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REPORT No. 86/17
PETITION 292-07
REPORT ON ADMISSIBILITY

EDINSON VINICIO BENAVIDEZ PAZMIÑO AND FAMILY
ECUADOR

Approved by the Commission at its session No. 2093 held on July 7, 2017
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Bolívar César Guamán Ortiz and María Eudofilia Zúñiga Gutiérrez
Alleged victims:	Edinson Vinicio Benavidez Pazmiño, Flor Marlene Guamán Zúñiga, Emanuel Alejandro Benavidez Guamán, Bolívar César Guamán Ortiz and María Eudofilia Zúñiga Gutiérrez
State denounced:	Ecuador
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Right to Life), 8 (Right to a Fair Trial), 19 (Rights of the Child), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	March 13, 2007
Date on which the petition was transmitted to the State:	July 13, 2011
Date of the State's first response:	October 27, 2011
Additional observations from the petitioning party:	November 29, 2011 and July 18, 2016
Additional observations from the State:	June 26, 2015 and November 1, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (deposit of instrument of ratification on December 28, 1977)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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¹ Hereinafter "the Convention" or "the American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; March 1, 2007
Timeliness of the petition:	Yes; March 13, 2007

V. ALLEGED FACTS

1. The petitioners allege that on November 20, 2002, their daughter named Flor Marlene Guamán Zúñiga and their son-in-law, Edison Vinicio Benavidez Pazmiño, were killed by the explosion of a bomb used for military purposes by the "Galápagos" Armored Brigade, headquartered in the City of Riobamba. They assert that at the time that Ms. Guamán Zúñiga died, she was seven months pregnant and the mother of a two-year-old son, whose name is Emanuel Alejandro Guamán ("Emanuel Alejandro"). They indicate that as a result of the blast, several people were killed, hundreds of others were injured and most of the city was destroyed; and that the authorities confirmed that the blast was due to negligence on the part of the staff handling the Brigade's arsenal. In this report, the five family members will be referred to as "the alleged victims."³

2. The petitioners submit that the State issued Decree No. 3369 on November 28, 2002 to declare Riobamba in a state of emergency, and ordered to conduct the actions necessary to cope with the effects of the explosion, and to repair the damages caused to the population and the infrastructure of the city. By said decree, the Ministry of Economy and Finance was urged to manage the economic resources based on the priorities and the then-current budget. They also indicate that the Ecuadorian army gave them twenty thousand dollars in aid to cover funeral costs. That sum was granted as a "humanitarian emergency aid" and the State clearly indicated in the payment receipt that this sum was "not the compensation applicable."

3. The petitioners assert that on March 25, 2004 they filed an administrative compensation claim to the National Defense Ministry to request two million four hundred thousand dollars of compensation, a sum that apparently they regarded was a parameter in the friendly settlements signed by Ecuador before the IACHR, and in judgments of the Inter-American Court on Human Rights.⁴ They submit that the Defense Ministry's failure to settle the claim within three month resulted in a constructive grant of authorization, which led to a free-standing right. Consequently, they assert that on July 7, 2004 they requested the Ministry of Defense to issue a certificate of constructive approval. As they did not get an answer, on July 29, 2004, they resorted to the Twelfth Court for Civil Matters of Pichincha to request the issuance of a certificate of constructive approval. This court ordered the Defense Ministry twice to issue the certificate of constructive approval; but the Ministry of Defense refused to comply –it refused for the last time on November 8, 2004.

4. They claim that on December 12, 2004 they filed a lawsuit before the Second Chamber of the Administrative Court of District No. 1 of Quito, in order to request compensation in view of the administrative compensation claim. However, they indicate that to file proceedings, they had to pay a court fee of 1,356.00 USD. They claim that their fee waiver request to the National Council of the Judiciary was denied on grounds of unemployment; therefore, they had to borrow money to afford that fee. They submit that as the members

³ As contextual information, in the petition it is mentioned that a representative of the Province of Chimborazo publicly said that the explosion was due to a premeditated action to hide a lack of arms and military equipment that had been illegally sold; and as a result of said announcement, the Army filed civil actions against said representative.

⁴ The petitioners cite: IACHR, Report No. 99/00. Case 11,868 Carlos Santiago and Pedro Andrés Restrepo Arismendy, Ecuador, October 5, 2000; and I/A Court H.R., *Case of Benavides Cevallos v. Ecuador*. Merits, Reparations and Costs. Judgment of June 19, 1998. Series C No. 38.

of this court "did not want" to issue a judgment, the petitioners had to file objections to them so that the co-judges would rule on the case. Nevertheless, by the sentence of July 25, 2006, which was notified the following day, the Second Chamber of Co-Judges of the Administrative Court of District No. 4 of Quito denied compensation on the grounds that the proceedings had lapsed.

5. As a result, the petitioners filed an appeal before the Special Chamber for Administrative Law Matters of the Supreme Court of Justice, where they were charged a court fee of 1,650.00 USD. As they were unable to afford this sum, they requested a fee waiver on the grounds of free access to justice for children; but the Court denied the fee waiver on the grounds that said exception applies only in cases for alimony. Consequently, on March 1, 2007, the Second Chamber of the Administrative Court of District No. 1 of Quito found the appeal inadmissible in view that the court fee had not been paid, and thus ordered to archive the case.

6. Concerning the arguments filed by the State, the petitioners assert that the appeal for the protection of constitutional rights was the only remedy that they did not lodge because in previous cases the Constitutional Court had found itself incompetent to determine compensations. They also explain that their intention is not to have the IACHR act as a court of appeals, but to bring to its attention manifest irregularities in the domestic proceedings. They submit that to this date both the cause of the explosion and the number of victims are yet to be determined; and they request fair compensation and other general measures of relief. In their most recent communication to the IACHR, the petitioners assert that the State has given them only small palliatives but not a full redress.

7. In turn, the State alleges the lack of prior exhaustion of domestic remedies, on the grounds that the appropriate remedy to repair the effects of state officers' acts or omissions that violate the Constitution was the filing of an appeal for the protection of constitutional rights. It moreover asserts that if the petitioners considered that there was a delay in the settlement of their compensation claim, they should have filed a remedy before the Ministry of Economy and Finance.

8. The State also submits that the constructive approval that the alleged victims claim was null and void in view of the fact that the compensation sum requested by the petitioners had to be fixed by a competent authority, i.e. the Ministry of Economy and Finance. In this regard, it indicates that had the constructive approval sought by the petitioners been certified by the competent authority –which was not the case–, it would have had legal effects. It submits that the petitioners made two mistakes. Firstly, they should have requested the issuance of a certificate of a constructive grant of authorization from the Administrative Court, which is the competent judicial authority for this procedure; secondly, they asked the civil court directly to issue the certificate, when the right thing was that a judicial authority request it from the corresponding administrative body, in this case, the Defense Ministry.

9. Furthermore, Ecuador indicates that it has always publicly recognized the damage caused by the explosion at the munitions dump in Riobamba and the state agents' responsibility for the facts. It also asserts that it had started reparations proceedings in favor of the victims by the Executive Decree No. 3,369 and, that by the Executive Decree No. 3,386 of December 5, 2002, it urged the Ministry of Economy and Finance to determine the budget to compensate the victims, and to coordinate the actions aimed at rebuilding the infrastructure damaged. Moreover, it indicates that through Ministerial Agreement No. 145 of January 30, 2003, the State ordered operations to rebuild Riobamba's infrastructure, and issued vouchers for the victims of the explosion to repair their property.

10. The State asserts that Emanuel Alejandro was awarded a school grant to attend a military school, which he attended for only one year, and that later he was given another grant for another school. It also informs that Emanuel Alejandro has access to free-of-charge medical care and to a study grant for his university studies. In addition, the Riobamba's Mayor's Office allegedly donated a tract of land to build Emanuel Alejandro's house with a budget made up of donations from institutions and individual citizens.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The State alleges the lack of exhaustion domestic resources on the grounds that the petitioners failed to lodge an appeal for the protection of constitutional rights, and that the request of a constructive approval is allegedly null and void. On the other hand, the petitioners submit that they did not resort to the constitutional jurisdiction in view of previous cases in which the Constitutional Court had declared itself incompetent to set compensations.

12. In this regard, in view of the arguments and information presented by the parties, the Inter-American Commission notes that the requirement of prior exhaustion of domestic remedies does not generate an obligation for the alleged victims to exhaust all the possible remedies of their domestic legal system. In other words, if the matter was brought through any of the valid and appropriate remedies under the domestic legal framework and the State had the opportunity to rule on the matter within its jurisdiction, the object of the international rule is met.⁵ In this regard, the Commission notes that the alleged victims first resorted to a civil court to request the certification of what they deemed was a constructive grant of authorization; and that then they filed a lawsuit before the administrative court in order to be compensated for the damages suffered as a result of the munitions dump explosion in Riobamba. The last proceedings officially ended when the Second Chamber of the Administrative Court of District No. 1 of Quito ruled to deny compensation, on March 1, 2007.

13. Likewise, the Commission deems reasonable the petitioners' argument that the appeal for the protection of constitutional rights was not the appropriate remedy, in terms of simplicity and speediness, to have compensation set for the unlawful damage caused by state agents' negligence, and that it is more reasonable to *prima facie* consider that the right jurisdiction to resort to was indeed the administrative jurisdiction –which the petitioners exhausted. In turn, the State did not submit information proving that the constitutional jurisdiction was the appropriate venue for this complaint. In addition, according to the information available, the alleged victims requested a certificate of constructive approval, following the steps that the State informed to the IACHR, that is, by means of a judicial authority and not straight to the Ministry of Defense.

14. The Commission has analyzed the exhaustion of the remedies of the administrative jurisdiction since the alleged violations of due process constitute a major aspect in a petition. However, as to the arguments concerning the death of two of the alleged victims, it also considers that based on the information available, an investigation was open to determine the cause of the explosion, and that in principle, a criminal investigation filed by the State would be the appropriate remedy to establish the cause and the circumstances of the blast as well as the corresponding liabilities in said facts.

15. In this regard, as this petition was received on March 13, 2007 and the domestic remedies were exhausted by the decision of March 1, 2007, the Commission concludes that the petition meets the requirements set forth in Article 46.1(a) and (b) of the American Convention.

VII. COLORABLE CLAIM

16. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that the alleged victims' death in a military brigade due to an explosion allegedly caused by state agents' negligence, as well as the purported violations of due process in the framework of civil proceedings (including the alleged obstacles posed by the court fees) and the purported lack of full redress (considering the situation of child Emanuel Alejandro after his parents' death)

⁵ IACHR, Report No. 73/12, Admissibility, Petition 15-12, Edgar Tamayo Arias, United States, July 17, 2012, par. 37; IACHR, Report No. 67/12, Admissibility, Petition 728-04, Rogelio Morales Martínez, Mexico, July 17, 2010, par. 34; IACHR, Report No. 18/12, Admissibility, Petition 161-06, Juvenile Offenders Sentenced to Life Imprisonment without Parole, United States, March 20, 2012, par. 46; IACHR, Report No. 70/04, Admissibility, Petition 667/01, Jesús Manuel Naranjo Cárdenas et al. – Pensioners of the Venezuelan Aviation Company - VIASA, Venezuela, October 13, 2004, par. 52; and IACHR, Report No. 57/03, Admissibility, Case 12,337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, par. 40.

may *prima facie* establish violations of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention, in connection with its Article 1.1; to the detriment of the alleged victims.

17. As to the State's argument about a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to substitute the domestic authorities' competence to reverse a decision unfavorable to the alleged victims and examine possible assessment mistakes made by the domestic courts. Instead, the Commission will, in the merits stage, analyze whether the domestic legal proceedings adhered to the right of due process and judicial protection, and ensured the alleged victims' right of access to justice, under the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 19, 24 and 25 of the American Convention, in relation to Article 1.1 of the same treaty;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.