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REPORT No. 22/17
CASE 11.587
REPORT ON MERITS

CÉSAR GUSTAVO GARZÓN GUZMÁN
ECUADOR

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I. SUMMARY

1. On November 8, 1994 the Commission received a petition lodged by the Ecumenical Commission for Human Rights (*Comisión Ecuménica de Derechos Humanos-CEDHU*) (hereinafter “the petitioners”) alleging the international responsibility of the Republic of Ecuador (hereinafter “the State of Ecuador,” “the Ecuadorian State” or “Ecuador”) for the forced disappearance of César Gustavo Garzón Guzmán by State agents on November 10, 1990, in Quito, Ecuador. The petitioners also alleged that the events were not investigated and impunity prevails.

2. The State denied its responsibility in the disappearance of the alleged victim and stated that there is no evidence that proves that State agents took part in it. Therefore, it indicated that it is not possible to describe the events as forced disappearance. The State also indicated that a series of actions were undertaken to determine the whereabouts of the alleged victim and that the case is included in the Truth Commission’s Report.

3. After reviewing the positions of the parties, the Inter-American Commission concluded that the Ecuadorian State is liable for violations of the rights protected under Articles 3 (Right to Judicial Personality,) 4(1) (Right to Life,) 5(1) and 5(2) (Right to Humane Treatment,) 7 (Right to Personal Liberty,) 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) in conjunction with Article 1(1) of the same Convention; and for the violation of Article I (a) and (b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of César Gustavo Garzón Guzmán. The Commission also concluded that the State is responsible for the violation of the Rights to Fair Trial, Judicial Protection and Humane Treatment enshrined in Articles 8(1), 25(1) and 5(1) in conjunction with 1(1) of the Convention to the detriment of all the next of kin of César Gustavo Garzón Guzmán named herein.

II. PROCEEDINGS AFTER THE ADMISSIBILITY REPORT

4. On November 8, 1994 the Commission received the petition and registered it with number 11.587. The processing up to the Admissibility decision is detailed in Report No. 70/10 of July 12, 2010.¹ In it, the IACHR declared the petition admissible with regards to the alleged violation of Articles 3, 4, 5, 7, 8 and 25 of the American Convention in connection to Article 1(1) of the same Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons.

5. On July 20, 2010 the Commission conveyed the Admissibility Report to the parties, made itself available for reaching a friendly settlement and set a deadline of three months for the petitioners to submit additional comments on the merits, in keeping with the Rules of Procedure in force at the time. On April 28, 2011 the petitioners submitted their additional comments on the merits. These comments were forwarded to the Ecuadorian State on May 3, 2011 with a request to return its additional comments on the merits within three months, in accordance to the Rules of Procedure in force at the time. The State submitted its comments on the merits on March 1, 2012. Following this communication, the IACHR received additional communications from both parties, which were duly forwarded.

III. POSITIONS OF THE PARTIES

¹ IACHR, Report No. 70/10, Petition 11.857, Admissibility, César Gustavo Garzón Guzmán, Ecuador, July 12, 2010, paras. 4 and 5.

A. Position of the petitioners

6. As contextual information, the petitioners mentioned that at the time of the alleged victim's disappearance, members of the security forces implemented a policy of State repression against persons linked to the Group "*Alfaro Vive Carajo*." They stated that this context included illegal detentions as well as disappearances notorious for the denial of detention and the refusal to provide any information about what happened to those detained.

7. The petitioners cited as precedent that on August 7, 1989 César Gustavo Garzón was detained and tortured by members of the Criminal Investigations Service of Pichincha. They alleged that he was later transferred to the García Moreno Prison where he remained for 13 months until his release on September 7, 1990, when the judge in the case dismissed the charges due to lack of evidence.

8. The petitioners alleged that on November 10, 1990, two months after the detention, César Gustavo Garzón Guzmán disappeared after midnight when leaving the discotheque "Sol Candela" located in Amazonas Avenue and Reina Victoria Street in the city of Quito. They stated that at the time of his disappearance, César Gustavo Garzón Guzmán was preparing for his graduation as Doctor in Literature at the University in Ecuador.

9. The petitioners indicated that, when his relatives noticed that he didn't get home that night, they started to search for him in clinics, hospitals, prisons, and even the morgue, without success. They alleged that on November 11, 1990 at 6:00 PM, his relatives went to the Criminal Investigations Service of Pichincha to report his disappearance, but the agency refused to take the report alleging that it had not yet been 48 hours since his disappearance.

10. The petitioners stated that at that time, in 1990, it was a common practice for the police not to receive these complaints within the first 48 hours.

11. The petitioners mentioned that on November 14, 1990 fellow classmates of César Gustavo Garzón reported his disappearance to various media outlets such as the newspapers *El Comercio*, *La Hora*, *Últimas Noticias*, *Radio Quito* and *Radio Tarqui*. They stated that on November 28, 1990 writers from Pichincha publicly and again denounced the disappearance of the alleged victim.

12. According to the petitioners, on November 16, 1990 the alleged victim's next of kin lodged a complaint with the Criminal Investigations Service of Pichincha. However, as no results were attained, on November 23, 1990 another complaint was lodged with the President of National Congress who, in response, sent a written communication to the Director of Investigations of the National Police urging that the situation be investigated. The petitioners also said that on November 29, 1990 they filed a complaint with the Tribunal of Constitutional Guarantees, which referred the matter to the Ministry of Government and Police.

13. The petitioners alleged that on January 8, 1991 the police informed them, by means of an informative bulletin, that the investigation carried out in the case was unsuccessful. They added that even though the police sent several letters assigning the investigation to internal units, they never carried out a real investigation to shed light on the events.

14. The petitioners added that the relatives continued for several years approaching various authorities who were then in office, to request that investigations be carried out to shed light on what happened to the alleged victim, but the truth was never officially revealed.

15. The petitioners informed that in May 2003 the newspaper *El Comercio* published two reports in which it was stated that a former National Army Officer affirmed that the Commander General of the Police, General Edgar Vaca, would know where the remains of Mr. Garzón could be found. These reports also indicated that the aforementioned General used to torture and to extra-judicially execute the members of the "*Alfaro Vive Carajo*" Group. The petitioners also pointed out that these reports stated that the former

National Army Officer declared that he was only following orders from his seniors and following institutional policies on fulfillment of his duties.

16. The petitioners also indicated that, based on these reports, the Ecumenical Commission for Human Rights sent several communications to the Minister of Defense and to the Minister of Government, requesting that exhaustive investigations be undertaken to shed light on the facts, but their requests were never answered.

17. The petitioners concluded that none of the complaints had the effect of triggering State investigations as the governments in power did not formally launch an investigation to clarify the events.

18. Finally, the petitioners replied to an argument of conflict of interest posed by the State. The State alleged that there was a conflict of interest, as the legal representative of CEDHU, the organization that lodged the complaint before the IACHR, was also a member of the Truth Commission. In that respect, the petitioners argued that she was designated by the State, knowing that she was the legal representative of CEDHU; the organization that lodged the complaint in 1994, and because of that, the principle of *estoppel* should be applied.

19. A description of the facts and the investigation related to the forced disappearance of César Gustavo Garzón Guzmán, based on the information submitted by both parties, will be included in the analysis of facts of the Commission. This section summarizes the main legal arguments offered by the petitioners.

20. The petitioners alleged that the State breached the Right to Juridical Personality, as the forced disappearance leaves the person in a situation of legal uncertainty making it impossible to exercise his or her rights effectively and leaving the person out of the realm of legal protection.

21. The petitioners claimed that the State breached the Right to Life since it can be presumed that the alleged victim was murdered after the forced disappearance.

22. They sustained that the State breached the Right to Humane Treatment based on the forced disappearance of the alleged victim that also entailed a generalized state of anguish, insecurity and fear, not only of the victim but also of his family and friends.

23. The petitioners argued that the State breached the Right to Personal Liberty, as they alleged the victim was deprived of his liberty in contravention of legal requirements.

24. The petitioners claimed the breach of Rights to a Fair Trial and Judicial Protection for the lack of investigation within a reasonable time and because a judicial investigation was never launched, even though more than 25 years have elapsed.

25. They also sustained that the State did not provide the victims' next of kin with an adequate and effective recourse to resolve the situation. They rejected the State's argument according to which the petitioners should have lodged the action for *habeas corpus*. Alleging that both the Commission and the Court have established that this recourse was not in compliance with the Convention. This because it established that anyone who believes to be illegally detained may in person or represented by someone, lodge the action before the Mayor in whose jurisdiction the person was. This presupposes knowledge of where the person is detained, which is impossible in the case of a forced disappearance.

26. The petitioners pointed out that the possibility to exercise a *habeas corpus* to search for a person who had disappeared was an action established in the Constitution passed in 2008. Finally, they stated that Ecuador has not yet typified the crime of forced disappearance of persons.

B. Position of the State

27. In the merits stage the Ecuadorian State reiterated some of the arguments related to admissibility, specifically those related to exhaustion of domestic remedies and duplicity. Since these allegations were duly analyzed in the Admissibility Report, the Commission will refer to the State's arguments that deal with the merits of the case.

28. As background information, the State pointed out that the events of this case took place during a special period of the history of the rule of law in Ecuador, during the 1990s decade, when socioeconomic reforms and structural adjustments were being implemented and which also resulted in changes in the administration of justice.

29. The State sustained that there was no systematic pattern of forced disappearances implemented by State agents. It also stated that a Truth Commission was created on May 3, 2007 to investigate cases linked with human rights violations during the period 1984-1988 as well as other periods.

30. The State argued that the case under analysis is factual and legally complex. It noted that even though the petitioners claim that State agents took part in the events, there is no evidence that proves this.

31. The State referred to the petitioners' allegations indicating that the State covered up those responsible for the alleged human rights violation, and sustains that they are trying to force the IACHR to assume the criminal jurisdictional prerogatives of the State to investigate and sanction. Ecuador alleged that the establishing of criminal responsibilities corresponds to domestic judges and tribunals and that the organs of the Inter-American System only have a reinforcing or complementary role.

32. The State contended the statement made by the petitioners about the National Police declining to initially take on the complaint for 48 hours had not passed since the events. It sustained that on one hand, there is no evidence to support such allegations, and on the other hand, there is evidence that a complaint was lodged on November 16, 1990 six days after the events, and that the State undertook immediate steps to start the search of the alleged victim.

33. The State pointed out that there is a conflict of interest with regards to Elsie Monge, who acted as former President of the Truth Commission and as petitioner in the instant case. It argues that her role as President of the Truth Commission grants her a disloyal advantage for she intervened actively and decisively in the definition of the facts of this matter. Ecuador sustains that this situation incurs a breach of the State's right to defense.

34. The State argued that it did not breach the Right to Juridical Personality, as it always recognized Mr. César Gustavo Garzón as a rights-bearer as well as the ability of his next of kin to take action. Ecuador added that once the complaint was submitted before the National Police, the General Command of the Police ordered a search. Ecuador stated that the Truth Commission's undertakings resulted in the launching of an inquiry of the disappearance of the alleged victim, carried out by the State's General Prosecutor.

35. Ecuador also alleged that it did not breach the Rights to Life and Personal Liberty, because in the absence of evidence that determines the participation of State agents, the events described do not constitute the crime of forced disappearance, and even less of extrajudicial execution. In addition, it argued that the alleged victim was once detained and an investigation was carried out in accordance to the legal procedures of the time, so a new detention would not be necessary.

36. The State rejected a breach of the Right of Humane Treatment as it asserted that recognizing such violations to the detriment of the next of kin of a person who has disappeared, first requires determining the existence of a forced disappearance, and the State responsibility, which the State maintains are absent in the instant case.

37. Ecuador alleged that it did not breach the Rights to a Fair Trial and Judicial Protection because the complaint lodged on November 16, 1990 triggered investigations and a search by the competent authorities.

38. Specifically, the State indicated that once the complaint was received, the National Police Inspector sent a telegram to all the competent administrative authorities ordering to start the search of the disappeared person. Said request was reiterated on December 17, 1990.

39. The State pointed out that the Police interviewed relatives of the disappeared, co-workers, the owner of the discotheque where the alleged victim was last seen, and the manager of a restaurant that was located near the discotheque. It also said that some *in situ* inspections were carried out and those who saw the alleged victim the day he was disappeared rendered statements to the police.

40. The State noted that, as a consequence to the inclusion of the alleged victim in the Report of the Truth Commission, an inquiry was launched to shed light on the events. In this context, genetic information from Mr. Garzón was taken, genetic information from the mother of the alleged victim -María Clorinda Guzmán- was obtained, and it acted in collaboration with Interpol, *inter alia*.

41. The State made reference to a new complaint filed by the relatives of the alleged victim on May 23, 2013 and indicated that it triggered an inquiry that year, which was accumulated with the previous one on January 2, 2014. Ecuador stated that currently the investigation is classified but that actions continue to be taken as part of it.

42. The Ecuadorian State also refuted the petitioner's argument related to the lack of access to justice suffered by the relatives of the alleged victim, as it stated that remedies -such as *habeas corpus*- were available and instead, the relatives refrained from using them. It reiterated that the *habeas corpus* was an adequate and effective remedy to determine the whereabouts of the disappeared person.

43. The State sustained that it did not breach its obligation to respect nor did it breach its duty to adopt domestic legal provisions, for in this case the elements that constitute a forced disappearance are absent.

44. Ecuador alleged that it did not breach Article I of the Inter-American Convention on Forced Disappearance of Persons, as the events of this case do not constitute forced disappearance of persons and, in any case, said Treaty had not entered into force at the time of the events.

45. Finally, the State mentioned that it has a mechanism for victim's reparation that is adequate in this case. Based on that, on the principle of complementarity, and on the Inter-American Court's jurisprudence, Ecuador alleged that the IACHR should establish that it lacks jurisdiction to hear this case, as the Commission's intervention would risk the reparation proceedings implemented by the Law for Reparation for Victims.

IV. ESTABLISHED FACTS

46. The Commission considers it pertinent to recall that the jurisprudence of the Inter-American System has established that, for an international tribunal, the criteria for assessing evidence are less rigid than under domestic legal systems and has stated that it can "assess the evidence freely."² In that respect, both the Commission and the Inter-American Court have said that it "must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that,

² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 127 and 128.

despite this, is able to create confidence in the truth of the facts that have been alleged.”³ The Court has established that “it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them.”⁴

47. The Commission emphasizes that in cases in which a forced disappearance is alleged, it has been the practice of the bodies of the Inter-American system to give special consideration to the nature of this violation, which is intended to erase any physical trace of the crime and which is generally followed by a series of acts and omissions on the part of State officers seeking to cover up the crime by means of various ploys. First, they deny the deprivation of liberty. Next, they resort to disinformation, or the dissemination of false information, regarding the victim’s whereabouts or fate. Finally, they conduct ineffective, lax investigations that, far from establishing the truth, perpetuate ignorance about the victim’s fate.⁵

48. Likewise, the Court has stated that indicatory or presumptive evidence is of special importance in the case of complaints of forced disappearance, because this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts, and fate of the victims to be determined.”⁶ The Court has deemed it possible for the disappearance of a specific individual to be demonstrated by means of indirect and circumstantial testimonial evidence, when taken together with their logical inferences, and in the context of the widespread practice of disappearances.⁷

49. The facts will be described in the following order: (A) General context of forced disappearances; (B) General Information included in the Report from the Truth Commission; (C) About César Gustavo Garzón Guzmán and his disappearance; (D) About the domestic proceedings.

A. General context of forced disappearances

50. The Commission has monitored the human rights situation in Ecuador, through its various protection mechanisms. Specifically, in its 1997 "Report on the Situation of Human Rights in Ecuador", it reported that between 25 and 30 forced disappearances took place between 1985 and 1995 in Ecuador, many of which occurred between 1985 and 1988⁸. It added that in some of these cases, the Criminal Investigation Service of the Police was responsible for carrying out the crimes and attempting to conceal them⁹, and recommended that the State carry out prompt, exhaustive and impartial investigations in all cases of disappearances that have not yet been resolved, as well as prosecute and punish those responsible and compensate the survivors of the victims¹⁰.

51. For its part, the Working Group on Enforced or Involuntary Disappearances of the United Nations reported on 17 cases of disappearances in Ecuador between 1985 and 1992 and indicated that most

³ IACHR, Report No. 25/15, 10.737, Merits. Víctor Manuel Isaza Uribe and Family. Colombia. July 21, 2015, para.42 I/A Court H.R., Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 132.

⁴ I/A Court H.R., Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134.

⁵ IACHR, Report No. 111/09. Case11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009, para. 56.

⁶ I/A Court H.R., Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134.

⁷ I/A Court H.R., Blake v. Guatemala Case. Judgment of January 24, 1998. Series C No. 36, para. 49.

⁸ IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96/Doc.10 rev.1, 24 April 1997, E. Claims concerning Disappearances, <http://www.cidh.org/countryrep/ecuador-eng/chaper-4.htm#THE RIGHT TO LIFE>.

⁹ IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96/Doc.10 rev.1, 24 April 1997, E. Claims concerning Disappearances, <http://www.cidh.org/countryrep/ecuador-eng/chaper-4.htm#THE RIGHT TO LIFE>.

¹⁰ IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96/Doc.10 rev.1, 24 April 1997.

of these cases "concerned persons who were reportedly arrested by members of the Criminal Investigation Service of the National Police. The disappearances occurred in Quito, Guayaquil and Esmeraldas (...)"¹¹.

B. General Information included in the Report from the Truth Commission

52. Taking into account that "during the democratic period torture, disappearances, extrajudicial killings and other grave violations of human rights were denounced as part of a State practice that must be investigated,"¹² the Truth Commission in Ecuador was established on May 3, 2007 through Executive Decree No. 305, published in the official gazette (*Registro Oficial*) No. 87 of May 18, 2007,¹³ in order to investigate human rights violations between 1984 and 1988, and other periods.¹⁴ The Truth Commission was composed of the following members: Julio César Trujillo, Monsignor Alberto Luna Tobar, Sister Elsie Monge Yoder and Pedro Restrepo Bermúdez.¹⁵

53. On June 6, 2010, the Truth Commission launched its Final Report: "Without Truth there is no Justice." Therein, the Truth Commission established that in the period 1984-2008 there were a total of 456 victims of human rights violations in Ecuador; these violations included illegal deprivation of liberty, torture, sexual violence, forced disappearance, attempts against life and extrajudicial executions.¹⁶

54. On October 29, 2010, the Government of Ecuador presented the Report of the Truth Commission to the IACHR, within the framework of its 140th session, indicating that the delivery of the report is "part of our government's commitment with the guarantee and protection of human rights, but above all to establish a precedent that can never be repeated in America, never again in our country"¹⁷ and reported on a series of measures taken to comply with the recommendations issued by the Truth Commission¹⁸.

1. The time period between 1984 and 1988

55. Regarding the time period 1984-1988 in which President Febres Cordero was in office, the Truth Commission stated that a context of repression was created against the so-called "subversive groups" such as "*Alfaro Vive Carajo*" and "*Montoneras Patria Libre*," aimed at the elimination of the members of these groups,¹⁹ and establishing the proposition that those who disagreed with the political ideology of the ruling regime were dangerous to the safety of the community and the country. The repression also encompassed

¹¹ UN, Report of the Group on Working Group on Enforced or Involuntary Disappearances, E/CN.4/1995/36, p. 33, December 30, 1994 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G95/100/03/PDF/G9510003.pdf?OpenElement>

¹² National Assembly of the Republic of Ecuador (Asamblea Nacional de la República del Ecuador), Ley de Protección e Inmunidad de la Comisión de la Verdad.

¹³ "The Truth Commission of Ecuador was established as a result of a historic process at the behest of several organizations of victims of human rights violations and their relatives (*Comité de Familiares de Presos Políticos, Comité de Familiares contra la Impunidad* and in the recent years the *Comité Ecuatoriano No Impunidad -CENIMPU-* which is composed by relatives and direct victims), who had been demanding for more than twenty years of the Ecuadorian State that it duly satisfy their rights to the truth, justice, and reparation." Report of Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 17.

¹⁴ The objectives of the Ecuadorian Truth Commission were: (1) Perform a deep and independent investigation into the human rights violations that occurred between 1984 and 1988, and other special cases, such as the so-called Fybeca case, as well as the causes and circumstances which made them possible. (2) Request the declassification of files of the State which are confidential or of national security. (3) Promote recognition to the victims of such violations and design reparation policies. (4) Recommend the necessary legal and institutional reforms as well as effective mechanisms for the prevention and punishment of human rights violations. (5) Determine the existence of probable signs of civil, criminal and administrative responsibilities to forward them to the relevant authorities. See: Report of Truth Commission of Ecuador. 2007. Executive Summary. Introduction, p. 17.

¹⁵ Official Gazette No. 87, Article 7, Friday May 18, 2007, Thursday May 3, 2007, Constitutional President of the Republic.

¹⁶ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010.

¹⁷ IACHR, Presentation of the Report of the Truth Commission of Ecuador, 140 period of sessions of the IACHR, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=120&page=3>; min. 16:30.

¹⁸ IACHR, Presentation of the Report of the Truth Commission of Ecuador, 140 period of sessions of the IACHR, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=120&page=3>;

¹⁹ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p.147.

various social sectors opposing the regime or its economic policies, such as students, peasants, workers and trade unions.²⁰

56. As stated, the extreme repression was based in the doctrine and law of national security, "which threaten the fundamental freedoms and human rights of the Ecuadorian population with the justification of fighting Communist tendencies or extremists in the country."²¹ The Report added that "these regulations justified acts of violence and terrorism perpetrated by the forces of the State against the alleged imminence and endangerment of a powerful 'internal enemy' that in its conception justified the use of any violation of human rights as an act of so-called defense of the society and the State."²²

57. The afore-mentioned Report establishes that a new repressive agency of the police started functioning. It was called Criminal Investigation Service, also known as SIC-10, which derived from the Criminal Investigations Service (SIC) and became a clandestine operative organization aimed at reprising and eliminating the members of "Alfaro Vive Carajo" and other political-military organizations.²³ According to the Truth Commission, the SIC, SIC 10 and the Special Investigations Unit (UIES) of the National Police, as well as special intelligence agencies of the armed forces -such as the Special Group of Counterintelligence (GECI) and the Quito Counterintelligence Company (CCIQ) - took part in carrying out grave human rights violations in the context of the fight against subversion and the political opposition in the country,²⁴ including forced disappearances against members or sympathizers of groups considered subversive.

58. According to the Truth Commission, 9 cases of forced disappearance took place during León Febres Cordero's government.²⁵

2. The period between 1988 and 1992

59. In relation to the period of time between 1988 and 1992, in which President Rodríguez Borja was in office, the Truth Commission considered that while there was a greater respect for the exercise of political freedom and expression, doctrines and security policies concerning repression of subversion continued to prevail.²⁶

60. As established in the Truth Commission's Report, during this time frame the Government refused to dismantle the police and army groups that had been accused of the afore-mentioned violations. In its report, the Truth Commission established that during this period one forced disappearance occurred.²⁷ This one disappearance is the disappearance of the alleged victim of the instant case. In this regard, the Commission will include in the next section, the findings of the Truth Commission about Mr. Garzón Guzmán.

61. The Truth Commission established that a total of 17 forced disappearances took place during the period between 1985 and 2004.²⁸

62. With regards to the victims' profiles and *modus operandi* used for the forced disappearances, the Commission notes that the Truth Commission determined that of the 17 victims of forced disappearance,

²⁰ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 148.

²¹ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights Violations, 2010, p. 326.

²² Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights Violations, 2010, p. 327.

²³ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 222.

²⁴ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Main Police and Army Structures involved in Human Rights Violations in Ecuador, p. 249.

²⁵ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights Violations, 2010, p. 93.

²⁶ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 154.

²⁷ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights Violations, 2010, p. 94.

²⁸ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 106.

three were members of “*Alfaro Vive Carajo*” and one was related to “*Montoneras Patria Libre*.” The Truth Commission stated that it observed from the cases it heard and the witness statements it received, that forced disappearance of persons started with the detention of the victims by State agents, in compliance with repressive strategies or in routine actions in which the agents ended up abusing of their authority and unjustifiably used excessive force.²⁹

63. The Truth Commission also made reference to a pact of silence among the members of the different police and army agencies who participated in the detention, torture and forced disappearances. There was also a similar pact among other members who have or could have access to information related to these events, together with actions of destruction of records or other incriminatory documents, internal misinformation efforts (transfer of detainees, internal mobilization,) as well as the public denial of the events denounced by relatives and public opinion. The Truth Commission identified these elements as the foundation of the institutional *modus operandi* of forced disappearances.³⁰

64. In the afore-mentioned report the Truth Commission also established some situations in which “the forced disappearance that was carried out by State agents was attempted to be concealed as a mere disappearance of a person, in which situation responsibility could not be determined or in which there could be many alleged and uncertain authors who were generally linked to common crime, faith (accident) and even a personal and secret decision to abandon completely their familiar contexts.”³¹

C. About César Gustavo Garzón Guzmán and his disappearance

1. About César Gustavo Garzón Guzmán and his family

65. César Gustavo Garzón Guzmán was born on June 8, 1958. He was a writer and trainer at the *Casa de la Cultura Ecuatoriana* and also worked for the “*El Conejo*” Publishing House.³² At the time of the events he was 32 years old and was writing his PhD dissertation. According to the case file, his relatives are: i) his father Julio Garzón; ii) his mother, Clorinda Guzmán de Garzón; ii) his siblings Luis Alberto Garzón Guzmán and Rodrigo Garzón Guzmán; and iii) his brother in law, Luis Lascano.³³ In some of the petitioners’ briefs there is a mention of a sister and a niece, whose names do not appear in the file.

2. About the detention in 1989

66. On August 7, 1989 Mr. Garzón Guzmán was detained and transferred to the García Moreno Prison, where he was deprived of liberty for approximately 13 months.³⁴

67. The alleged victim was accused of carrying firearms, ammunition and explosives,³⁵ as well as of armed assaults and theft of money, vehicle theft, falsification of public documents, attempted kidnapping, subversive activities and illegal possession of State garments and several blank official document forms.³⁶

²⁹ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 107.

³⁰ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 107.

³¹ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Executive Summary, 2010, p. 109.

³² Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 2: Crimes against humanity, 201, p. 89.

³³ Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Annex 4 to the State’s observations of February 2, 2016.

³⁴ Annex 2. Document No. 924-CRSVQ No. 2 from the Director of the Quito’s Center for the Social Rehabilitation of Men No. 2 to Mr. Coronel Aníbal de La Torre Romero (Chief of the O.I.D. of Pichincha) on July 12, 1994. Annex to the communication sent by the Ambassador-Permanent Representative of Ecuador on April 29, 1996.

³⁵ Annex 2. Document No. 924-CRSVQ No. 2 from the Director of the Quito’s Center for the Social Rehabilitation of Men No. 2 to Mr. Coronel Aníbal de La Torre Romero (Chief of the O.I.D. of Pichincha) on July 12, 1994. Annex to the communication sent by the Ambassador-Permanent Representative of Ecuador on April 29, 1996.

³⁶ Annex 3. Report No. 4911-SICP, October 10, 1989. Annex to the State’s observations of April 29, 1996.

68. In the accusation, reference was made to the alleged victim's presumed "subversive activities" as follows:

It's worth mentioning that CÉSAR GUSTAVO GARZON GUZMAN states having started subversive activities since when there only existed the clandestine organization *Alfaro Vive Carajo*; he has provided details of circumstances and causes of the split from which *MONTONERAS PATRIA LIBRE* was established. Organization to which he has been a member all the time, attending trainings and perfecting political-military schools, both as trainer and as student; he states that nowadays he holds a monthly salary of 30000 sucres paid by the organization by means of FABIAN RAMIREZ GRIJALVA; he has a full time dedication to the so-called revolution work and as such, he has participated in many responsibility actions, complying with a full time schedule of subversive activities within the organization.³⁷

69. The alleged victim sustained that he was tortured while in detention and said that "the location where I was tortured was in the SIC-P premises, but hidden."³⁸

70. On September 7, 1990 the judge in his case dismissed all charges and the alleged victim was freed.³⁹

3. About the events that surrounded César Gustavo Garzón Guzmán's disappearance

71. According to witness statements made available, César Gustavo Garzón Guzmán went to *El Conejo* Publishing House in the afternoon of November 9, 1990 to pick up a check. Likewise, other witness statements indicate that the same night, Mr. Garzón Guzmán was at the discotheque "Son Candela," where he was last seen.

72. About his presence at *El Conejo* Publishing House, Luis Lascano and Rodrigo Guzmán, brother in law and brother of the alleged victim, respectively, stated before the Police that on November 9, 1990 at lunch time, the alleged victim told them that he had to urgently go to the Publishing house to pick up a check for a literary piece he has written and that, later, he was attending a friend's birthday celebration. They stated that he left approximately at 3:00 pm dressed with striped gray pants, a white shirt with red and blue dots, black jacket, and black shoes. They have not heard anything from him since then.⁴⁰ On the other hand, Mario Toscano, accountant at *El Conejo* Publishing House, confirmed that Mr. Garzón Guzmán went there that afternoon to pick up a check.⁴¹

73. Juan Carlos Valenzuela, disc-jockey and co-owner of the discotheque "Son Candela", stated that when he saw the news about the disappearance of CÉSAR GUSTAVO GARZÓN GUZMÁN, and saw his picture, he remembered he had seen him on the night of November 9 of the previous year, together with Messrs. Moreno and Vásquez, but that he did not know anything else about the matter and he did not see

³⁷ Annex 3. Report No. 4911-SICP, October 10, 1989. Annex to the State's observations of April 29, 1996.

³⁸ Annex 4. Questionnaire on Torture and Ill-Treatment filled by César Gustavo Garzón Guzmán. Annex to the initial petition of November 8, 1994.

³⁹ Annex 2. Document No. 924-CRSVQ No. 2 from the Director of the Quito's Center for the Social Rehabilitation of Men No. 2 to Mr. Coronel Aníbal de La Torre Romero (Chief of the O.I.D. of Pichincha) on July 12, 1994. Annex to the communication sent by the Ambassador-Permanent Representative of Ecuador on April 29, 1996.

⁴⁰ Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Interview of Luis Lascano and Rodrigo Guzmán. Annex 4 to the State's observations of February 2, 2016.

⁴¹ Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Interview of Mario Toscano. Annex 4 to the State's observations of February 2, 2016.

when or with whom he left the place.⁴² Patricia Villacis, another co-owner of the discotheque “Son Candela”, stated that the day of the events she saw the alleged victim arrive at the discotheque with other people, and that “she served them a small bottle of rum. FRANCISCO MORENO AND LILIANA VASCONEZ left the table and thirty minutes later, around 01:00 am the alleged victim left. She said that she opened the door for him to leave and immediately closed it again and went to help other clients at the bar.”⁴³

74. In the Truth Commission Report, it explains that on December 3, 1990, when Liliana Vásconez Vaca was called to render a statement to the Homicide Department of the Criminal Investigation Service of Pichincha, “I was accused of being an active member of the *Montoneras Patria Libre* Group, they tried to effectively link me with the disappeared and also threatened me with having me say whatever they wanted me to say by using coercive means. Her identification was confiscated until December 4, 1990.”⁴⁴

75. In 2003, several media reports that made reference to the disappearance of César Gustavo Garzón Guzmán were published. Some of these reports were also mentioned by the Truth Commission.

76. Due to a news story published on May 4, 2003, in which a former intelligence agent from the Army assured that “General Vaca knows the whereabouts of the skeletal remains of writer Gustavo Garzón and he knows how Arturo Jarrín, leader of *Alfaro Vive Carajo*, was killed in the 80’s,”⁴⁵ General Vaca responded to the allegations about being the mastermind of a police force that tortured and killed members of the Group “*Alfaro Vive Carajo*” by stating that “then I had a hierarchical position and over me laid a whole institutional structure. It was not a policy of Edgar Vaca against the criminals, but of the institution in fulfillment of its institutional mission.”⁴⁶

77. In response to said news report, the Ecumenical Commission for Human Rights addressed letters to the Ministry of Government and the Ministry of Defense on May 5, 2003. In those letters, the Ecumenical Commission requested that a comprehensive investigation be ordered to shed light on the events. The petitioners stated that they did not receive any reply indicating that an investigation was carried out.⁴⁷

78. The letters stated that “since the beginning of the disappearance there was no interest on the part of the competent authorities and there even were signs of cover up. César Verduga, the then-Minister of Government, hinted to the mother, Mrs. Clorinda Guzmán, that her son wanted to disappear because of disappointment in love (...)”⁴⁸. Others commented that he would have left for Colombia (...) In its letter, the

⁴² Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Interview of Juan Carlos Valenzuela. Annex 4 to the State’s observations of February 2, 2016.

⁴³ Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Interview of Patricia Villacis. Annex 4 to the State’s observations of February 2, 2016.

⁴⁴ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 4: Cases, 1989-2008 Period, 2010, Case of Gustavo Garzón, p. 30.

⁴⁵ Annex 5. Diario El Comercio, report of May 4, 2003, at page 2 A: “Vaca, powerful as untouchable.” Annex to the petitioners’ brief of July 16, 2009.

⁴⁶ Annex 5. Diario El Comercio, report of May 4, 2003, at page 2 A: “Vaca, powerful as untouchable.” Annex to the petitioners’ brief of July 16, 2009.

⁴⁷ Annex 6. Letters sent to the Minister of Government (Document # 349 CEDHU/2003) and to the Minister of Defense (Document #349 CEDHU/2003) by the Ecumenical Commission for Human Rights on May 5, 2003. Annex to the petitioners’ brief of July 16, 2009.

⁴⁸ Annex 6. Letters sent to the Minister of Government (Document # 349 CEDHU/2003) and to the Minister of Defense (Document #349 CEDHU/2003) by the Ecumenical Commission for Human Rights on May 5, 2003. Annex to the petitioners’ brief of July 16, 2009.

Ecumenical Commission requested an investigation to identify the former official of army intelligence who states that the Commander General of the police knows the whereabouts of the alleged victim.⁴⁹

79. The June 18th news report informed that a friend, who requested not to be identified, stated that on the day of the events he was with the alleged victim at the “Son Candela” discotheque and that he will never forget what Mr. Garzón Guzmán confided that night: “I know they are following me, the agents are following my steps closely.”⁵⁰ The report also states that “State security forces were behind the writer’s disappearance,” according to an army intelligence officer.⁵¹

80. Also on June, *El Comercio* published another report making reference again to the fact that “General Vaca knew exactly where the skeletal remains of the writer Gustavo Garzón were.”⁵²

4. The references to Mr. Garzón Guzmán in the Report of the Truth Commission

81. The Truth Commission recorded the case of César Gustavo Garzón Guzman, as a forced disappearance, described as follows:

Place and date of the events: Quito, November 9, 1990

File: 232021

Total of victims: 1

Alleged responsible: N/A

Victim: Garzón Guzmán César Gustavo

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Violations committed against him: Forced Disappearance

82. The Truth Commission describes the facts, literally, as follows:

Forced Disappearance of the writer

In the afternoon of November 9, 1990, Gustavo Garzón Guzmán left this house located in the city of Quito, San Juan sector, to “El Conejo” Publishing House to pick up a check for the publication of a literary piece he has written. At 17:30 he met with Miriam Liliana Vásquez Vaca at the Coffee shop located in Amazonas Avenue and Moreno Bellido and together they went to Quito’s Expo Center from where Francisco Antonio Moreno picked them up an hour later. Together they went to the Construction Chamber to pick up Alfredo Pérez. They then went to the Bar “Tropical” located at the city’s southern part, between the Quijano and Maldonado Streets. They had some drinks there and left around 22:00 to the Discotheque “Son Candela,” at Carrión Street and Reina Victoria where they met Raúl Roberto Ricaurte Rodríguez. At 1:00 Francisco Moreno and Miriam Liliana Vásquez left leaving Gustavo Garzón “in perfect physical and mental health, sober and relaxed.” Gustavo Garzón Guzmán disappeared early in the morning of November 10, 1990; he didn’t make it to his house after he met his friends so his family looked for him in “hospitals, clinics and even the morgue

⁴⁹ Annex 3. Letters sent to the Minister of Government (Document # 349 CEDHU/2003) and to the Minister of Defense (Document #349 CEDHU/2003) by the Ecumenical Commission for Human Rights on May 5, 2003. Annex to the petitioners’ brief of July 16, 2009.

⁵⁰ Annex 7. Diario El Comercio, report of June 18, 2003: “A search for the disappeared with no answer.” Annex to the petitioners’ brief of July 16, 2009.

⁵¹ Annex 7. Diario El Comercio, report of June 19, 2003: “A search for the disappeared with no answer.” Annex to the petitioners’ brief of July 16, 2009.

⁵² Annex 8. Diario El Comercio, report of June 18, 2003 at page 7A: “The hidden side of anti-subversive espionage.” Annex to the petitioners’ brief of July 16, 2009.

without success".⁵³ The Truth Commission said this case was attributable to "late anti-subversive actions" left from the Presidency of Febres Cordero.⁵⁴

83. The Truth Commission's Report names members of the national police as those responsible of the forced disappearance of the alleged victim, in several parts of the report; however, it does not individually identify those responsible. Volume 1 of the Report includes a chart of forced disappearances in Ecuador between 1985 and 2005 where it included the following information about the alleged victim:

Year: 1990

Province: Pichincha

Cases: Gustavo Garzón

Number of Victims: 1

Locations: Criminal Investigation Service (SIC-P)

Branch of the Security Forces: National Police⁵⁵

84. In Volume 5, of Conclusions and Recommendations, the Truth Commission described 24 cases in which it had not been possible to individualize the alleged responsible person but there were signs of State agents' participation. About the alleged victim it stated:

No: 71

Case: Gustavo Garzón

Alleged Responsibility: Members of the National Police

Details⁵⁶:--

5. The search and complaint lodged by the family after the disappearance

85. According to statement of the relatives, in the early hours of November 10, when they realized that the alleged victim did not get to his house, they contacted relatives and friends to inquire about his whereabouts. They also searched jails, hospitals, clinics and the morgue, not only in Quito but in different cities of the country, asking for help from friends, like a nephew who was a police officer, but all these actions were unsuccessful.⁵⁷

86. They said that on November 11, 1990 they went to the Investigation Service of (SIC-P) to lodge a complaint, which was not taken by his agency, as it maintained that 48 hours had not elapsed since his disappearance. The State refuted this argument, stating that this allegation cannot be confirmed, although it is confirmed that the complaint was indeed lodged on November 16, 1990 by Fabiola Lema Ramirez.⁵⁸

87. On November 14, 1990 fellow classmates of the alleged victim publicly denounced his disappearance to "El Comercio" Newspaper. The newspaper published the following: "Young writer Gustavo

⁵³ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 4: Cases, 1989-2008 Period, 2010, Case of Gustavo Garzón, p. 29.

⁵⁴ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights violations, 2010, p. 96.

⁵⁵ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 1: Human Rights violations, 2010, Case of Gustavo Garzón, p. 187.

⁵⁶ Report of Truth Commission of Ecuador, Without Truth there is no Justice, Vol. 5: Conclusions and Recommendations, 2010, p. 36.

⁵⁷ Annex 1. Police Report No. 051-SICP signed by investigation officers Edmundo Mera and Romel Castro, directed by the Head of Criminal Investigation of the Province of Pichincha, of January 08, 1991. Interview of Luis Lascano and Rodrigo Guzmán. Annex 4 to the State's observations of February 2, 2016.

⁵⁸ Annex 9. Complaint lodged by Fabiola Lema Ramirez on November 16, 1990 before the Head of the Criminal Investigation Service of Pichincha. Annex 2 to the brief of observations of the State of February 2, 2016.

Garzón has disappeared since last Friday November 9th. His relatives and friends have made intense efforts to find him.”⁵⁹

88. On November 16, 1990 Fabiola Lema Ramírez, a friend of the alleged victim, lodged a complaint with the Judicial Police of Investigations of the Province Head of Pichincha and stated that “on Friday November 9, 1990, at approximately 03:00 AM, Mr. GUSTAVO GARZON GUZMÁN, left a discotheque in La Mariscal area to go to his house. He has not it made it there yet, his whereabouts are unknown, and the disappeared has the following features: 1.60 cm height, brunette complexion, light brown eyes and normal size.”⁶⁰

89. On November 23, 1990 the petitioners lodged a complaint with the National Congress. In response, it sent a written communication to the Director of Investigations of the National Police urging that the situation be investigated.⁶¹

90. On November 28, 1990 a group of writers from Pichincha publicly denounced that, at that time, there was no information about the whereabouts of the alleged victim.⁶²

91. On November 29, 1990 by virtue of the lack of response to her previous complaints, the mother of the alleged victim filed a new complaint before the President of the Tribunal of Constitutional Guarantees citing the gravity of the situation and requesting that the President urgently order an investigation into the whereabouts of the missing person.⁶³ In said complaint, the mother stated that “the disappearance of my son happened three months after exiting the Garcia Moreno Penitentiary, after demonstrating before the justice that he had no participation in the acts that caused his detention. Therefore, I suppose that the disappearance of my son is due to clear political reasons that violate express Constitutional norms, is related to national freedom and security, and to the right to life and freedom of expression.”⁶⁴

92. On February 19, 1991 the petitioners submitted a new communication to the President of the Tribunal of Constitutional Guarantees, requesting the designation of a multi-partisan special commission to investigate, process and pursue the momentum of this process.⁶⁵

93. On July 1, 1991 the Family Committee sent a letter to the then-Ministry of Government and Police, expressing their concern about “the actions of the police to cover-up their deteriorated image, whilst the uniformed assassins enjoy full impunity”⁶⁶ and mentioned the name of different police agents responsible for the detentions, tortures and disappearances that happened at that time.⁶⁷

⁵⁹ Annex 10. News report of the El Comercio Newspaper of November 14, 1990: “Writer disappears.” Annex to the brief from the petitioners of July 16, 2009.

⁶⁰ Annex 9. Complaint lodged by Fabiola Lema Ramirez on November 16, 1990 before the Head of the Criminal Investigation Service of Pichincha. Annex 2 to the brief of observations of the State of February 2, 2016.

⁶¹ Annex 11. Communication from the president of the H. National Congress, Dr. Edelberto Bonilla Oleas to the Director of Investigations of the National Police, November 23, 1990 – Document Nro. 00009 APCN-90. Annex to the observations brief of the petitioners of July 16, 2009.

⁶² Annex 12. News report of November 28, 1990 – Diario Expreso: “Ecuadorian intellectuals to the country- In defense of life.” Annex to the initial petition of November 8, 1994.

⁶³ Annex 13. Complaint filed by the petitioners before the President of the Tribunal of Constitutional Guarantees, on November 29, 1990. Annex to the petitioners’ observations brief of July 16, 2009.

⁶⁴ Annex 13. Complaint filed by the petitioners before the President of the Tribunal of Constitutional Guarantees, on November 29, 1990. Annex to the petitioners’ observations brief of July 16, 2009.

⁶⁵ Annex 14. Communication of the petitioners to the Tribunal of Constitutional Guarantees, on February 19, 1991. Annex to the petitioners’ observations brief of July 16, 2009.

⁶⁶ Annex 15. Letter sent by the Family Committee to the Ministry of Government and Police, César Verduga, on July 1, 1991. Annex to the petitioners’ initial petition of November 8, 1994.

⁶⁷ Annex 15. Letter sent by the Family Committee to the Ministry of Government and Police, César Verduga, on July 1, 1991. Annex to the petitioners’ initial petition of November 8, 1994.

94. On November 7, 1991 the mother of the alleged victim sent a letter to the President of the Republic, requesting that he informs them of her son's whereabouts.⁶⁸ Also, on that day, the mother sent a letter to the Minister of Government and Police insisting that justice be done in her case.⁶⁹

95. On July 8, 1992 the mother of the alleged victim sent a new letter to the President of the Republic, requesting that an investigation into the disappearance of her son be conducted.⁷⁰ On August 5, 1992 the mother of the alleged victim sent a letter to the new President-elect, requesting that, upon taking office, the investigation of her son's disappearance is ordered.⁷¹

96. On August 17, 1992 the mother of the alleged victim sent a new letter to the Minister of Government and Police, expressing her suffering caused by the disappearance of her son and stating that the International Commission created by the President did not investigate the death of her son, as she had been promised.⁷²

D. About the internal processes

97. On November 16, 1990 the Police General Inspector of the General Command of the National Police sent a telegram to various internal units ordering them to proceed in the search for Mr. César Gustavo Garzón Guzmán indicating his physical characteristics: color: brunette, height: 160, eyes: light brown, hair: brown, body type: thick. In the telegram, he requested that any news be shared with him urgently.⁷³

98. On December 17, 1990 the Chief of Criminal Investigation of Pichincha sent a new telegram to the District and Provincial Commands, Chiefs and deputy Chiefs requesting information about the results of the actions undertaken in relation to the telegram of December 16, 1990.⁷⁴

1. Police investigation: first information report

99. On January 8, 1991 the Police issued an "information report" whereby it informed of the investigations undertaken to-date in relation to the disappearance of the alleged victim.⁷⁵

100. Said document records that the investigating officers received various complaints related to the disappearance and they undertook a series of diligent actions. Particularly, it is stated that statements were rendered by Fabiola Lema Ramírez, Vicente Alfredo Pérez Bermúdez, Miryam Liliana Vasconez Vaca, Francisco Antonio Moreno Badillo and Raúl Roberto Ricaurte Rodríguez, persons with whom the alleged

⁶⁸ Annex 16. Letter sent to the President of the Republic, Dr. Rodrigo Borja Cevallos, by Ms. Clorinda Guzmán de Garzón on November 07, 1991. Annex to the petitioners' observations brief of July 16, 2009.

⁶⁹ Annex 17. Letter sent to the Minister of Government and Police, César Verduga, by Ms. Clorinda de Garzón on November 7, 1991. Annex to the petitioners' initial petition of November 8, 1994.

⁷⁰ Annex 18. Letter sent to the President of the Republic, Dr. Rodrigo Borja Cevallos, by Ms. Clorinda Guzmán de Garzón on November 07, 1991. Annex to the petitioners' observations brief of July 16, 2009.

⁷¹ Annex 19. Letter sent to the President of the Republic of Ecuador elected by popular vote – Arch. Sixto Duran Ballén - by Ms. Clorinda Guzmán de Garzón, on August 05, 1991. Annex to the petitioners' observations brief of July 16, 2009.

⁷² Annex 20. Letter sent to the Minister of Government and Police, Roberto Dunn Barreiro, by Ms. Clorinda Guzmán de Garzón on August 17, 1992. Annex to the petitioners' initial petition of November 8, 1994.

⁷³ Annex 21. Telegram No. 90-0233-IGPN issued by the Police General Inspector (General Command of the National Police), in the city of Quito, on November 16, 1990. Annex 1 of the merits brief of the State, February 2, 2016.

⁷⁴ Annex 22. Telegram No. 270-SICP issued by the Chief of Criminal Investigation of Pichincha, in the city of Quito, on November 17, 1990. Annex 3 of the merits brief of the State, February 2, 2016.

⁷⁵ Annex 1. Police Report No. 051-SICP issued by the investigating officers to the Provincial Chief of Criminal Investigation of Pichincha, January 8, 1991. Annex 4 of the merits brief of the State, February 2, 2016.

victim had met on the night of November 9, as well as Luis Alberto Garzón Guzmán, the brother of the disappeared person.⁷⁶

101. It was also stated that interviews were carried out with Luis Lascano and Rodrigo Guzmán, brother-in-law and brother of the disappeared person respectively; Juan Carlos Valenzuela and Patricia Villacis, co-owner partners of the location called “Son Candela”; Juan Carlos Suarez, manager of the Manhattan Restaurant located in the upper level of the discotheque “*Son Candela*”, Martha Tenorio, friend of the alleged victim, as well as Mario Toscano, accountant of the “*El Conejo*” Publishing House.⁷⁷ The relevant content of the statements recorded in the police report was referred to in the section of the facts related to the disappearance of the alleged victim.

102. In said document, there is record that the Police carried out a verification in the Bank of Guayaquil in relation to the check that the alleged victim would have received and cashed on the day of his disappearance, as recorded on the obverse, said check would have been cashed on November 12, 1990, that is, at a time after his disappearance. The police added, that they received the response that checks cashed by the “deferred system” are sealed with the date of the following day and, in this case, the check was cashed on Friday and, therefore, it carried the date of Monday November 12, 1990.

103. It further states, that hospitals, clinics, assistance homes, morgues, detainment centers, among others, were visited to obtain indications of the disappearance of the alleged victim; and that verifications were carried out through the migration dependencies “in case Mr. CÉSAR GUSTAVO GARZÓN GUZMÁN could have left the country for any reason, but the results of these proceedings were negative because there is not any recorded movement of said person.”⁷⁸

104. In the police report, it is indicated that the police will continue “with the corresponding investigations with the objective to locate Mr. CÉSAR GUSTAVO GARZÓN GUZMÁN, who is missing since the early morning hours of November 10, 1990.”⁷⁹

2. Police Investigation: second information report

105. On July 30, 1991 the Second Lieutenant of the Police issued a new information report explaining that they had visited the location of “Son Candela”, health centers, morgue, prisons and the migration offices, both in Quito and Guayaquil, with the objective of obtaining new information, but obtained negative results. Also, he indicated that a telegram was sent to the Chiefs of different dependencies of the National Police in all the Republic, in the month of May of the present year, without obtaining a positive response.⁸⁰ He concluded that they will continue with the respective investigations with the objective of locating the alleged victim.⁸¹

⁷⁶ Annex 1. Police Report No. 051-SICP issued by the investigating officers to the Provincial Chief of Criminal Investigation of Pichincha, January 8, 1991. Annex 4 of the merits brief of the State, February 2, 2016.

⁷⁷ Annex 1. Police Report No. 051-SICP issued by the investigating officers to the Provincial Chief of Criminal Investigation of Pichincha, January 8, 1991. Annex 4 of the merits brief of the State, February 2, 2016.

⁷⁸ Annex 1. Police Report No. 051-SICP issued by the investigating officers to the Provincial Chief of Criminal Investigation of Pichincha, January 8, 1991. Annex 4 of the merits brief of the State, February 2, 2016.

⁷⁹ Annex 1. Police Report No. 051-SICP issued by the investigating officers to the Provincial Chief of Criminal Investigation of Pichincha, January 8, 1991. Annex 4 of the merits brief of the State, February 2, 2016.

⁸⁰ Annex 23. Information Report No. 1972-SICP signed by Second Lieutenant of the Police, Fausto Olivo – SCIP and sent to the Provincial Chief of Criminal Investigation of Pichincha on July 30, 1991. Annex to the communication sent by the Ambassador – Permanent Representative of Ecuador on July 2, 1996.

⁸¹ Annex 23. Information Report No. 1972-SICP signed by Second Lieutenant of the Police, Fausto Olivo – SCIP and sent to the Provincial Chief of Criminal Investigation of Pichincha on July 30, 1991. Annex to the communication sent by the Ambassador – Permanent Representative of Ecuador on July 2, 1996.

3. Police Investigation: third information report

106. On August 22, 1994 the Second Lieutenant of the Police issued a new information report informing about the status of the investigations undertaken in relation to the disappearance of the alleged victim. In said writing, the Second Lieutenant of the Police referred to the facts of the disappearance of the alleged victim in the following terms:

1. That when carrying out a detailed analysis of the content of Report No. 4911-SICP, dated August 10, 1989, we find that through the versions (sic) of CÉSAR GARZON, other active members of the subversive movement or group "*Montoneras Patria Libre*" were apprehended, and in light that the citizen GARZON GUZMAN, three months after having obtained his freedom, disappears without leaving any trace, it is presumed that unidentified subjects belonging to the same subversive group are related with the disappearance, without having to-date obtained any information about his whereabouts.⁸²

107. The Second Lieutenant concluded stating that "the corresponding investigations will be continued until there is total clarification of the case and thus the location of the citizen César Gustavo Garzón Guzmán, and these results will be disclosed in a timely manner."⁸³

108. The Commission observes that the State informed that after the report of the Truth Commission, judicial investigations were initiated about the disappearance of Mr. Garzón Guzmán. Even though some actions were mentioned, the State did not provide documentary evidence of these investigations. It did not inform about the progress or concrete outcomes in the individualization of the possible responsible persons nor did it provide any information about a plan of search for the whereabouts of Mr. Garzón Guzmán.

V. ANALYSIS OF LAW

A. Rights to the recognition of juridical personality, personal liberty, to humane treatment, to life, to a fair trial and to judicial protection (Articles 3, 7, 5, 4, 8.1 and 25.1 of the American Convention) in relation to the obligation to respect and ensure the rights (Article 1(1) of said instrument); and Inter-American Convention on Forced Disappearance of Persons (Article I(a) and b) with regards to César Gustavo Garzón Guzmán

109. The articles of the American Convention referred to in the title above state the following:

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

⁸² Annex 24. Information Report No. 1526-OIDP dated August 22, 1994, signed by Mr. Second Lieutenant of the Police Diego Erazo G. and sent to the Chief of the office of criminal investigation of Pichincha. Annex to the observations brief of the State of April 29, 1996.

⁸³ Annex 24. Information Report No. 1526-OIDP dated August 22, 1994, signed by Mr. Second Lieutenant of the Police Diego Erazo G. and sent to the Chief of the office of criminal investigation of Pichincha. Annex to the observations brief of the State of April 29, 1996.

3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

[...]

Article 5. Right to Humane Treatment

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 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 1(1) of the Convention states

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

Article 8. Right to a Fair Trial

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

Article 25. Right to Judicial Protection.

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

Article 1.1 of the Convention states:

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.

110. Also, Articles I(a) and b) of the Inter-American Convention on Forced Disappearance of Persons state the following:

Article I

The States Parties to this Convention undertake:

- a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;
- b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

111. In its consistent case law on cases of forced disappearance of persons, the inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the disappearance forms part of a systematic pattern or practice applied or tolerated by the State. In brief, it is a crime against humanity involving a gross rejection of the essential principles on which the inter-American system is based.⁸⁴

112. Therefore, States have the duty not to practice nor to tolerate the forced disappearance of persons under any circumstance. Also, States must reasonably prevent that this crime is committed, carry out a serious investigation with the objective to identify those responsible, and impose the appropriate punishment, as well as to ensure the victim adequate compensation.⁸⁵ These duties are expressly stated in Articles I(a) and I(b) of the Inter-American Convention on Forced Disappearance of Persons.

113. According to its established jurisprudence, the Commission considers forced disappearance to be a complex violation of human rights that continues in time as long as the whereabouts of the victim or his remains is unknown. A disappearance as such ceases only when the victim appears or his remains are found.⁸⁶

114. In relation to the rights infringed, forced disappearance infringes the right to humane treatment and places the victim in a grave situation of risk of suffering irreparable damage to his rights, humane treatment and life. The Court has established that "prolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment."⁸⁷ Likewise, the Court has expressed that even under the assumption that the acts of torture or deprivation of life of the person in the specific case cannot be proven, bringing of detainees before official repressive bodies, state agents, or individuals that act with its acquiescence or tolerance that practice torture and murder without punishment represents, in itself, an infringement to the duty to prevent violations to the rights to humane treatment and life.⁸⁸

⁸⁴ IACHR, Report No. 101/01. Case 10.247 and others. Extra-legal executions and forced disappearance of persons. Peru. October 10, 2001. para. 178. IACHR Application filed before the I/A Court, Case No. 11.324, Narciso González et al, Dominican Republic, May 2, 2010, para. 103; IACHR Application filed before the I/A Court, Case No. 12.517, Gregoria Herminia Contreras et al, El Salvador, June 28, 2010, para. 131; I/A Court H.R., Case of Goiburú et al. Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 82; Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 92; Case of the Serrano-Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, paras. 100 to 106; and Case of Molina Theissen. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C, No. 108, para. 41.

⁸⁵ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174; Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, para. 62; and Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 142.

⁸⁶ IACHR, Application before the I/A Court, Case No. 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, Bolivia, May 12, 2009, para. 106.

⁸⁷ I/A Court H.R., Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171; and Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, para. 85.

⁸⁸ I/A Court H.R., Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 59; Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006.

[continues ...]

115. In addition, the Court has considered that, in cases of forced disappearance, in response to the multiple and complex nature of this grave violation of human rights, its execution can include the specific infringement of the right to the acknowledgment of juridical personality.⁸⁹ Beyond the fact that the disappeared person cannot continue to enjoy and exercise other, and eventually all the rights to which they are also entitled, their disappearance is “not only one of the most grave forms of extraction of a person from all realms of the legal system, but also deny their existence and leave it in a state of limbo or an undetermined juridical situation in what refers to society and the State.”⁹⁰ The Commission considers that an enforced disappearance also implies a violation of the rights to a fair trial and judicial protection in respect of the disappeared victim, as regards the lack of actions to search for their whereabouts through efficient investigations and the impossibility of resources being brought in his favor before the State's refusal of the fact that he is in his custody.

116. In relation to the characteristics of forced disappearance, it has the following concurring and constituting elements: i) deprivation of liberty; ii) direct involvement of governmental officials or by acquiescence, and iii) refusal to acknowledge the deprivation of liberty and to disclose the fate and whereabouts of the person concerned.⁹¹

117. Next, the Commission will determine whether what happened to César Gustavo Garzón Guzmán constituted a forced disappearance, in light of each of the elements described. Taking into consideration the characteristics of the case at hand, wherein the controversy lies in the existence or not of evidence about the deprivation of liberty by state agents, the Commission considers pertinent to analyze the two first elements in conjunction.

1. In relation to the deprivation of liberty by State agents

118. The Commission observes that in accordance with the available testimonial evidence, the last place where Mr. Garzón Guzmán was seen was the discotheque “La Candela”, between the night of November 9, 1990 and the early morning of the following day. There is no direct evidence about the fact that Mr. Garzón Guzmán was deprived of liberty by state agents in said place or while leaving the place, thus, the Commission will analyze if the constitutive elements are present in light of the indicative and circumstantial evidence. As previously stated, this evidence is especially relevant in cases of forced disappearance of persons because of the nature of this violation.

119. First, the Commission highlights a series of contextual elements that are supported by the report of the Truth Commission. As indicated in the proven facts, in the immediate years before the disappearance, there was a context of state repression of subversion under the doctrine of national security, and in accordance, certain persons or groups of persons were considered domestic enemies. These persons were victims of grave human rights violations in a selective manner, based on said doctrine. Among these groups, the Truth Commission identified “*Alfaro Vive Carajo*” and “*Montoneras Patria Libre*”⁹² In relation to

[... continuation]

Series C No. 202, para. 85; and Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 154.

⁸⁹ I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, paras. 91-92; and Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 157.

⁹⁰ I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, para. 90.

⁹¹ I/A Court H.R., Case Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 97; Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55; and Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, para. 60.

⁹² See Application filed by the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the case of Consuelo Benavidez (10.476) against the Republic of Ecuador, these facts are referenced.

the types of violations recorded by the Truth Commission, forced disappearance was highlighted as one type. Finally, in relation to the context, the Commission observes that in the year of 1990, when Mr. Garzón Guzmán disappeared, both military and police repressive structures persisted.

120. Second, there are various elements that connect Mr. Garzón Guzmán to said context. On the one hand, the alleged victim was released after being detained in the Garcia Moreno prison in connection with various crimes, two months before his disappearance. In addition, in the context of his detainment prior to his disappearance, the alleged victim was officially qualified as “subversive” and associated with the “*Alfaro Vive Carajo*” and “*Montoneras Patria Libre*” groups. On the other hand, according to the statement made by Liliana Vázquez Vaca, when she was interviewed by the Police approximately one month after the disappearance of Mr. Garzón Guzmán in the framework of its investigation, various agents threatened her and associated her with the alleged victim, qualifying her as an active member of the “*Montoneras Patria Libre*” group. The Commission also highlights that one friend that accompanied the alleged victim in the discotheque “Son Candela” the day of the events, expressed that Mr. Garzón Guzmán commented to him that “I know that I’m being followed, the agents are closely following my steps”. From all these elements, the Commission understands that Mr. Garzón Guzmán was identified by the security agencies of the State precisely as a member of the subversive groups that were the target of the afore-mentioned repression.

121. Third, the Commission highlights the contents of the press releases of 2003 that make reference to a former Intelligence Officer who directly connected the then-Director of the Criminal Investigation Service of the National Police (SIC-10) to the disappearance of the alleged victim, indicating that “General Vaca knows where are the remains of the writer Gustavo Garzón” and that “said General acted as the brain of a group of police officers that tortured and murdered members of the Group “Alfaro Vive Carajo”. In one of the press releases it is indicated that said General stated, without expressly denying the facts, that it was not a personal policy, rather, it was one of the institutional mission of the hierarchic entity to which he belonged.

122. Fourth, the Commission observes that the State did not provide an alternative hypothesis based on a diligent and effective investigation. As analyzed below, the State did not properly investigate all the elements mentioned so far; nonetheless, the State had knowledge of these from the moment the complaints were made by the family of Mr. Garzón, as well as the public complaints made by his associates. The State did not carry out any investigation into the information transmitted through the press releases mentioned above. The Commission notes that all indications in the file before the Commission and the conclusions of the Truth Commission are consistent with the deprivation of liberty by State agents and the State has not provided information or evidence consistent with another hypothesis.

123. In virtue of the above, the Commission considers there are sufficient elements that, considered in conjunction and along with the absence of an alternative and properly substantiated hypothesis, allow it to conclude that César Gustavo Garzón Guzmán was deprived of liberty by State agents, under the custody of the State. In this regard, the Commission considers that the first and second elements of forced disappearance are fulfilled in this case.

2. In relation to the denial of acknowledging the detention and cover-up

124. In relation to the denial of acknowledging the detention and cover-up, the Commission observes that when family and friends of the alleged victim denounced the acts and requested information from various authorities, the latter responded they did not have knowledge of his detention nor of his whereabouts.

125. In addition to the negative responses, the Commission observes that in the present case there existed additional cover-up mechanisms. On one hand, in the framework of the interviews carried out by the Police in the days after the disappearance, the Police intimidated one of the persons who was with Mr. Garzón Guzmán, affectionately relating the person with him, as well as qualifying the person as belonging to a subversive group, which can be understood as a mechanism to dissuade the person from providing relevant information about the disappearance or to demand the search of Mr. Garzón Guzmán. On the other hand, the

Commission notes that the only investigations about the facts that are recorded in the present case, are those undertaken by the National Police, an entity that belonged to the repressive structure at the time and that must have been investigated as potentially responsible for the disappearance.

126. Also, the Commission highlights that the hypotheses considered and the negative response of the authorities coincides with the institutional *modus operandi* in cases of forced disappearances at the time of the events in Ecuador. As indicated, the Truth Commission stated that there existed a pact of silence between the police and military institutions, according to which they denied all events and the disappearance was portrayed as related to common delinquency, a tragic accident or a personal and secret decision to distance themselves from their context. In this case, the Commission recalls that the State denied the acts and worked with the hypothesis that he was abducted by members of the same “subversive” group to which he belonged, that he voluntarily disappeared “because of disillusion in love” or that he voluntarily fled to Colombia to join a “subversive” group. These hypotheses that are not the result of a diligent and effective investigation, and that do not dismiss all indications of state participation, constituted a mechanism of cover-up.

3. Conclusion

127. By virtue of the above considerations, the Commission considers that the constitutive elements of a forced disappearance of persons are present.

128. In this regard, the Commission concludes that the Ecuadorian State violated and continues to violate the rights to juridical personality, to life, to humane treatment, personal liberty, to a fair trial, and to judicial protection established in Articles 3, 4(1), 5(1) 5(2), 7, 8 and 25 of the American Convention in conjunction to the obligations of the State provided in Article 1(1) of the same international instrument, to the detriment of César Gustavo Garzón Guzmán. Also, the Commission concludes that the State violated Article I(a) and b) of the IACFDP to the detriment of the same person, taking into consideration that at the time of ratification of said instrument by the Ecuadorian State and to-date, the forced disappearance of Mr. Garzón Guzmán continues.

129. The Commission observes that these conclusions are consistent with those indicated by the Truth Commission. As determined in the proven facts, said Commission analyzed what happened to César Gustavo Garzón Guzmán and qualified it as a forced disappearance, indicating the National Police as the responsible party.

B. Rights to fair trial and judicial protection (Articles 8(1) and 25(1) of the American Convention on Human Rights) in relation to the obligation to respect rights and the duty to adopt domestic legal measures (Articles 1(1) and 2 of said instrument) and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons

130. The Articles of the American Convention referred to in this section state the following:

Article 8. Right to a Fair Trial

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.

Article 25. Right to Judicial Protection

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

The content of Article 1(1) of the Convention was referenced in the previous section

131. Article I(b) of the Inter-American Convention on Forced Disappearance of Persons provides that States party to said Convention commit “[t]o punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

132. From the inter-American jurisprudence, when addressing the complaint of a disappearance of a person, there is an inescapable relation between the State’s response and the protection of the life and integrity of the person that is reported as disappeared. The immediate and exhaustive nature of the State’s response is independent of whether it is about a possible disappearance in the hands of private individuals or in the hands of state agents. The Commission reiterates that when there are reasonable grounds to suspect that a person has been a subject of forced disappearance, the prompt and immediate action of prosecutorial and judicial authorities is essential, by the order of timely and necessary measures addressed to determine the whereabouts of the victim or the place where he or she could be found alive.⁹³

133. The Court has stated that States are obliged to provide effective judicial remedies to the victims of rights violations (Article 25), which must be substantiated in accordance with the rules of due process (Article 8(1)), all within the general duty, undertaken by the States, to guarantee the free and full exercise of the rights recognized in the Convention to all persons subject to their jurisdiction (Article 1(1)).⁹⁴

134. Therefore, the Court has identified that the duty to investigate implies that once State authorities are aware of the act, they must initiate *ex officio* and without delay, a serious, impartial and effective investigation through all the available legal means and oriented to determine the truth and the prosecution, capture, trial and eventual punishment of all the authors of the act,⁹⁵ especially when there are or there may be involvement of state agents.⁹⁶ This obligation is a duty of means and not of results, that must be undertaken by the State as its own legal duty and not as a mere formality preordained to be ineffective, or as a result of private interests, that depends upon the initiative of the victim or his family or upon their offer of proof.⁹⁷ The duty of the State to investigate must be diligently fulfilled to avoid impunity and the repetition of these types of acts.⁹⁸

⁹³ IACHR, Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009, para. 225; I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 202, para. 134; Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See also Matter of Natera Balboa. Provisional Measures regarding Venezuela. Resolution of the Court of February 1, 2010, Consideration thirteen, and Matter of Guerrero Larez. Provisional Measures regarding Venezuela. Resolution of the Court of August 29, 2013. Consideration six.

⁹⁴ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 97; and Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 215.

⁹⁵ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment July 29, 1988. Series C No. 1, para. 177; and Case of Veliz Franco et al v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

⁹⁶ I/A Court H.R., Case of Myrna Mack Chan v. Guatemala. Merits, Reparations and Costs. Judgment November 25, 2003. Series C No. 101, para. 156; and Case of the Afro-descendant Communities displaced from the Cacarica River Basin. (Operation Genesis) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

⁹⁷ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment July 29, 1988. Series C No. 1, para. 177; and Case of Veliz Franco et al v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

⁹⁸ I/A Court H.R., Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, para. 319; Case of Veliz Franco et al v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183; Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216.

135. Furthermore, in relation to due diligence during the investigation, the Inter-American Court has stated that “[e]ach act of the State that forms part of the investigative process, as well as the investigation as a whole, should have a specific purpose: the determination of the truth, and the investigation, pursuit, capture, prosecution and, if applicable, punishment of those responsible for the facts.”⁹⁹ In this regard, the State must demonstrate it has undertaken an immediate, exhaustive, serious and impartial investigation,¹⁰⁰ which must be aimed at exploring all the possible lines of inquiry.¹⁰¹ The State may be responsible if the evidence is not “ordered, practiced or evaluated,” which could be very important for the adequate clarification of the facts.¹⁰²

136. On the other hand, Article 8(1) of the American Convention states, as one of the elements of due process, that tribunals shall decide the cases submitted within a reasonable time. According to the terms of said norm, the Commission shall consider, in light of the concrete circumstances of the case, the elements that the bodies of the inter-American system have considered, namely: i) the complexity of the case; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities; and iv) the effects of the juridical situation of the party in the process.¹⁰³ The Inter-American Court has considered that a long delay may *per se* constitute a violation of the principle of due process,¹⁰⁴ therefore, it is for the State to explain and demonstrate why it has required more time than would be reasonable to deliver final judgment in a specific case.¹⁰⁵

137. In the present case, the victim’s next of kin claimed that the Investigation Service of Pichincha refused to receive the report of disappearance on November 11, 1990, pointing out that 48 hours had not passed since the disappearance; this was denied by the State. Nonetheless, some sources of public knowledge state that, at the time of the facts, it was a common practice to wait 48 hours to receive a complaint.¹⁰⁶ In addition, this denial is consistent with the persistent context of the repressive structures within the Police and with the cover-up that operated in the present case in the terms already analyzed. This situation led to the first search, initiated on November 16, 1990, and it is reasonable to infer it had a negative impact in the situation of the alleged victim, taking into consideration that in light of a disappearance report, it is indispensable that the States act promptly in the first hours and days¹⁰⁷ to avoid materialization of extreme risk to the life and personal integrity involved in a disappearance, particularly, in a forced disappearance.

⁹⁹ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

¹⁰⁰ IACHR, Report on the Merits, No. 55/97, Juan Carlos Abella (Argentina), November 18, 1997, para. 412.

¹⁰¹ IACHR, Report No. 25/09 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, para. 109. See also, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

¹⁰² I/A Court H.R. Case of the "Street Children " (Villagran-Morales et al.) v. Guatemala. Judgment of November 19, 1999. Series C No. 63, para. 230. See also, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

¹⁰³ IACHR, Report No. 110/10, Case 12.539, Merits, Sebastián Claus Furlan and Family, Argentina, October 21, 2010, para. 100. I/A Court H.R., Case of Santo Domingo Massacre v. Colombia. Preliminary Exceptions, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

¹⁰⁴ I/A Court H.R., Case of García-Asto and Ramírez-Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166; Case of Gómez-Palomino v. Peru. Judgment of November 22, 2005. Series C No. 136, para. 85; Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, para. 160.

¹⁰⁵ I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 142.

¹⁰⁶ Ombudsman of Ecuador, Thematic Report of disappeared people in Ecuador: Analysis of State responses, statistics, access to justice and the socio-cultural context of the problem 2013-2014 (Spanish only), p. 23.

¹⁰⁷ I/A Court H.R., Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 284.

138. Additionally, the Commission highlights that all the investigations undertaken in relation to the forced disappearance of the victim are reduced to three police reports, without any evidence that the State initiated or carried out a formal criminal investigation in relation to these facts, beyond the generic reference of the State in its last report about the initiation of an investigation after the report of the Trust Commission.

139. Now, in relation to the content of the three police reports, the Commission observes that these evidence that the actions were limited to receiving the declarations and remittance of the commands ordering the search for the alleged victim, without any evidence of an analysis of the indications that resulted from said actions, as well as their prompt follow up. In these investigations, the authorities limited themselves to generically stating, that the authorities have visited “on various occasions” and “in different dates” hospitals, clinics, the morgue and detainment centers in search of the alleged victim, “without possibility to obtain any indication”, without referring to the circumstances of modality, time and location through which said actions were carried out.

140. In relation to the determination of the authors of and participants in the facts, the Commission observes that in the “police reports” there is no record that the State opened any lines of investigation aimed at clarifying any indication of the participation of state agents. On the contrary, the Commission recalls that in the third police report, they proposed the hypothesis that the disappearance was committed by members of the same subversive organization to which they considered the victim had belonged, without referring to the reasons to sustain said hypothesis, which was also not duly investigated.

141. The Commission adds to the above, that afterwards, the media published that a General knew the whereabouts of the remains of the victim and that State agents participated in the felony/crime, and on May 5, 2003, the Ecumenical Commission of Human Rights requested an investigation to clarify these statements; nonetheless, there is no record in the case file that the State adopted any measure to investigate these new elements.

142. Based on the above, the Commission considers that after 26 years of the forced disappearance of Mr. Garzón Guzmán, the State has not investigated the facts of the present case with due diligence and neither in a reasonable time. The Commission considers that in the circumstances of the present case, given that the State did not present any justification, it does not need to proceed to analyze said period in light of the elements mentioned above.

143. Consequently, the Commission concludes that the Ecuadorian State violated the rights established in Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of the same international instrument, in prejudice of César Gustavo Garzón Guzmán, as well as his family in accordance to paragraph 65 of the present report. Likewise, the Commission concludes that the State did not fulfil its duty to investigate, derived from Article I(b) of the IACFDP.

C. Rights to Humane Treatment (Articles 5 and 11 in conjunction with Article 1(1) of the American Convention)

144. The right to humane treatment, enshrined in Article 5(1) of the American Convention, provides that “[e]very person has the right to have his physical, mental, and moral integrity respected.”

145. The jurisprudence of the Inter-American Court has established that the next of kin of the victims of human rights violations may, in turn, be victims of violations to their mental and moral integrity.¹⁰⁸ Therefore, the Inter-American Court has considered the right to mental and moral integrity of the victims’ next of kin to be violated on the grounds of the additional suffering they have experienced as a consequence

¹⁰⁸ I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Exceptions, Merits, Reparations and Costs. Judgement of June 7, 2003. Series C No. 99, para. 101; Case of the “Las Dos Erres” Massacre v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 206; and Case of Heliodoro Portugal v. Panama. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No 186, para. 163.

of the specific circumstances of the violations committed against their loved ones,¹⁰⁹ and based on the subsequent acts or omissions of state authorities regarding these facts.¹¹⁰

146. The Commission notes that, in accordance with the jurisprudence of the Court, “in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims’ next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.”¹¹¹

147. In the present case, the Commission considers that the sole fact of the forced disappearance of the victim has generated a profound feeling of pain, anguish and uncertainty among the victim’s next of kin, which has become more profound because of the lack of an effective and diligent investigation in a reasonable time.

148. By virtue of the above considerations, the Commission concludes that the State is responsible for the violation of the right to physical, mental, and moral integrity established in Article 5(1) of the American Convention in conjunction the obligations established in Article 1(1) of said instrument, in prejudice of the Mr. Garzón Guzmán’s next of kin stated in paragraph 65 of the present report.

VI. CONCLUSIONS

149. The Commission concludes that the State of Ecuador is responsible for the violation of the rights to juridical personality, to life, to humane treatment, to personal liberty, to fair trial and to judicial protection enshrined in articles 3, 4(1), 5(1), 5(2), 7, 8(1) and 25(1) in conjunction to article 1(1) of that international instrument, as well as Articles I (a) and I (b) of the Inter-American Convention on Forced Disappearance of Persons in prejudice of César Gustavo Garzón Guzmán. The Commission also concludes that the State is responsible for the violation of the rights to judicial protection and humane treatment enshrined in articles 8(1), 25(2) and 5(1) in conjunction with Article 1(1) of that international instrument in prejudice of the next of kin of César Gustavo Garzón Guzmán stated in the present report.

VII. RECOMMENDATIONS

150. By virtue of the of the above conclusions,

THE INTERAMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF ECUADOR, TO

1. Conduct a complete, impartial, and effective investigation into the whereabouts of César Gustavo Garzón Guzmán, and should it be determined that the victim is no longer alive, adopt the necessary measures to deliver his remains to his family, as they wish.

2. Conduct domestic proceedings in connection with the violations of human rights shown in this report and initiate criminal proceedings for the offense of forced disappearance of the person of César

¹⁰⁹ 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. 335; Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96; Case of Goiburú et al v. Paraguay. Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 96.

¹¹⁰ I/A Court H.R., Case of Manuel Cepeda Vargas v. Colombia. Preliminary Exceptions, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para. 195.

¹¹¹ I/A Court H.R., Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114; Case of Ticóna Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 87; Case of La Cantuta v. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 123; and Case of Anzualdo Castro v. Peru. Judgment of September 22, 2009. Series C No. 202, para. 105.

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

3. Make adequate reparation for the human rights violations declared in this report, both materially and morally, including just compensation, the establishment and dissemination of the historical truth of what happened, a public acknowledgment of responsibility, and the implementation of an adequate care program for his next of kin, in consultation with them.

4. Adopt the corresponding administrative, disciplinary or criminal measures for the acts or omissions of state agents that contributed to the denial of justice and impunity of the facts of the case, including the acts or omissions of the authorities that would have obstructed the undertaking of a diligent investigation.

5. Adopt the necessary measures of non-repetition to prevent any similar events from occurring in the future. The measures of non-repetition in the instant case shall include legislative, administrative or other measures in order for the investigations about the forced disappearance of persons in Ecuador to comply with the standards described in this report.