (attached to the State's communication of December 10, 1996).

<sup>35</sup> Petitioners' brief of December 12, 2013, received on February 4, 2014.

<sup>36</sup> The initial notification of the State of the instant case, requesting it for information, was done on March 13, 1995.

<sup>37</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996).

1. It cannot be construed that there was any mistreatment when Ms. JANETH AMPARO CONSTANTE MERIZALDE was giving her statement for the following reasons:

A. When she gave her statement on January 15, 1994, Mrs. LILIAN NOEMI MERIZALDE, the mother of the then-detainee was present, who, together with her daughter, signed at the foot of the statement.

B. On January 17, 1994, when the relevant investigations continued, Ms. JANETH CONSTANTE gave her statements in the presence of Dr. Fabiola Diaz Ruiz, the duty prosecutor at the time.

2. It cannot be construed that Ms. JANETH AMPARO CONSTANTE MERIZALDE's injuries were caused at the OID-P offices by the investigating agents because in the course of the inquiries made in the presence of the prosecutor at no time did she say that she had been physically mistreated so as to give her (illegible); Ms. JANETH CONSTANTE said in her statement that she was giving it FREELY AND VOLUNTARILY, WITHOUT ANY KIND OF COERCION, WHETHER EMOTIONAL OR PHYSICAL, OR IN RESPONSE TO ANY OFFER WHATSOEVER, IN FULL USE OF HER FACULTIES AND COGNIZANT OF HER CONSTITUTIONAL GUARANTEES.

3. It is known from different sources that when a person, be they a man or a woman, charged with committing an offense first arrives at the CDP, they are greeted at the prison facility with the well-known welcome from the inmates who for one reason or another have been detained there for some time, (illegible) this happened to Ms. JANETH CONSTANTE".<sup>38</sup>

52. On October 31, 2006, the General Commandant of the National Police sent Official Letter 96-1800-CG to the Director General for Humanitarian Affairs and the Environment of the Ministry of Foreign Affairs, enclosing a xerox copy of the report prepared by the OID detailing the steps taken to investigate the unlawful arrest of the alleged victim.<sup>39</sup> That report was requested on October 4, 1996 and prepared by the investigator, Police Corporal Juan Enrique, with the approval of the Chief of the Apprehension and Criminal Intelligence Unit of the OIDP and was addressed to the Chief of the Criminal Investigation Office of Pichincha.<sup>40</sup> That report indicates that the only investigative steps taken were to visit the Provincial Archive of the OID-Pichincha and the Office of the Chief of Police of Pichincha, where he requested xerox copies of the documents found there. The report contains the following conclusions:

1. At approximately 8:00 p.m. on January 13, 1994, JANETH AMPARO CONSTANTE MERIZALDE was arrested because she was caught stealing at the Lord Nelsons (sic) store at the Quincentro shopping mall by the proprietor, Mr. FABIÁN ANDA, who asked that she be arrested, as the relevant police report records.

2. Mr. FABIÁN ANDA, filed a written complaint with the Chief of Police of Pichincha, Dr. Juan Campaña Zurita, the examining magistrate at the time, based on the provisions contained in Articles 172 and 173 of the Code of Criminal Procedure, at 12:45 p.m. on January 14, 1994, legalizing the arrest of JANETH AMPARO CONSTANTE MERIZALDE and ordering the relevant inquiries to be carried out.

3. Accordingly, Mr. FABIÁN ANDA legalized the detention of the citizen JANETH AMPARO CONSTANTE MERIZALDE in less than 24 hours after the arrest was made, thus ruling out that she had been arbitrarily detained.<sup>41</sup>

53. There is no information in the record to suggest that, other than these reports submitted by the OID, any other criminal or administrative investigation of the facts in the instant case was carried out thereafter.

<sup>38</sup> Annex 6. Police report 1873-OIDP from the investigating officer of OID Pichincha to the Chief of the Criminal Investigation Office in Pichincha dated May 1, 1996 (attached to the State's communication of May 29, 1996).

<sup>39</sup> Annex 18. Official letter No. 96-1800-CG from the Office of the General Commandant of the National Police dated October 31, 1996. (attached to the State's communication of November 25, 1996).

<sup>40</sup> Annex 5. Report No. 2135-OIDP of the Criminal Investigation Office in Pichincha dated October 25, 1996 (attached to the State's communication of November 25, 1996).

<sup>41</sup> Annex 5. Report No. 2135-OIDP of the Criminal Investigation Office in Pichincha dated October 25, 1996 (attached to the State's communication of November 25, 1996).

## V. ANALYSIS OF LAW

54. The Commission will now proceed to provide its legal analysis in the following order: i) the right to humane treatment and the absolute prohibition of torture; ii) the right to a fair trial during the investigation of Ms. Constante Merizalde; and iii) the right to a fair trial and judicial protection regarding the duty to investigate the allegations of torture and of torture and cruel, inhuman, and degrading treatment.

### 1. The right to humane treatment, the absolute prohibition of torture, the right to not be compelled to be a witness against oneself (Articles 5.1, 5.2, and 8.2(g)) of the American Convention, in relation to Article 1.1 of same)

55. Article 5 of the American Convention establishes, as relevant:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. 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.

Article 8.2 of the American Convention indicates, as pertinent:

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(...)

g. the right not to be compelled to be a witness against himself or to plead guilty; and

56. Article 1.1 of the American Convention states that:

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.

57. The IACHR has underscored that the American Convention prohibits the use of torture or cruel, inhuman, or degrading treatments or punishment in any circumstance. The Commission has stated that “an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*.”<sup>42</sup> It has also determined the prohibition of torture to be a norm of *jus cogens*.<sup>43</sup>

58. For its part, the Court has repeatedly stated that “International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*”<sup>44</sup>. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of

<sup>42</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 118.

<sup>43</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 154.

<sup>44</sup> Corte IDH. *Caso Bueno Alves Vs. Argentina*. Fondo, Reparaciones y Costas. Sentencia de 11 de mayo de 2007. Serie C No. 164, párr. 76; Corte IDH. *Caso del Penal Miguel Castro Castro Vs. Perú*. Fondo, Reparaciones y Costas. Sentencia de 25 de noviembre de 2006. Serie C No. 160, párr. 271; y Corte IDH. *Caso Baldeón García Vs. Perú*. Fondo, Reparaciones y Costas. Sentencia de 6 de abril de 2006. Serie C No. 147, párr. 117.

constitutional guarantees, domestic political instability or other public emergencies or catastrophes"<sup>45</sup>. The Court has also indicated that universal and regional instruments set forth said prohibition and enshrine the right of all human beings not to be tortured. Similarly, various international instruments enshrine this right and reaffirm that prohibition, including international humanitarian law<sup>46</sup>.

59. Based on the legal precedents of the Inter-American system, for torture to exist three elements have to be combined: i) an intentional act committed by an agent of the State or with its authorization or acquiescence; ii) it must cause severe physical or mental suffering, and iii) it must be committed with a given purpose or aim.<sup>47</sup>

60. In the context of a criminal investigation, the Inter-American Court has held that torture can be defined as "acts that have been prepared and carried out deliberately against the victim to break down his mental resistance and force him to incriminate himself or to confess to a particular criminal behavior or to subject him to means of torture in addition to the deprivation of liberty itself."<sup>48</sup>

61. As regards the infliction of physical and psychological harm, the Commission recapitulates the available evidence. Specifically, Ms. Constante Merizalde described, in a message to CEDHU dated January 17, 1994, that she had been tortured and mistreated by agents of the police when giving her signed statement during the criminal interrogation. In that message she indicated that she had been given an electric shock in one arm, was hit in the face, tufts of her hair were pulled out, and she was threatened with death. Later, as is stated in the State's report of May of 1996, on January 18, 1994 Ms. Constante Merizalde reported she was tortured, which led to a forensic examination. Said examination was consistent with the description given by Ms. Constante Merizalde of what had happened. The forensic examination noted edemas, ecchymoses (bruising), burns on the forearm, and abrasions, which were described as the result of blunt force trauma and electrical current in contact with the skin. After that forensic examination and when expanding her signed statement on February 17, 1994, Ms. Constante Merizalde continued to report that she had been physically and psychologically tortured.

62. Based on the foregoing, in the Commission's view it has been demonstrated that Ms. Constante Merizalde was a victim of physical and psychological mistreatment while deprived of liberty at the pre-trial detention facility and before January 18, 1994, the date on which the forensic examination was conducted on her.

63. The case law of the Inter-American Commission and Court has indicated that whenever a person is taken into custody in normal health, and is later found to have health problems, the State must provide a credible explanation of the situation. Consequently, it is presumed that the State is responsible for the injuries an individual suffers while in the custody of State agents. Under such an assumption, the State has the obligation

<sup>45</sup> I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164. Para. 76; 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. Para. 271; and I/A Court H.R., Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147. Para. 117.

<sup>46</sup> I/A Court H.R., Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164. Para. 76. Quoting: International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the protection of the rights of all migratory workers and the members of their families relatives, Article 10; Inter-American Convention to Prevent and Punish Torture, Article 2; African Charter on the Rights of Men and of People, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), Article 4, and European Convention for the Protection of Fundamental Freedoms, Article 3; Set of principles for the protection of all individuals subject to any form of detention or imprisonment, Principle 6; Code of conduct for law enforcement officers, Article 5; UN Rules on Juveniles Deprived of the Liberty, Rule 87(a); Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, Article 6; Rules for the Administration of Juvenile Justice (Rules of Beijing), Rule 17(3); Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Article 4, and Guidelines on the European Council of Ministers on human rights and the fight against terrorism, Guideline IV; Article 3 common to the four Geneva Conventions; Geneva Convention governing war prisoners (Convention III), Articles 49, 52, 87, 89, and 97; Geneva Convention relative to the protection of civilian persons in time of war (Convention IV), Articles 40, 51, 95, 96, 100 and 119; Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims in international armed conflict (Protocol I), Article 75(2)(ii), and Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims of non-international armed conflict (Protocol II), Article 4(2)(a).

<sup>47</sup> IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, section 3. Analysis and IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para. 79.

<sup>48</sup> IA Court of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 146.

to provide a satisfactory and convincing explanation of what has occurred, and disprove any allegations of State liability with appropriate evidence.<sup>49</sup>

64. In the instant case, the Ecuadorean State alleged that the injuries on Ms. Constante Merizalde may have been due to a practice known as “welcoming” at the pre-trial detention facility. This is when a new inmate arrives and the other inmates beat them. The State also alleged that the presence of the prosecutor on duty during the interrogation is evidence that the injuries could not have been inflicted during the interrogation.

65. As regards the first explanation offered, the Commission finds it to be mere speculation by the Ecuadorean State which is not backed by any evidence, nor is it the result of a serious investigation of the allegations made by Ms. Constante Merizalde, or the findings of the forensic examination. Without prejudice to that fact, the Commission finds the argument of Ecuador worrisome because it implies that the State authorities are aware of a violent practices in their prisons, yet instead of acting as guardians of all persons deprived of liberty and taking all possible measures to eradicate such violence, the State uses it to justify the injuries found on its detainees.

66. As regards the second explanation, the Commission notes that the presence of the prosecutor on duty was disputed by Ms. Constante Merizalde in her statement of February 17, 1994. At any rate, the Commission finds that the mere presence of the signature of a staff member of the *Ministerio Público* does not, in and of itself, constitute sufficient evidence to rule out the involvement of state agents in inflicting the injuries found on detainees. It bears mention that regarding the actions of the prosecutor, this Commission has already established that there may have been significant irregularities in the taking of evidence in the presence of the prosecutor, and these may even constitute rights violations.<sup>50</sup> Furthermore, in the specific case of the State of Ecuador during the period when this case occurred, it has been demonstrated that torture took place in the presence of the prosecutor.<sup>51</sup>

67. In this regard, the explanations offered by Ecuador fail to meet the minimum standard of a credible, satisfactory, and convincing explanation. Therefore, the State has not disproven its presumed responsibility for the injuries Ms. Constante Merizalde suffered while in its custody. Consequently, the Commission believes that the injuries described by Ms. Constante Merizalde, and corroborated by the forensic examination, were caused by State agents.

68. Concerning whether the treatment was inflicted intentionally or for a given purpose, the Commission observes that according to the statements by Ms. Constante Merizalde, and given the very nature of the acts of violence perpetrated against her, they were inflicted deliberately and intentionally for the purpose of reducing her physical and mental capacity, and to get her to sign a statement and plead guilty to the crime of which she was accused.

69. Regarding the intensity of the physical and mental harm, the Commission notes that the Istanbul Protocol establishes a special category for torture by electric shock.<sup>52</sup> Similarly, both the Inter-American Court<sup>53</sup> and the European Court of Human Rights (hereinafter “the European Court”)<sup>54</sup> have characterized electric shock treatment as torture. In particular, the European Court has characterized electric shock treatment as among the practices which undoubtedly reach the level of severity required to be considered a violation of the prohibition on torture, cruel, inhuman or degrading treatment.<sup>55</sup> As regards the blows to the face, the European

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<sup>49</sup> IACHR. Report 172/10. César Alberto Mendoza et al. Merits. Argentina. November 2, 2010. Para. 298; I/A Court H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220, para. 134 and I/A Court H.R. *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013 Series C No. 260.

<sup>50</sup> IACHR, Report N° 82/13, Case 12.679, José Agapito Ruano Torres and Family, El Salvador, November 4, 2013, paras. 131-143.

<sup>51</sup> IACHR, Report N° 40/14, Case 11.438, Herrera Espinoza et al., Ecuador, July 17, 2014, paras. 162 and 163.

<sup>52</sup> Istanbul Protocol, para. 212.

<sup>53</sup> I/A Court H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220, para. 128.

<sup>54</sup> European Court of Human Rights, *Çakıcı v. Turkey*, Application no. 23657/94, Judgment of 07 August 1999, para. 88-93.

<sup>55</sup> European Court of Human Rights, *Saadi v. Italy*, Application no. 37201/06, Judgment of 28 February 2006, para. 143.

Court has indicated that these, at least and when they occur in isolation, constitute degrading treatment.<sup>56</sup> The Commission understands that the same could be said of pulling out tufts of hair. As for the threats, the Inter-American Commission has acknowledged that threats and the real danger of subjecting a person to physical injury, in certain circumstances, may cause a person such severe anguish as to constitute psychological torture.<sup>57</sup> In sum, the Commission considers that the slaps in the face and the pulling of the hair did not take place in an isolated manner but in the context of severe acts of physical and psychological treatment as electric shocks and death threats. Taking into account the situation in an integral way, the Commission understands that Ms. Constante Merizalde was subjected to severe acts of violence that meet the standard to be considered torture.

70. In light of the above considerations, the Commission concludes that the Ecuadorean State has not disproven its presumed responsibility for the injuries to Ms. Constante Merizalde while she was in State custody. The Commission also concludes that on the whole, the various physical and psychological injuries inflicted on Ms. Constante Merizalde meet the criteria to be considered torture. Likewise, the Commission believes that it was because of this torture that Ms. Constante Merizalde felt obliged to testify against herself. Consequently, the Commission finds that the State of Ecuador violated the absolute prohibition on the use of torture and the right to not be compelled to be a witness against oneself, established in Articles 5.1, 5.2, and 8.2(g) of the American Convention in relation to Article 1.1 of same, to the detriment of Ms. Amparo Merizalde.

## **2. The right to a fair trial during the investigation of Ms. Constante Merizalde (Articles 8.1, 8.2 (d) and (e) and 8.3 of the American Convention, in relation to Article 1.1 of same**

71. Article 8 of the American Convention establishes, as relevant:

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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(...)

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

(...)

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

72. Article 1.1 of the American Convention states that:

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.

<sup>56</sup> European Court of Human Rights, *Bouyid v. Belgium*, Application no. 23380/09, Judgment of 23 September 2015, para. 103-113. La traducción es propia.

<sup>57</sup> I/A Court H.R. *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 174.

73. The Commission shall take a position on the following points regarding the proceedings against Ms. Amparo Contante Merizalde: i) the right for the confession of guilt to be valid only if it is made without coercion of any kind and the exclusionary rule; ii) the right to have an attorney; and iii) the reasonable length of time of the criminal proceedings.

## **2.1 The right for a confession of guilt by the accused to be valid only if it is made without coercion of any kind and the exclusionary rule**

74. The Inter-American Court has recognized that the rule on exclusion of evidence obtained by torture or cruel and inhuman treatment has been enshrined in several different international instruments<sup>58</sup> and human rights protection bodies,<sup>59</sup> as has the “absolute and inderogable nature” of that rule.<sup>60</sup>

75. In the IACHR *Report on the Situation of Human Rights in Mexico (1998)*, the Commission has held that:

In the case of a statement or testimony in which there is a well-founded suspicion or presumption that it was obtained by some type of coercion, be it physical or psychological, the judicial bodies must [...] determine whether such coercion did actually exist. In the event that a statement or testimony obtained in these circumstances is admitted and used during the trial as an element of evidence or proof, that State may incur international responsibility.<sup>61</sup>

76. Likewise, the Inter-American Court has explained that because there is a guaranteed right not to be forced to confess without coercion of any nature as established under Article 8.3 of the Convention, “annulment of procedural documents resulting from torture or cruel treatment is an effective measure to halt the consequences of a violation of judicial guarantees.”<sup>62</sup> Said measure not only encompasses confessions extracted by means of torture and cruel treatment but “extends to any form of duress” capable of interfering with “the spontaneous expression of a person’s will,” which entails “the obligation to exclude that evidence from the judicial proceeding.”<sup>63</sup> As established by the Court, this obligation does not only include evidence that has been obtained directly by coercion, “but also evidence derived from such action.”<sup>64</sup> The purpose of the exclusionary rule is precisely to discourage and prevent the use of unlawful practices under the Convention such as torture and, therefore, it is absolutely essential to abide by said rule.

<sup>58</sup> Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Likewise, Article 10 of the Inter-American Convention to Prevent and Punish Torture sets forth that “No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.”

<sup>59</sup> In this regard, the Committee against Torture has held that “the obligations in Articles 2 (whereby no exceptional circumstances whatsoever...may be invoked as justification of torture’), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that must be observed in all circumstances.” See United Nations. Committee against Torture. General Comment No. 2, ‘Implementation of Article 2 by States Parties,’ January 24, 2008 (CAT/C/GC/2), para. 6. Likewise, the Human Rights Committee has held the following: “The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. (...) no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by Article 14, including during a state of emergency, except if a statement or confession obtained in violation of Article 7 is used as evidence that torture or other treatment prohibited by this provision occurred.” United Nations. Human Rights Committee. General Comment No. 32, Right to equality before courts and tribunals and to a fair trial (HRI/GEN/1/Rev.9 (vol. I), par 6.

<sup>60</sup> IA Court of HR. *Case of Cabrera García and Montiel Flores v. México*. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 165.

<sup>61</sup> IACHR, Report on the Situation of Human Rights in Mexico, Chapter IV: Right to Humane Treatment, OEA/Ser.L/V/II.100, Doc. 7. rev. 1, September 24, 1998, para. 320.

<sup>62</sup> IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166. IA Court of HR. *Case of García Cruz and Sánchez Silvestre v. Mexico*. Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 273, para. 58, see specifically footnote 73.

<sup>63</sup> IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166.

<sup>64</sup> IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166.



77. With this in mind, the Commission shall proceed to determine whether the testimony given by Ms. Amparo Constante Merizalde under coercion during the interrogation—which was characterized as torture previously in this report—was used during the trial or whether it was excluded.

78. The Commission first observes that the testimony during interrogation of the victim served as grounds for the Police Commissioner of Pichincha to order the initiation of criminal proceedings and pre-trial detention, because he concluded that she had confessed her guilt to the OID investigators. After the criminal proceedings began, she was kept in pre-trial detention although the victim had already reported on two occasions (January 18, 1994 and February 17, 1994) that she had been tortured. On the last occasion, as well as when a defense attorney was appointed, Ms. Constante Merizalde also plead not guilty.

79. The Commission finds that the exclusionary rule means that when there is any denunciation of any evidence or statement obtained through torture, the authorities conducting the investigation and criminal proceedings must immediately open a serious investigation to clarify what has happened and, when appropriate, exclude such evidence or statement. To proceed with a criminal trial, assigning full validity to evidence and statements that are alleged to have obtained through torture, without opening an investigation into it, constitutes clear disregard for the exclusionary rule.

80. The Commission observes that in the instant case, the various authorities who spoke of Ms. Amparo Constante Merizalde's possible guilt did so not only by considering—but also by attributing overriding importance to—the confession given under duress. None of the judicial authorities involved in the proceedings made any assessment at all of the allegations of coercion or the resulting requirement to exclude said confessions; rather, the Police Commissioner used them as the main grounds for prosecution. The Judge of the Fifth Criminal Court was made aware of this situation through the victim's allegations, yet he ordered no measures whatsoever to investigate them or exclude the confession which had been explicitly retracted by the defendant. The Commission points out that Ms. Constante Merizalde was released upon posting bail, and not because her confession obtained through torture had been excluded. As will be analyzed in the next section of this report, the State still has not instituted an investigation of these facts and there is no information as to whether the criminal trial has formally ended.

81. Therefore, the Commission concludes that the Ms. Amparo Constante's confession obtained during her coercive interrogation, which has already been characterized as torture, was not excluded from the trial. On the contrary, in spite of her allegations, they continued to serve as grounds for the legal action taken subsequently during the criminal trial. Consequently, the Commission finds that the State violated the right established in Article 8.3 of the American Convention in relation to Article 1.1 of same.

## 2.2 The right to have a proper defense from the earliest stages of the investigation

82. Article 8.2.d. of the American Convention establishes the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel." Additionally, Article 8.2e establishes "the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law."

83. The Court has previously held that this right must necessarily be exercised from the moment a person is accused of perpetrating or participating in an unlawful action and only ends when the proceeding concludes.<sup>65</sup> In addition, it emphasized that a public defender must be effective, for which purpose the State must adopt all the appropriate measures.<sup>66</sup>

<sup>65</sup> IA Court of HR, *Cabrera García and Montiel Flores v. México*. Judgment of November 26, 2010. Series C No. 220, para. 154; IA Court of HR, *Case of Barreto Leiva v. Venezuela*. November 17, 2009. Series C No. 206, para. 29; IA Court of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 71; IA Court of HR, *Case of Heliodoro Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, para. 148; IA Court of HR, *Case of Bayarri v. Argentina*. Judgment of October 30, 2008. Series C No. 187, para. 105; and IA Court of HR, *Case of Barreto Leiva v. Venezuela*. November 17, 2009. Series C No. 206, para. 62.

<sup>66</sup> IA Court of HR, *Cabrera García and Montiel Flores v. México*. Judgment of November 26, 2010. Series C No. 220, para. 154; IA Court of HR, *Case of Barreto Leiva v. Venezuela*. November 17, 2009. Series C No. 206, para. 154.

84. In the case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, the Court found that the State violated the right to a defense since the victims' attorneys' failed to show up for an essential proceeding in the trial against the victims for the crime of drug trafficking.<sup>67</sup>

85. In the instant case, the Commission finds it to be proven that Amparo Constante Merizalde was arrested on January 13, 1994 at 20:00 hours and entered the detention facility at 20:30 hours that same day. Likewise, the IACHR determined that on January 15 and 17 she was transferred to the *Oficinas de Investigación del Delito* (Criminal Investigation Office—OID) to give testimony. It is undisputed that no defense attorney appointed by either Ms. Constante Merizalde or the State was present. It was not until January 18, 1994, when the defendant had already given two signed statements during the course of interrogation, that the Police Commissioner ordered that the public defender be notified of the order for prosecution issued that day; later the victim, through written authorization, accepted Mr. Flavio Sánchez as her defense attorney.

86. Consequently, Ms. Constante Merizalde did not have a proper defense when she gave her testimony during the interrogation at the OID in Pichincha on January 15 and 17, 1994. As has been stated, that testimony served as the basis for the police report which the Police Commissioner used as grounds to initiate prosecution and order her into pre-trial detention, which was subsequently confirmed by the Judge in the Fifth Criminal Court.

87. Without prejudice to the fact that Ms. Constante Merizalde later had a proper defense, the lack of this during the interrogation when she was suspected of having committed a crime, constituted a violation of the rights established in Articles 8.2(d) and (e) of the American Convention, in relation to Article 1.1 of same.

### 2.3. Regarding reasonable time for the criminal trial

88. The Court has established that “the reasonableness of the period of time mentioned in Article 8.1 of the Convention must be assessed in relation to the total time demanded by criminal proceedings. This time period runs from the first procedural act addressed to a specific person allegedly responsible for a given offense, until final and non-appealable judgment is rendered.”<sup>68</sup> In order to determine whether a criminal proceeding was conducted within a reasonable period of time, as defined under Article 8.1 of the Convention, the Inter-American Court has taken into account four elements: a) the complexity of the matter; b) the judicial activity of the interested party; c) the behavior of the judicial authorities;<sup>69</sup> and, d) the effects that the delay in the proceedings may have on the judicial situation of the victim.<sup>70</sup>

89. In the instant case, Amparo Constante Merizalde was arrested on January 13, 1994, and on April 6, 1994 her release was ordered once she had posted bail. As described by the petitioners in their last communication of 2013 and undisputed by the State, the order for release is the last document that appears in the file of the criminal case. The Commission observes that more than 20 years have passed and the investigation still has not formally concluded, nor is there a final ruling on Ms. Constante Merizalde's criminal liability, notwithstanding that the statute of limitations has run out on the crime for which she was accused. In referring to the delay, the State has indicated that “there may also have been some procedural incidents that caused potential deviations from the reasonable time period.” But the State does not mention which or what kinds of incidents occurred in this case, or give any evidence in this regard.

90. The Commission finds that the State has not justified the more than 20-year delay in issuing a final ruling in the criminal trial. Consequently, the Commission concludes that the State also violated the right to a hearing

<sup>67</sup> IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Judgment of November 21, 2007, para. 154.

<sup>68</sup> IA Court of HR, *Case of Bayarri v. Argentina*. Judgment of October 30, 2008. Series C No. 187, para. 107; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 150; IA Court of HR, *Case of Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, para. 77.

<sup>69</sup> IA Court of HR, *Case of Bayarri v. Argentina*. Judgment of October 30, 2008. Series C No. 187, para. 72; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

<sup>70</sup> IA Court of HR, *Case of Valle Jaramillo v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

within a reasonable time established in Article 8.1 of the Convention in relation to Article 1.1 of same, to the detriment of Amparo Constante Merizalde.

**3. The right to a fair trial and to judicial protection regarding the duty to investigate the allegations of torture by Ms. Constante Merizalde (Articles 8.1 and 25.1 of the American Convention, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture)**

91. Article 8 of the American Convention states, as for the pertinent part:

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.

(...)

92. Article 25 of the American Convention states, as for the pertinent part:

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.

93. Article 1.1 of the American Convention states that:

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.

3. Articles 1, 6 and 8 of the IACPPT set:

Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6 [...] The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. [...] The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. [...] Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. [...] After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

94. Pursuant to the guarantee set forth in Article 1.1 of the Convention, States have the obligation to prevent, investigate and seriously punish violations of the Convention that come to its attention.<sup>71</sup> The component of investigation of the duty to ensure rights is closely linked to the right to effective remedies. On this topic, the Inter-American Court has established that:

[...] The States Parties are obligated to offer the victims of human rights' violations effective judicial recourses (Article 25), that must be substantiated pursuant to the rules of the due process of law (Article 8.1), all this within

<sup>71</sup> IA Court of HR, *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 174.

the general obligation, of the same States, to guarantee the free and full exercise of the rights acknowledged by the Convention to everyone under its jurisdiction (Article 1.1).<sup>72</sup>

95. The Inter-American Court has established that once a crime of a human rights violation comes to the attention of State authorities, particularly of the right to humane treatment,<sup>73</sup> it is their duty to open a serious, impartial and effective investigation *ex officio* and without delay,<sup>74</sup> which must be carried out within a reasonable period of time.<sup>75</sup> In keeping with the duty to investigate with due diligence, a violation of the right to humane treatment, States are obligated to act, as of the beginning of the investigation, with the utmost urgency.<sup>76</sup>

96. Particularly, in cases involving allegations of torture or abuse, the Court has emphasize that “the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, especially when there are no witnesses other than the perpetrators and the victims themselves, and consequently the evidence may be scarce.”<sup>77</sup>

97. Regarding said investigation, the Inter-American Convention to Prevent and Punish Torture establishes that States are obligated to adopt effective measures to “punish torture” (Articles 1 and 6) and that if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, “States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case [...]”

98. Similarly, the United Nations Committee against Torture has established that when allegations of torture are made, an independent medical examination must be conducted in every instance in keeping with the Istanbul Protocol.<sup>78</sup> Pursuant to said instrument, the medical assessment must include: i) case information; ii) clinician’s qualifications (for judicial testimony); iii) Statement regarding veracity of testimony (for judicial testimony); iv) background information; v) allegations of torture and ill-treatment; vi) physical symptoms and disabilities; vii) psychological history/examination; viii) photographs; ix) diagnostic test results; x) consultations; xi) interpretation of findings; xii) conclusions and recommendations; xiii) statement of truthfulness; n) statement of restrictions on the medical evaluation/investigation; xiv) clinician’s signature, date, place; xv) relevant annexes.<sup>79</sup>

99. In this case, the State was made aware of the accusations of torture on multiple occasions: First, through a complaint lodged by Ms. Constante Merizalde on January 18, 1994, which led to the forensic examination; Second, through the results of that forensic examination which reported multiple lesions and a burn from contact with electrical current; Third, through the expanded defendant’s statement during the interrogation on February 17, 1994, in which she maintained that she was innocent and reported that she had confessed because she was being tortured; And fourth, the State was again apprised of these accusations when notified of the petition filed before the IACHR.

<sup>72</sup> IA Court of HR, *Case of Miguel Castro Castro Prison Vs. Peru*. Judgment November 25, 2006. Series C No. 160. para. 381; IA Court of HR, *Case of Goiburú et al v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 110; IA Court of HR, *Case of Servellón García et al v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 147; and IA Court of HR, *Case of Ximenes Lopes v. Brazil* Judgment of July 4, 2006. Series C No. 149, para. 175.

<sup>73</sup> IA Court of HR, *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C No. 167, para. 100.

<sup>74</sup> IA Court of HR, *Case of García Prieto et al v. El Salvador*. Judgment of November 20, 2007. Series C No. 168, para. 101; IA Court of HR, *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 146; IA Court of HR, *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007. Series C No. 167, para. 130.

<sup>75</sup> IA Court of HR, *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114; IA Court of HR, *Case of la Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C. No. 163, para. 146; and IA Court of HR, *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382.

<sup>76</sup> IA Court of HR, *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Para. 121.

<sup>77</sup> IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para.111.

<sup>78</sup> Committee against Torture. Examination of reports submitted by States Parties under Article 19 of the Convention. CAT/c/MEX/CO/4. February 6, 2007. para. 16(a).

<sup>79</sup> See: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment “Istanbul Protocol.” Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2001.

100. Despite this, the only evidence of investigation in the file is two police reports that were requested once the Ecuadorean State was notified of the initial petition lodged before the Inter-American system. According to those reports, the measures taken were to first go to the pre-trial detention facility and review the documents on file there. The second measure was aimed at investigating the alleged illegal detention, but it was limited to remitting copies of the documents that were submitted to the Commission. Beyond these minimal steps, which in no way constitute an investigation of allegations of torture, the file shows no evidence that any State authority undertook a serious, diligent criminal investigation of these accusations, which were corroborated by the forensic examination. Consequently, the torture of Ms. Constante Merizalde is in a state of complete impunity.

101. In light of the above considerations, the Commission concludes that the State of Ecuador violated the rights to a fair trial and to judicial protection established in Articles 8.1 and 25.1 of the American Convention, in relation to the obligations established in Article 1.1 of same to the detriment of Amparo Constante Merizalde. Furthermore, considering that the Inter-American Convention to Prevent and Punish Torture entered into force in Ecuador on December 9, 1999, the Commission finds that the failure to investigate also constituted a violation of the obligations contained in Articles 1, 6, and 8 of said instrument, from that date through the present.

102. In light of the considerations of fact and law described above, the Commission concludes that the State of Ecuador is responsible for violations of Articles 5.1, 5.2, 8.1, 8.2 (d), (e) and (g), 8.3, 25.1 and 1.1 of the American Convention on Human Rights, as well as of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Amparo Constante Merizalde.

## **VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 32/16**

103. The Commission adopted Report on Merits No. 32/16 on July 29, 2016, which encompasses paragraphs 1 to 102 *supra*, and transmitted it to the State on August 10 of the same year. In that report, the Commission recommended that the State:

1. Make full reparations, both symbolic and material, to the victim in this case.
2. Conduct a serious, diligent, and effective investigation, within a reasonable period of time, to clarify the acts of torture described in this report, identify the individual perpetrators, and impose the corresponding punishments. Since this constitutes a serious violation of human rights, the State may not invoke legal provisions such as a statute of limitations to refrain from investigating the facts of the instant case.
3. Order whatever administrative, disciplinary, or criminal measures may be appropriate based on the acts and omissions of government officials who contributed through their actions or denial of justice to harming the victim.
4. Adopt whatever measures are necessary to prevent similar acts from occurring in the future. Specifically, develop programs to train security forces, judges, and prosecutors on the absolute prohibition of acts of torture and cruel, inhuman, or degrading treatment, as well as the obligations stemming from the exclusionary rule. Also adopt measures needed to ensure that all allegations of torture are duly investigated according to the standards described in this report.

104. In the proceedings following its notification of the report on merits, the Commission received several communications from the parties relating to the implementation of the recommendations of the IACHR, in particular concerning the signing of an Agreement on Implementation of Recommendations. During that interval, the Commission granted the State a total of 10 extensions of the deadline established in Article 51 of the American Convention. The State expressly waived the invocation of preliminary objections over noncompliance with the aforesaid deadline were the case to be submitted to the Inter-American Court.

105. Below, the IACHR highlights the salient points of the Agreement on Implementation of Recommendations signed by the two parties on December 27, 2018:

### **1. Economic reparation**

[...] considering that Ms. JANETH AMPARO CONSTANTE MERIZALDE was a direct victim of violations of Articles 5.1, 5.2, 8.1, 8.2 d), e), g), 8.3, 25.1 and 1.1 of the ACHR; and of Articles 1, 6, and 8 of the ICPST, it was determined that there are analogous elements [to ones already examined and disposed of by the inter-American system for protection of human rights] for the purposes of this case.

[...] The Ministry of the Interior proposed as comprehensive reparation for the human rights violations the total sum of USD 60,000.00 (SIXTY THOUSAND UNITED STATES DOLLARS), an amount that was accepted by the direct victim, as attested in Meeting Minute No. 1.

[...]

The disbursement of the amount [...] will be made to her from Budget Item No. 91-00-000-008-570215-1701-001-0000-0000, in accordance with Certification No. 826 of October 11, 2018, for [compensation].

[...]

The beneficiary of this “Implementation Agreement” acknowledges that the financial amount agreed upon herein as compensation corresponds to her as the beneficiary of the recommendations made by the IACHR in its Report on Merits No. 32/16. Accordingly, she will be unable to make any subsequent claims upon the Ecuadorian State for such disagreements in judicial or extrajudicial proceedings.

### **2. Other reparation measures**

With respect to the second, third, and fourth recommendations made by the Inter-American Commission on Human Rights in its Report on Merits No. 32/16, Ms. JANETH AMPARO CONSTANTE MERIZALDE, the direct victim and beneficiary, hereby states that each and every one of the points recommended in the Report have been met in full, as is also indicated by the Technical Report and the annexes appended as supporting documents.

### **3. Withdrawal of petition and request to archive the case before the IACHR**

The State, through the Ministry of the Interior, has implemented in full the recommendations contained in Report on Merits No. 32/16 in case IACHR No. 11.444 for the harm associated with the violations of the rights recognized in Articles 5.1, 5.2, 8.1, 8.2 d), e), g), 8.3, 25.1 and 1.1 of the American Convention on Human Rights, as well as for violation of the obligations contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. JANETH AMPARO CONSTANTE MERIZALDE.

Likewise, the beneficiary, by virtue of the full implementation of the above-cited report, hereby undertakes:

1. To abandon Case No. 11.444 before the Inter-American Commission on Human Rights;
2. To request the IACHR to publish Report on Merits No. 32/16, inasmuch as the State has implemented all the recommendations put forward by the IACHR in accordance with Article 51 of the American Convention, and Article 47 of the Rules of Procedure of the Convention [sic].
3. To request that Case 11.444 not be referred to the jurisdiction of the Inter-American Court of Human Rights;
4. To request the archive the proceeding in the inter-American human rights system pursuant to Article 42(1) of the Rules of Procedure of the Inter-American Commission on Human Rights;
5. No to bring any action or complaint before the universal human rights system in relation to the facts in this case that constitute the subject matter of this agreement.

106. The Commission appreciates the signing of the Agreement on Implementation of Recommendations. However, it notes that though the Agreement mentions that "the State has implemented all the recommendations put forward by the IACHR," it refers only to economic reparation without providing any information about steps taken to implement the other three reparation measures recommended by the IACHR. Likewise, the Commission notes that it does not have a copy of the "Technical Report and the annexes" that were attached to the Agreement.

107. At the same time, the Commission clarifies that the present stage is not that of the friendly settlement procedure provided for in the Convention and Rules of Procedure but, rather, a stage following the determination of the State's international responsibility, and therefore the IACHR is acting in its supervisory role to monitor the implementation of its recommendations. In this sense, taking into account the current stage of this case, the supervision of its compliance will be carried out through the issuance of this final report, its subsequent publication, and the corresponding follow-up in relation to all the recommendations, without prejudice to taking into account the agreement on compensation for the purposes of the pecuniary component of the integral reparation recommended.

108. Having evaluated the available information and taking into account the Agreement signed between the parties, which expressly states that the IACHR shall proceed with the adoption of the report on merits in accordance with Article 51 of the Convention, on March 11, 2019, the IACHR decided by an absolute majority not to refer the case to the Inter-American Court and to proceed with the publication of the Report on Merits. To date, the Commission has not received any detailed information regarding compliance with the payment of the agreed-upon compensation, nor any information regarding implementation of the three other reparation measures. Therefore, the IACHR requests the Ecuadorian State to provide it with that information as well as a copy of the aforementioned Technical Report and the annexes to the Implementation Agreement.

## **VII. PROCEEDINGS SUBSEQUENT TO REPORT No. 94/19 AND COMPLIANCE INFORMATION**

109. The Commission adopted Merits Report No. 94/19 (final) on June 14, 2019 and transmitted it to the State on July 3 of the same year granting it a period of two months to inform the IACHR on the measures adopted to comply with its recommendations.

110. In the proceedings subsequent to the notification of the final merits report, on December 19, 2019, the State, again referring to a "friendly settlement agreement," reported that on May 9, 2019, Prosecutor No. 2 of the Truth Commission took cognizance of the criminal case, indicating that some proceedings were carried out, such as the taking of free and unsworn versions from the victim, witnesses and investigated persons and the process of appointing two expert witnesses.

111. In view of the fact that the State did not provide substantial information on compliance with the recommendations, the IACHR reiterates that although the Agreement between the parties indicates that "all the recommendations ordered by the IACHR have been complied with", it only refers to economic reparation without providing any information on the actions taken to comply with the other three measures of reparation recommended by the IACHR. Likewise, the Commission notes that it does not have a copy of the "Technical Report and annexes" that were attached to the Agreement.

112. Likewise, the Commission reiterates that the present stage is not that of the friendly settlement procedure provided for in the Convention and the Rules of Procedure, but rather it is the stage subsequent to the determination of the State's international responsibility and, therefore, the IACHR is acting in its role of supervising compliance with its recommendations.

113. After evaluating the available information and taking into account that to date, the Commission does not have detailed information on compliance with the payment of compensation or on compliance with respect to the other three measures of reparation, the IACHR requests the State to provide a copy of the aforementioned Technical Report and annexes to the Compliance Agreement and requests both parties to provide information on compliance with the reparations so that it can follow up on them.

## VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

114. In view of the foregoing considerations of fact and law, the Commission concludes that the State of Ecuador is responsible for the violation of Articles 5.1, 5.2, 8.1, 8.2 d), e) g), 8.3, 25.1 and 1.1 of the American Convention on Human Rights; as well as for the violation of the obligations contained in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Amparo Constante Merizalde.

115. The Commission takes into account the Implementation Agreement and recognizes the efforts of the parties to achieve it. Given that implementation of said agreement remains incipient, and by virtue of the above conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REITERATES THAT THE STATE OF ECUADOR,**

1. Make full reparations, both symbolic and material, to the victim in this case.
2. Conduct a serious, diligent, and effective investigation, within a reasonable period of time, to clarify the acts of torture described in this report, identify the individual perpetrators, and impose the corresponding punishments. Since this constitutes a serious violation of human rights, the State may not invoke legal provisions such as a statute of limitations to refrain from investigating the facts of the instant case.
3. Order whatever administrative, disciplinary, or criminal measures may be appropriate based on the acts and omissions of government officials who contributed through their actions or denial of justice to harming the victim.
4. Adopt whatever measures are necessary to prevent similar acts from occurring in the future. Specifically, develop programs to train security forces, judges, and prosecutors on the absolute prohibition of acts of torture and cruel, inhuman, or degrading treatment, as well as the obligations stemming from the exclusionary rule. Also adopt measures needed to ensure that all allegations of torture are duly investigated according to the standards described in this report.

## IX. PUBLICATION

116. By virtue of the foregoing considerations and based on Article 51.3 of the American Convention and 47.3 of its Rules of Procedure, the IACHR decides to make this report public and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms contained in the instruments that govern its mandate, will continue to evaluate the measures adopted by the State of Ecuador with respect to the aforementioned recommendations until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.