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**REPORT No. XX/14**  
**CASE 11.442**  
REPORT ON MERITS

LUIS JORGE VALENCIA HINOJOSA  
ECUADOR

Approved by the Commission at its session No. XX held on April XX, 2014  
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**I. SUMMARY**

1. On November 8, 1994, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by the Comisión Ecuánica de Derechos Humanos (hereinafter also “the petitioners”) alleging the violation by the Republic of Ecuador (hereinafter “the Ecuadorian State,” “the State,” or “Ecuador”) of several provisions of the American Convention on Human Rights (hereinafter also “the Convention” or “the American Convention”). The petition indicates that Mr. Luis Jorge Valencia Hinojosa, a police agent, was arbitrarily deprived of his life at the hands of another police agent. It is also indicated that the facts were investigated by the criminal justice of the police jurisdiction in a proceeding with many shortcomings and in which those implicated were absolved in a final judgment as it was determined that it was a suicide.

2. The Commission recorded the petition under case number 11,442 and on March 13, 1995, ordered that it be processed in keeping with the Regulations then in force, and forwarded the complaint to the Ecuadorian State. On May 8, 2003, the Commission, applying Article 37(3) of its Rules of Procedure then in force, decided to defer the treatment of admissibility until the debate and decision on the merits.

3. The Ecuadorian State asked the Commission to find the case inadmissible on grounds of no unwarranted delay in the decision on the remedies and for having failed to meet the requirement of exhausting domestic remedies. It also asked that in the analysis on the merits it be found that the State had respected the right to life, the right to judicial guarantees, and the right to judicial protection.

4. After analyzing the parties’ positions, the Inter-American Commission concluded that the case is admissible and that the Ecuadorian State is responsible for violating the right to life established at Article 4 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Luis Jorge Valencia Hinojosa. In addition, the Commission concluded that the Ecuadorian State is responsible for violating the right to judicial guarantees and judicial protection, established in Articles 8 and 25 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Ms. Patricia Alejandra Trujillo Esparza, the alleged victim’s widow. Based on these conclusions, the Commission made the respective recommendations.

**II. PROCESSING BEFORE THE COMMISSION**

5. On November 8, 1994, the Commission received the initial petition registered under case number 11,442. On March 13, 1995, the Commission transferred the pertinent parts of the initial petition to the State of Ecuador, and requested its observations within 90 days. On August 3, 1995, communication was received from the State by which it reported that it did not have the information. On March 14, 1996, the Commission reiterated the request for information to the State. On April 19, 1996, communication was received from the petitioners by which they reiterated their interest in seeing the case processed, given the lack of a response from the State.

6. On May 22, 1996, the State sent the Commission information on the case produced by the National Police. On June 18, 1996, the Commission forwarded the pertinent parts of the information submitted by the State to the petitioners, who submitted their observations on August 6, 1996. On December 19, 1996, a communication was received from the State producing additional information, the pertinent parts of which were forwarded to the petitioners.

7. On May 8, 2003, the Commission informed the petitioners that pursuant to Article 37(3) of its Rules of Procedure then in force it decided to defer its decision on admissibility until the debate and decision on the merits. Accordingly, the Commission asked the petitioners to submit their observations on the merits within two months. On September 15, 2003, the petitioners submitted observations on the merits, which were forwarded to the State on May 24, 2004, which was asked to submit its additional observations on the merits within two months. On October 5, 2006, the Commission reiterated to the State that request for observations. On March 3, 2010, the IACHR reiterated its request and asked the State for the principal documents in the judicial record. On that same date the Commission asked the petitioners to submit updated information.

8. On April 19, 2010, the petitioners presented additional observations on the merits and copies of the exhibits in the judicial record. This information was transmitted to the State on April 22, 2010; it was given one month to respond. On May 28, 2010, the State requested an extension, which was granted.

9. On January 5, 2011, the Commission reiterated to the State its request on the exhibits in the respective records. On January 8, 2011, in response to an oral request from the Office of the Solicitor-General (Procuraduría General) of the State of Ecuador, the Commission resent the State the initial petition, which was received on November 8, 1994.

10. On February 14, 2011, the Commission received a communication by which the State submitted observations on the merits of the instant case, as well as a copy of the exhibits in the records in the criminal cases. On March 9, 2011, the Commission forwarded this information to the petitioners. On December 23, 2011, the Commission received a communication by which the petitioners made observations on the State's brief. That communication was forwarded to the State on January 12, 2012; it was given one month to respond. On August 16, 2013, the Commission received a communication from the State supplementing the brief of February 2011. This communication was forwarded to the petitioners on August 20, 2013.

### III. THE PARTIES' POSITIONS

#### A. The petitioners' position

11. The petitioners alleged that on December 3, 1992, police officer Luis Jorge Valencia Hinojosa went with several colleagues from work to an eatery to eat *fritada* (pork fry) and drink alcohol, after which a police officer left to go to his place of work, while the alleged victim and four other agents went to a store, where they consumed half a bottle of liquor. They indicated that an argument then ensued between a police officer and a taxi driver, as a result of which the people called the police. They added that in response to the call, Captain Joffre Venegas went to the locale and ordered the police, including the alleged victim, to get into the patrol car, and he took them to the quarters of the Police Command of Chimborazo SP5. They indicated that as he was unloading them, Captain Venegas insulted them and ordered that they turn in their weapons, especially the alleged victim. They indicated that Mr. Valencia Hinojosa refused to comply with that order, the Captain went to the police station, and the alleged victim fired two shots, one of which hit Captain Venegas and the other Corporal Lema, after which he took flight.

12. According to the petitioners, the police carried out an operation to capture him; that operation was entrusted to Captain Patricio Ramírez. They stated that second lieutenant Cabezas took the rifle from a police officer and set off in a patrol car in which second lieutenant Piedra was seated. They indicated that at approximately 11:00 a.m. several police officers forcibly entered the domicile of the alleged victim and demanded that his family members turn him in. According to the narration, Second Lieutenant Cabezas even fired his weapon, and only in the face of the desperate pleas by the family members, who asked for respect for the children in the home, did he refrain from shooting. They indicated that the alleged victim's wife described what happened, indicating that the police "entered wildly, breaking and kicking the doors. As they did not find him, they were upset. They added that a second lieutenant by the last name of Piedra said: "this jerk Valencia is going to die because he'll die in my hands."

13. They indicated that there are testimonies that indicate that during the operation the police even went to a room in the Quito Tennis Club of Chimborazo, where the alleged victim had gone to hide. They added that one of the children who was at the place declared that when lieutenant Piedra arrived he said to him, "tell me where he went or I'll kill you," in response to which the child told him where the alleged victim was hiding. They stated that the police immediately began to shoot at the room while shouting, "come out with your hands up and nothing will happen to you." They indicated that according to the witnesses, after second lieutenants Piedra and Cabezas forced the door open, Second Lieutenant Piedra entered, two shots were heard, and he came out saying he was dead, and he shook hands with Second Lieutenant Cabezas. They indicated that the second lieutenants informed the neighbors that the alleged victim attacked them, but as he saw he was surrounded he opted to commit suicide using his own weapon.

14. As regards the requirement of exhaustion of domestic remedies, the petitioners indicated that the suitable remedy for resolving the case is a criminal proceeding, a remedy pursued by the alleged victim's widow as private accuser. They indicated that this proceeding began in the regular courts, and subsequently was removed to the police courts, where the matter was met by an unwarranted delay. They specified that the judge took more than a year to rule on the preliminary phase, that the court took eight months take cognizance of the motion to vacate handed down by the First District Court, and that afterwards it took one year and two months to issue a new order of dismissal.

15. As for the right to life, the petitioners reiterated the case-law of the Court on the duty of the state to prevent its agents from attacking that right as well as the duty of reasonable prevention in such situations that might lead to suppression of the right to life. They alleged that the State made use of lethal force as the only means for obtaining the surrender of the alleged victim, while the police agents limited themselves to shooting at the place where he was hiding, without first having tried to reason with him. They indicated that second lieutenants Piedra and Cabezas fired many shots at the alleged victim while demanding that he surrender.

16. They indicated that the State's responsibility in this case is determined not only by its breach of the duty to prevent and to be diligent in the use of lethal force, but also because the administration of justice failed to seriously investigate the facts. By way of example they noted that the autopsy protocol indicates as a trajectory of the bullet from right to left, upwards, and slightly from front to back; nonetheless, according to a police officer the alleged victim was left-handed, while the witnesses at the scene said that Valencia, while running, was carrying his weapon in the left hand. Another point mentioned by the petitioners is that the chemical paraffin analysis on the right hand indicates positive for the presence of nitrites/nitrates, while another expert exam indicates that the determination of gunpowder on the skin of the right hand was negative.

17. They argued that the police captain, who at the time was serving as judge of the Second District of the Police Courts, on absolving second lieutenants Piedra and Cabezas, accorded total credibility to their statements according to which they only shot into the air. They noted that the judicial authority set aside the testimony of third persons (not police officers) who were at the scene and indicated that shots were fired in the direction of the room, and that detonations were heard after second lieutenant Piedra entered the place where the alleged victim was hiding.

18. As regards the right to due process, they indicated that since the accused are active-duty police officers, and since the facts occurred in the performance of their duties, the authorities of the regular courts recused themselves from continuing to take cognizance of the case, instead referring the matter to the police jurisdiction. They indicated that the judicial proceeding went forward before the Police Court of the Second District in the city of Riobamba, and that it concluded on November 11, 1996, with dismissal of charges against the accused. According to the petitioners, the jurisdiction of the police courts is limited to cases involving attacks on the legal interests particular to the institutional order of the police, and that an assassination cannot fit within that situation.

19. The petitioners alleged that the police courts do not meet the requirements of independence and impartiality required by the Convention and that all those cases in which members of the security forces have committed serious violations of the rights of a person must be judged by regular courts. They indicated that the independence of the judge requires that he or she not be subjected, from any point of view, to any other authority, and that police judges are not designated by the judiciary, but by the executive, are members of the police institution, have a rank and therefore are subject to superiors in the police. They alleged that such subordination of the police courts is reflected throughout the criminal proceeding when, in order to carry out several investigative steps, the judge sought permission from his superiors in the police.

20. They added that the Code of Criminal Procedure of the Police then in force provided that the preliminary stage should last a maximum of 60 days, the intermediate stage 21 days, and that the consultation (*la consulta*) should last a maximum of 15 days. Nonetheless, in the instant case the proceeding was begun December 3, 1992, and it was not until 1994 that the preliminary stage was concluded, and on August 16, 1994, charges were dismissed with prejudice, such that the first two stages of the criminal proceeding, which should have lasted no more than 81 days, lasted one year and eight months. They added that the consultation, which should have lasted 15 days, took four months until the District Court of the Police ruled to vacate the proceedings, since a measure required by law had not been taken. They then indicated that it was not until September 20, 1995, nine months later, that the judge once again took cognizance of the case, and it took another year and a month to cure the nullity. In their opinion, the start date for calculating the total duration of the process is December 3, 1992, when the criminal proceedings were initiated, and the end date is November 11, 1996, when the order was handed down dismissing charges with prejudice.

21. According to the petitioners, these delays resulted in some of the police being called to give testimony in 1996, when they no longer recalled the facts or were no longer members of the police institution, and so did not appear. They added that the expert exhumation did not reach any conclusion for there was no skin on the corpse to determine the distance from which the shots were fired. They argued that in the event that the Commission did not accept their argument regarding failure to abide by the time periods established in the domestic legislation, the analysis should take into account the elements of: (a) the complexity of the matter; (b) the procedural activity of the interested person; and (c) the conduct of the judicial authorities.

22. As for the right to judicial protection, they indicated that based on the foregoing elements, the jurisdiction of the police courts, the deficiencies of the investigation and the delay, the State did not provide the family members an adequate remedy which in a reasonable time could establish the facts. They added that the alleged victim's widow complied with her obligation to file the complaint and private accusation, without it being required of her to give impetus to the criminal proceeding in the police jurisdiction.

## **B. The State's position**

23. The State indicated that the case should be considered inadmissible for failure to exhaust domestic remedies. It indicated that the petitioners did not appeal the decision of the regular judge to recuse himself and not take cognizance of the matter, so as to keep it from being processed before the criminal judge in the police jurisdiction.

24. As regards the application of the criminal justice system of the police jurisdiction, the State cited case-law of the Inter-American Court according to which in a democratic state the special jurisdictions for the military and the police are aimed at protecting special legal interests associated with the functions that the law assigns those forces. The State added that according to the same case-law, those jurisdictions should be restrictive and exceptional when it comes to judging the members of the armed forces or police based on the commission of crimes or misdemeanors which, by their nature, attack legal interests particular to the military or police order. In the opinion of the State, there is no clear line between what is encompassed by the special legal interest associated with the functions of members of the armed forces and police, and what constitutes common crimes that must be heard in the regular jurisdiction, accordingly, it is the

responsibility of both the national judges and the interested parties to clarify, in the specific case, what were the circumstances of the facts and the legal interests at issue.

25. According to the State, in the instant case the discovery of the conditions in which the alleged victim died fit in the context of his belonging to the police service, of it having occurred in the performance of his functions, and that the persons involved were his colleagues in the police on active duty. The State focused its argument on the fact that the death of the alleged victim occurred when he was on active duty as a member of the National Police, in the course of which he became involved in a dispute with his captain and wounded the captain and a fellow police officer, from which it is deduced that the facts related to his death involved police activity.

26. The State argued that at the moment of the facts the Criminal Code of the Police was in force in Ecuador – it has since been repealed – and that it included, as crimes against life, homicide (*homicidio*) and murder (*asesinato*), among others. It stated that under this provision the members of the National Police could be convicted, with the due judicial guarantees, in the event of committing a crime against life.

27. The State noted that the alleged victim's wife came forward as private accuser in both proceedings, before the regular jurisdiction and the police jurisdiction, and that the parties may appeal judges' orders recusing themselves. It indicated that contrary to questioning the recusal on the part of the judge, the alleged victim's wife, in her private accusation before the police jurisdiction, asked to amend the complaint so as to include other persons who may have been implicated in the death, and asked that testimony be taken and other procedural tools activated, which was done by the police judge. According to the State, the petitioners did not pursue the adequate remedy that was available to them domestically to exercise their rights.

28. The State alleged that one cannot invoke the exception of unwarranted delay to justify the failure to meet admissibility requirements. It indicated that on August 16, 1994, the police judge issued a reasoned ruling to dismiss the case with prejudice in favor of the persons implicated; and that one can deduce, based on an analysis of the witness evidence and the expert evidence, that the alleged victim committed suicide. It indicated that in keeping with the applicable legislation, that decision was forwarded for consultation to the First District Court of the Police, which vacated the proceedings from folios 328, when the alleged victim was said to have abandoned the private accusation, without the accused having expressly consented to that act. It indicated that after November 11, 1996, the Second District Judge for the Police once again declared the matter dismissed with prejudice, and after the consultation, on March 5, 1997, the District Court for the National Police is said to have affirmed the dismissal of charges. It argued that the activity of the judges was efficient and that the process lasted four years, three months, and one day, which in the view of the State does not constitute unwarranted delay.

29. The Ecuadorian State added that by a judicial ruling in the police jurisdiction, charges were dismissed with prejudice against the members of the Police who could have been involved in the death of the alleged victim, and that the IACHR is not a court of appeals in which one analyzes the reasoning of the domestic law judges when handing down their judgments.

30. As regards the right to life, the State indicated that "the imposition of predicting the death of the alleged victim in its context is an impossible burden," that the alleged victim was inebriated, that he had shot two of his colleagues and had fled, accordingly, requiring that the State adopt measures of prevention in respect of each possible risk of a violation of the right to life based on such human conduct, which is unpredictable, is utopian and disproportionate. The State focused its argument on the fact that, as appears from the facts in the proceeding, the alleged victim, inebriated, shot at a captain of the National Police prior to taking flight, which in the view of the State gave rise to a situation of risk that could not be foreseen or prevented. Accordingly, the only thing that the authorities could offer as a remedy is an investigation. In that regard, the State alleged that both in the regular jurisdiction and in the special jurisdiction, an effective investigation was initiated *sua sponte* to determine how the alleged victim died.

31. With respect to the right to due process, the State argued that the authority of the police jurisdiction stems from a constitutional and statutory mandate established prior to the police judge taking cognizance of the case involving the alleged victim. It emphasized that the police jurisdiction is determinant in judging members of the police on active duty. According to the State, despite being a special jurisdiction, the criminal procedure under the police jurisdiction guarantees the parties due process and its impartiality is illustrated by the measures taken: It asked for further forensic medical expert testimony, it ordered exhumation of the corpse, it took testimony from persons who could have been involved in his death, and it ordered the preventive detention of the suspects, within a reasonable time.

32. As regards the right to judicial guarantees, the State argued that it provided effective remedies to the family members, that both in the regular jurisdiction and in the special jurisdiction the death of the alleged victim was investigated at the initiative of the authorities, that his wife participated in the two proceedings, that in the regular jurisdiction she was afforded the opportunity to challenge the recusal of the criminal law judge and that before the police judge she filed briefs and requests that were attended to by the police judge until up to his acceptance of the abandonment. The State also indicated that it cannot be accused of failure to provide effective judicial protection if the alleged victim's wife presented a brief abandoning the proceeding, dated September 2, 1993, voluntarily waiving her rights as a party to the proceeding.

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

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

33. The petitioners are authorized by Article 44 of the American Convention to present complaints or petitions on behalf of the alleged victims to the Commission. They were under the jurisdiction of the Ecuadorian State as of the date of the facts adduced. In addition, Ecuador has been a state party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights established in the American Convention in the territory of Ecuador. In addition, the Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention were already in force for the State as of the date of the facts alleged in the petition. Finally, the Commission is competent *ratione materiae*, since the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Admissibility requirements**

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

34. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Commission pursuant to Article 44 of the same instrument to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. Article 46(2) specifies that the requirement does not apply when: (i) there is no due process in the domestic legislation to protect the right in question; (ii) the alleged victim did not have access to domestic remedies; or (iii) there is an unwarranted delay in the decision of such remedies.

35. The purpose of the requirement of exhaustion of domestic remedies is to afford an opportunity to the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to have an opportunity to resolve it before it is taken up by an international body. The Inter-American Court has indicated in this regard that one must exhaust only those remedies that are adequate to cure the violations presumably committed. Adequate remedies are those which:

are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is



not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.<sup>1</sup>

36. In the instant case the State indicated that the domestic remedies were not exhausted because the decision of the regular judge to recuse himself from taking cognizance of the proceeding was not appealed and that such an appeal was the adequate remedy available to the petitioners domestically to exercise their rights. The petitioners, for their part, alleged that the suitable remedy was the criminal proceeding, and that as of the date the petition was filed almost two years had elapsed without a final decision in the matter, accordingly the exception of unwarranted delay would apply. The State subsequently affirmed that said exception would not be applicable insofar as the proceeding began December 3, 1992, and on November 11, 1996, the judge of the police jurisdiction issued an order of dismissal with prejudice, which was upheld “in consultation” by the District Court of the National Police, which on March 5, 1997, issued its final judgment affirming the dismissal.

37. As the Commission has indicated, in order to analyze whether the exhaustion requirement has been met, it must determine what the adequate remedy to be exhausted is as per the circumstances of the case, understanding this to mean the one that can solve the legal situation infringed.<sup>2</sup> In this regard, in cases of alleged arbitrary deprivations of the right to life, the Commission has noted repeatedly that the adequate remedy is a criminal investigation and a criminal trial initiated and given impetus *sua sponte* by the State to identify the persons responsible and impose the corresponding sanctions.<sup>3</sup>

38. In the instant matter, the Commission observes that the investigation into the death of Mr. Luis Jorge Valencia Hinojosa culminated after the resolution of the First District Court of the National Police, a special jurisdiction, which affirmed the dismissal of charges against the police officers implicated, thus ruling out the hypothesis of homicide.

39. In this respect, the Commission notes that it has ruled repeatedly that special jurisdictions, such as the military or police jurisdictions, do not constitute an appropriate forum for investigating alleged violations of human rights, and therefore do not constitute an adequate remedy for investigating, prosecuting, and punishing violations of the right to life allegedly committed by members of the official forces.<sup>4</sup> The IACHR has repeatedly held in cases such as the instant case that a criminal investigation aimed at clarifying the facts and, as the case may be, imposing the corresponding responsibilities, means a criminal investigation in the regular jurisdiction.<sup>5</sup>

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<sup>1</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 63; I/A Court H.R. *Case of Fairén Garbí and Solís Corrales v. Honduras*. Merits. Judgment of March 15, 1989. Series C No. 6, para. 88; IACHR. Report No. 3/10, Petition 12,088, Admissibility, Segundo Norberto Contreras Contreras, Ecuador, March 15, 2010, para. 38.

<sup>2</sup> IACHR. Report No. 51/08. Petition 299-07. Admissibility. Robert Ignacio Díaz Loreto et al. Venezuela. July 24, 2008; and IACHR. Report No. 23/07. Eduardo José Landaeta Mejías et al. Petition 435-2006, Admissibility, para. 43, March 9, 2007.

<sup>3</sup> IACHR. Report No. 23/07, Eduardo José Landaeta Mejías et al., Petition 435-2006, Admissibility, para. 43, March 9, 2007; IACHR, Report No. 15/06, Maria Emilia González, Paula Micaela González and María Verónica Villar. Petition 618-01, Admissibility, para. 34, March 2, 2006; IACHR, Report No. 52/97, Case 11,218, Arges Sequeira Mangas, 1997 Annual Report, paras. 96 and 97. See also Report No. 55/97, para. 392 and Report No. 55/04 para. 25.

<sup>4</sup> IACHR, Admissibility Report No. 11/02, Joaquín Hernández Alvarado et al. (Ecuador), February 27, 2002, para. 18. See also, IACHR, Report No. 64/01 Case 11,712, Leonel de Jesús Isaza Echeverry and one other (Colombia) April 6, 2001, para. 22. See also, I/A Court H.R., *Case of Durand and Ugarte*. Judgment of August 16, 2000, para. 117; I/A Court H.R., *Case of Cesti Hurtado*. Judgment of September 29, 1999, para. 151. See also IACHR, *Report on the Situation of Human Rights in Chile*, September 27, 1985, pp. 199. 200. OEA/Ser.L/V/II.66 doc. 17; IACHR, 1996 Annual Report, March 14, 1997, p. 688. IACHR, *Report on the Situation of Human Rights in Ecuador*, April 24, 1997, p. 36. IACHR, *Report on the Situation of Human Rights in Brazil*, September 29, 1997, p. 50.

<sup>5</sup> See, for example, IACHR, Report No. 64/01 Case 11,712, Leonel de Jesús Isaza Echeverry and one other (Colombia), April 6, 2001, para. 22. See also, I/A Court H.R., *Case of Durand and Ugarte*, Judgment of August 16, 2000, para. 117; I/A Court H.R., *Case of Cesti Hurtado*, Judgment of September 29, 1999, para. 151; Report No. 52/97, Case 11,218, Arges Sequeira Mangas, 1997 Annual Report of the IACHR, paras. 96 and 97. See also Report No. 55/97, para. 392.

40. Therefore, the Commission considers that the proceeding before the criminal courts in the police jurisdiction did not constitute *prima facie* a suitable remedy for investigating facts such as those alleged in the instant matter, and, therefore, the exception contained in Article 46(2)(a) of the Convention applies. Without prejudice to the foregoing, as of the date of this pronouncement on admissibility the Commission notes that the parties have reported that the criminal proceeding in the police jurisdiction is definitively concluded in the domestic jurisdiction. In that sense, and although one could not demand of the family members of the alleged victim that they exhaust a remedy that was not suitable or effective, the Commission considers that as there is a final judicial decision on the facts of the case, one must consider that the requirement of prior exhaustion of domestic remedies has been met.

41. As for the argument of the State regarding the failure to file an appeal against the recusal by the judge, the Commission notes that the petition incorporates multiple arguments that are not limited to the application of the police jurisdiction. In effect, the petition is focused on the alleged arbitrary deprivation of the right to life and on the alleged lack of an effective judicial response by the State. In that regard, and as already explained in this section, the criminal proceeding as a whole, driven by the State *sua sponte*, was the suitable means of responding fully to the facts alleged in the petition. In any event, the Commission considers that the State did not explain how an eventual appeal would have been effective for challenging the use of a jurisdiction which according to the State was the one that should have been applied according to its own provisions in force at the time.

## **2. Time for filing a petition with the Commission**

42. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must be presented within six months counted from the date on which the interested person was notified of the final decision that exhausted remedies in the domestic jurisdiction.

43. In the instant matter, the Commission considered that the domestic jurisdiction was exhausted by the judgment of March 5, 1997, issued by the First District Court of the National Police, that is, subsequent to the filing of the petition. In that regard, and taking into account that the analysis of the requirements established in Articles 46 and 47 of the Convention must be performed in light of the prevailing situation at the moment it rules on the admissibility of the case<sup>6</sup>, the Commission considers that the requirement at Article 46(1)(b) of the Convention referring to the time for submission is intrinsically tied to the exhaustion of domestic remedies and, therefore, should also be considered satisfied.

## **3. Duplication of procedure and *res iudicata***

44. Article 46(1)(c) of the Convention provides that the admission of a petition is subject to the requirement that the matter “is not pending in another international proceeding for settlement” and Article 47(d) of the Convention stipulates that the Commission will not admit a petition that substantially reproduces a petition or communication already examined by the Commission or by another international organization. The parties have not shown the existence of either of those two circumstances, nor can they be deduced from the record.

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

45. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, whether the petition is “manifestly groundless” or whether it is “obviously out of order,” as per Article 47(c). The standard of appreciation of these measures is different from that required to decide on the merits of a

<sup>6</sup> IACHR, Report No. 24/07, Petition 661-03, Admissibility, Liakat Ali Alibux, Suriname, March 9, 2007; IACHR, Report No. 67/11, Case 11,157, Admissibility and Merits, Gladys Carol Espinoza Gonzales, Peru, March 31, 2011, para. 44; IACHR, Report No. 108/10, Petition 744-98 and others, Admissibility, Orestes Auberto Urriola Gonzáles et al., Peru, August 26, 2010, para. 54; Report No. 2/08, Petition 506-05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, para. 56; and Report No. 20/05, Petition 716-00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 32.

complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint establishes a basis for an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such a review is a summary analysis that does not imply any pre-judging or any early formation of an opinion on the merits.

46. Neither the American Convention nor the Rules of Procedure of the IACHR requires that the petitioners identify the specific rights alleged to be violated by the State in the matter submitted to the Commission, although the petitioners may do so. By way of contrast, it is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and whose violation is established if the facts alleged are proven by sufficient elements.

47. In this respect, the Commission observes that in the instant matter the petitioners have alleged a violation of the right to life stemming from the alleged participation of state agents in the death of Mr. Valencia Hinojosa. In addition, they have indicated that a series of irregularities occurred during the investigation and criminal proceeding into that incident, particularly the application of the police jurisdiction, which is said to have had a detrimental impact on the rights to judicial protection and judicial guarantees.

48. If the facts alleged by the petitioners are true, the Commission considers that they could tend to establish a violation of the right to life established in Article 4 of the Convention, to the detriment of Luis Valencia Hinojosa, and of the rights to humane treatment, judicial guarantees, and judicial protection established in Articles 5, 8, and 25 respectively of the American Convention, to the detriment of his family members. In addition, the Commission will analyze the facts alleged in light of the obligation to bring the domestic law into line with the provisions of the Convention, set forth at Article 2.

49. As for the State's argument regarding "fourth instance," the Commission notes that it is not for the Commission to rule on the criminal liability domestically of the persons involved, but as to whether the activity of the State in responding to an alleged violation of the right to life is compatible with the obligations imposed by the American Convention regarding investigation and clarification of the facts and, as the case may be, punishment of the persons responsible. In particular, the Commission recalls that in the case of *Cabrera and Montiel v. Mexico*, the Inter-American Court indicated that in order to consider the applicability of the so-called "fourth instance" argument:

... the applicant would need to apply to the Court to review the decision of the domestic court ... without, in turn, alleging that such decision was a violation of international treaties over which the Court has jurisdiction.<sup>7</sup>

50. The Commission considers that this hypothesis is not met in the instance case, since the petitioners do not seek a review of the final judgment, but a determination as to whether the totality of the proceeding that led to that judgment was compatible with the obligation to investigate the death of Mr. Luis Jorge Valencia Hinojosa, and whether Mr. Valencia's death, as per the rules of international law, may be attributable to the State. In this sense, the Commission notes that the petitioners were consistent in arguing that the criminal proceeding in the police jurisdiction as a whole, including the final decision, constituted a violation of the rights to judicial guarantees and judicial protection.

51. Finally, the Commission observes that in similar cases related to due diligence in the investigation of deaths in which one of the hypotheses of the investigative authority is suicide, and the petitioners alleged irregularities in the investigation, the European Court of Human Rights has considered admissible and taken cognizance of the petitions on the merits, establishing that there is a positive obligation

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<sup>7</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Para. 18.

on the State to carry out an effective investigation into the circumstances of what appears to be a suicide.<sup>8</sup> Along the same lines, the IACHR has also found admissible petitions in which the state authorities have validated a hypothesis of suicide while the petitioners allege irregularities in the investigation.<sup>9</sup>

## V. ESTABLISHED FACTS

### A. The events of December 3, 1992, and the death of Luis Jorge Valencia Hinojosa

52. Luis Jorge Valencia Hinojosa was a member of the National Police who was serving at Chimborazo Precinct No. 5<sup>10</sup> and was 32 years old when he died.<sup>11</sup> He was married to Patricia Alexandra Trujillo Esparza and, according to her testimony, Mr. Valencia was right-handed, had been with the institution for seven years, 11 months, and always carried a .38 caliber service revolver.<sup>12</sup>

53. According to the report of Chimborazo Province Police Commandant, on December 3, 1992, Policeman Luis Jorge Valencia Hinojosa, Policeman Luis Hernán Moposita; Corporal Pilco Taipe Lizardo, Corporal Luis Lema, and the taxi driver Ángel Arturo Guznay Choto were at a place known as “La Ciudadela [...] where [...] liquor is sold [...]”. The report states that a fight broke out there between Corporal Lizardo Pilco and the taxi driver Guznay Choto. Local residents called the patrol car dispatch number whereupon Police Captain Joofre Venegas went to the scene and ordered “all four policemen to get in patrol car ST-01 and go to the police station [...]”<sup>13</sup>

54. According to the police report, at the police station, “owing to the fact that policemen were drunk,” Capitán Joofre Venegas ordered them to turn over their weapons to him, “which Policeman Luis Valencia refused to do.” According to the report, in that instant, Policeman Luis Valencia discharged his service revolver twice, “wounding Captain Joofre Venegas and Corporal S. Luis Lema. Policeman Luis Valencia then fired two more shots and decided to make his escape.”<sup>14</sup>

55. According to the above report,<sup>15</sup> with the aim of locating and apprehending Mr. Valencia “Police Major FROM: Juan Ávila Hidalgo ordered the patrol cars on duty and a pickup truck with policemen at a checkpoint to search all the places where it was thought that he might be found ... a patrol car set out in pursuit ... with Second Lieutenants Hernán Cabezas and Luis Piedra, and Policeman Luis Romero on board, and Corporal Lorenzo Márquez driving. They went to the Ciudadela Pacará sector, where they met patrol car SU-30 under the command of Captain Patricio Ramírez. The occupants of the two patrol cars then decided to go to Policeman Luis Valencia home.” With respect to this fact, Police Lieutenant Colonel Juan Ávila Hidalgo<sup>16</sup>

<sup>8</sup> Thus, for example, the European Court has found admissible a case in which the hypothesis of the investigate authority was suicide, indicating that the obligations include the obligation to “carry out an effective investigation into the circumstances of what appears to be a suicide.” See ECHR, *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 56. See also ECHR, *Masneva v. Ukraine*, no. 5952/07.

<sup>9</sup> See IACHR, Report No. 83/07, *José Iván Correa Arévalo* (Mexico), October 16, 2007, para. 54; IACHR Report No. 57/13 *Digna Ochoa et al. (Mexico)*, July 16, 2013.

<sup>10</sup>Appendix 1. National Police Commissioner’s written communication of December 14, 1992 Appendix 8 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>11</sup>Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>12</sup>Appendix 3. Preliminary hearing statement of Patricia Alexandra Trujillo Esparza. August 18, 1993, and Testimony of Patricia Alexandra Trujillo Esparza. November 16, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>13</sup>Appendix 4. National Police of Ecuador. National Bureau of Investigations, Report 1887-OID-CH., December 17, 1992. Appendix 9 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>14</sup>Appendix 4. National Police of Ecuador. National Bureau of Investigations, Report 1887-OID-CH., December 17, 1992. Appendix 9 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>15</sup>Appendix 4. National Police of Ecuador. National Bureau of Investigations, Report 1887-OID-CH., December 17, 1992. Appendix 9 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>16</sup> Appendix 66. Statement of Juan Ávila Hidalgo, August 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

said that he was “in overall command” and that in view of “the attitude of Policeman Valencia, who was going through the streets shooting, [he] ordered the officers who were at the police station at the time, the yellow Dodge pickup, an NCO, and six policemen to go out and try to find him.” He said that “[his] orders were to find him and bring him to the police station.”

56. According to Policeman Luis Alfredo Verdezoto Rodríguez,<sup>17</sup> after receiving the order to pursue Mr. Valencia, “Second Lieutenant Cabezas proceeded to relieve him of the rifle that he had slung over his shoulder.” He said that he asked the second Lieutenant “why [he was] taking [his] rifle” and “he did not reply.” He clarified that Lieutenant Cabezas “acted violently,” “since he snatched it from [him] from behind and, without explaining why he was taking [his] rifle, hurriedly boarded patrol car ST-17.”

57. Patricia Alexandra Trujillo Esparza,<sup>18</sup> Mr. Valencia’s widow, said that Lieutenant Cabezas, armed with a rifle, and Second Lieutenant Piedra, who had a pistol, came to her house. She said that there was bad blood between Mr. Valencia and Captain Joofre Venegas because “Captain Venegas had been the Chief of the CIDG were [her] husband had worked and that soon after he was transferred to the Urban Service.” She said that, at her residence, Second Lieutenant Piedra Meza expressly threatened to murder Mr. Valencia, saying, “That bastard Valencia is dead because he's going to die by my hand” and that he had “wanted to shoot at the door” but her sister had not let him. With respect to this fact, Mr. Cabezas, who had gone along on that errand, said that he did not hear Mr. Piedra make any such a threat “because a large mass of locals had gathered.”<sup>19</sup> For his part, Mr. Piedra Meza stated that “at no time did [he] have any conversation or exchange any such words with any of the policeman's relatives.”<sup>20</sup>

58. According to the report of the Chimborazo Police Commandant, “after it was confirmed that [...] he was not there and as the patrol cars were preparing to go somewhere else, an unidentified citizen stated that the Policeman, intoxicated and with a revolver in his hand, was making his way through the Santa Martha neighborhood,” so they went there “immediately and the occupants of the two patrol cars got out to continue the chase on foot, eventually arriving at the facilities of the Tennis Club sports complex.”<sup>21</sup>

59. What follows is a compilation of the available statements regarding the arrival of the policemen Cabezas and Piedra at the Tennis sports complex:

- The child **Franklin Antonio García Espinoza**<sup>22</sup> stated that he was 17 years old and that he had been playing there when he “heard shouts saying, ‘Stop right there, Valencia. We aren’t going to do anything to you. Give yourself up,’ and [he] heard shots coming from the avenue, which got louder when they came in to the tennis club car park. [...] [T]hen , Corporal Luis Valencia entered the club's facilities, sidling along the wall, and you could see that he had a revolver in his left hand.”

<sup>17</sup> Appendix 5. Police report of Luis Alfredo Verdezoto Rodríguez. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>18</sup> Appendix 3. Preliminary hearing statement of Patricia Alexandra Trujillo Esparza. August 18, 1993, and Testimony of Patricia Alexandra Trujillo Esparza. November 16, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>19</sup> Appendix 6. Testimonies of Hernán Cabezas Gallegos. March 9, 1993, and December 20, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>20</sup> Appendix 7. Testimony of Luis Piedra Meza. November 16, 1993, and Additional Testimony of Luis Piedra Meza, August 22, 1996. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>21</sup> Appendix 4. National Police of Ecuador. National Bureau of Investigations, Report 1887-OID-CH., December 17, 1992. Appendix 9 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>22</sup> Appendix 8 Testimony of Franklyn Antonio García Espinosa. December 16, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

- Mr. **Luis Alciviades Valdiviezo**<sup>23</sup>, who was working on the Tennis Club courts, said that he heard some gunshots and then "a uniformed policeman appeared with a revolver in his hand, after which [he] saw two other people dressed in policemen's uniforms following him, one of whom had a rifle and the other a revolver. The latter were firing into the air. One of these two uniformed men got down on the ground and continued shooting while at the same time saying, 'Throw down the weapon, Valencia' and he went on firing. There was also another uniformed man who was shooting from the other side. Then the man [Valencia] entered, hugging the wall and went into Julio Garcia's bedroom." As to whether Mr. Valencia was "repelling his pursuers with gunshots" as he was being chased, he replied that "Policeman Valencia had the revolver held up and kept moving forward without looking round to see, while several shots were heard behind."

- The girl **Ana Teresa García Espinoza**<sup>24</sup> stated that she was 16 years old and that she was in the Tennis Club complex when she "saw a person coming into the tennis club, moving along the walls of the room. He was wearing a green sweater ... and he went toward the bedroom ... and went inside it." She said that "then [she] saw two policemen approaching, shooting; and one of them told us to get out of sight."

60. After the policemen entered the sports complex, according to Franklin Antonio Garcia Espinoza, "one of the policemen told everyone, including [his] sister's co-workers to get down. He saw that his co-workers went to hide behind the steps and [he] alone stayed at the end of the steps approximately one block away." He said that "Lieutenant Piedra came up and said to [him], 'Tell me where he went or I'll kill you,' so he told him that he was "in the room where [they] slept." He said that "Lieutenant Piedra was holding a revolver and he called to Lieutenant Cabezas, saying, 'Cabezas, he is hiding in the room.'"

61. With regard to the foregoing testimony, Mr. Piedra Meza said that he "[did] not know any minor by that name and that out of sheer principle and professionalism [he] would never have attempted or threatened any minor or citizen there." With respect to the same fact, the policeman Milton Patrizio Ramirez Herrera,<sup>25</sup> said that "he heard about that account of Second Lieutenant Piedra's actions, so [he] ordered the two officers to go to the police station because families and friends of the deceased were trying to make trouble for them there. They also said that the two men were going after Policeman Valencia on foot and that the patrol car had dropped them off nearby." According to the testimony of Ana Teresa García Espinoza, one of the policemen told her brother to tell him where Mr. Valencia was, "or else I'll kill you," to which her brother replied, "he must be inside."

62. According to the reports of Second Lieutenant Piedra Meza and Lieutenant Cabezas, after ascertaining where Mr. Valencia was, they proceeded to surround the place "to prevent his escape." They said that they then asked him "to surrender and give up the revolver," which he refused, saying that "if [they] approached he would kill [them] and that the only way they would get him out of there was dead."<sup>26</sup> The testimony of Luis Piedra Meza indicates that Mr. Luis Jorge Valencia was taking refuge in a *guachimanía* [security guard's quarters] and "it was then that the now deceased began shooting, whereupon [they] took cover in different places." He said that they also told him that "nothing had happened to [the] Captain and that everything would be alright if he surrendered."<sup>27</sup> Similarly, Second Lieutenant Cabezas stated that although

<sup>23</sup>Appendix 9. Testimony of Luis Alcides Valdiviezo. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>24</sup>Appendix 10. Testimony of Ana Teresa García Espinoza. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>25</sup>Appendix 11. Testimony of Milton Patricio Ramírez Herrera. August 26, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011. Additional Testimony of Milton Patricio Ramírez Herrera. January 17, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>26</sup>Appendix 12. Reports by Police Second Lieutenants Luis Piedra Meza and Hernán Cabezas Gallegos. December 3, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>27</sup>Appendix 7. Additional testimony of Luis Piedra Meza. August 22, 1996. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

they told him that the Captain was all right, Mr. Valencia said to them that "they would never get him out of there, except dead, so, in order to stop him from shooting anymore, we fired at neutral places and into the air."<sup>28</sup> He added that when Policemen Valencia "fired the first shot, ... he immediately asked everyone who was playing ... to get down on the ground."<sup>29</sup>

63. Policeman Hernán Cabezas Gallegos said that he took up a position "some 40 meters" from where Mr. Valencia was hiding and that he was alone "because the other policemen were in other positions surrounding the place where Policeman Valencia Hinojosa was holed up."<sup>30</sup> He said that he fired "two or three shots at places that were neutral or a long way from where the aforesaid policeman was hidden, and also shots into the air" but could not "say exactly how many shots." To the judge's question as to how could he explain how the shots were fired at neutral places when there were bullet holes in windows and masonry of the security guard's quarters, he replied, "As I say, I fired at neutral parts of the cement building at a prudent height, or into the air."<sup>31</sup>

64. According to Mr. Cabezas, he had fired those shots "so that the policeman was not shoot outwards and to encourage and to surrender after what he had been doing." He explained that "the intention was for the policeman to throw out the weapon, given that he was intoxicated and, bearing in mind that he had been shooting at a police captain, [they] could not walk straight up and ask," and that it was "for self-defense, given that the aforementioned policeman had just shot an officer and an NCO in the back and, furthermore, he was intoxicated and was shooting from within, despite calls to give himself up."

65. For his part, the policeman Luis Piedra Meza said that while Mr. Cabezas was at the front, he moved round to the back of the security guard's quarters and "fired shots at neutral parts of those quarters, given that shots were being fired in answer to the fire that was coming from within, but that those shots were not [his]."<sup>32</sup> He said that at that moment he "had [his] .38 service revolver," and "[the] shots were designed to intimidate the policeman, so that he would desist from the position he had adopted." When questioned by the judge about the difference between "intimidating" and "detering," Mr. Piedra Meza answered, "it is inapplicable."

66. Regarding the same events, Franklin Antonio García Espinosa said that Lieutenant Piedra went around to the back of the room while "Second Lieutenant Cabezas stayed where Lieutenant Piedra had dropped the coat, so they started shooting at the room, while at the same time one of the policemen told [Mr. Valencia] to come out with his hands up and that nothing would happen to him; the shooting went on for about five minutes."<sup>33</sup> For his part, Luis Alviciades Valdiviezo said that he saw "a policeman with a rifle shooting at the front while another did so from the back."<sup>34</sup> For his part, Mr. Quinaluisa [...] Ángel Geovanny, who was at the scene, said that "they were firing into the air... because it would have been completely different if they had been shooting at the house or at the person there; there was a bullet hole in the wall."<sup>35</sup>

<sup>28</sup> Appendix 6. Additional testimony of Hernán Cabezas Gallegos. December 20, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>29</sup> Appendix 6. Additional testimony of Hernán Cabezas Gallegos. December 20, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>30</sup> Appendix 6. Testimonies of Hernán Cabezas Gallegos. March 9, 1993, and December 20, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>31</sup> Appendix 6. Additional testimony of Hernán Cabezas Gallegos. December 20, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>32</sup> Appendix 7. Testimony of Luis Piedra Meza. August 11, 1993, Additional Testimony of Luis Piedra Meza, December 20, 1996. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>33</sup> Appendix 8 Testimony of Franklyn Antonio García Espinosa. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>34</sup> Appendix 9. Testimony of Luis Alcides Valdiviezo. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>35</sup> Appendix 13. Testimony of Quinaluisa [...] Ángel Geovanny. April 26, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

67. According to the testimony of Police Captain Milton Patricio Ramírez, who arrived at the scene in the company of a traffic patrolman, "[he] did not hear any shooting whatsoever," and, with regard to the positions of the two officers, he said that "they were lying prone in front of the door of the security guard's quarters at a distance of approximately 30 meters." He said that the policemen were shouting at Mr. Valencia to surrender as he was surrounded and stated that when they noticed his presence, the policemen said to him, "Captain, let's go into the building because the policeman seems to be dead and that they had heard a gunshot from inside the building." He said that "a few minutes later the two officers proceeded to enter the building and found Policeman Valencia's corpse." However, at no point did he hear a gunshot, either by the alleged victim or by the officers present. He stated that Second Lieutenant Cabezas had a Ruger rifle and that Second Lieutenant Piedra had a Glock pistol, and that he also had his pistol; however, he did not know which firearms were used to shoot at the building. He also said that the two officers who entered the building had to make a bit of an effort to force open the door "and they immediately came out again, signaling that Policemen Valencia was dead." He repeated that at no point did he hear a gunshot discharged by any party.<sup>36</sup>

68. There are different accounts about how Luis Jorge Valencia Hinojosa met his death:

- **Luis Alciviades Valdiviezo**<sup>37</sup> said that a policeman "with a rifle was firing at the front while the other one was doing so from the back." He observed "that the policeman with the white shirt with a collar went into the place where the policeman was hiding, whereupon the shooting stopped," He clarified that the first to enter the security guard's quarters "was the policeman with the white shirt" and that "the policeman with the rifle never went inside, but stayed next to the tennis club's wall." He specified that "when the policeman with the white shirt went inside, two shots were heard but he did not see where they came from, and then everything went quiet." When asked if the shots came from inside, he said that "[he] could not say who had fired the shots." With regard to these same events, he said that a "policeman who was wearing a white shirt went straight into the room where the dead policeman was hiding." He heard two shots but could not identify "where they came from because we had hidden behind the wall." However, "five minutes after the shooting stopped it transpired that a policeman had died."
- **Ana Teresa García Espinoza**<sup>38</sup> said that she "saw a man in a uniform lying on the ground, shooting at the room and that there was another uniformed man behind the room [...] and from then on the only thing you could hear was shooting." She said that after saying to her brother that "he must be inside," "the uniformed man, trying to remain hidden, made his way to where Mr. Valencia was, that is, to the room ... and went inside. Almost immediately the other uniformed man came up and told the first one that he was already dead. Then, outside the room the two policemen shook hands." She said that the policeman with the rifle wanted to shoot into the air but "he had run out of bullets."
- **Franklin Antonio García Espinoza**<sup>39</sup> said "that from where [he] was positioned [he] was watching the two officers fire at the room where Policeman Valencia was." He did not recall "exactly how many shots were fired but there were approximately 10 shots," and he could not "say if the shots also came from inside." He said that "after the shooting Second Lieutenant Cabezas and Second Lieutenant Piedra went into the room, forcing the lock, and after a while the two officers came out and said that Policeman Valencia was dead, and that [he] should also mention that when the two

<sup>36</sup>Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>37</sup>Appendix 9. Testimony of Luis Alcides Valdiviezo. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>38</sup>Appendix 10. Testimony of Ana Teresa García Espinoza. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>39</sup>Appendix 8 Testimony of Franklyn Antonio García Espinosa. December 16, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.



officers emerged onto the patio they shook hands." He said that he could not say for sure if "the last shot was fired by Policeman Valencia." However, he said that "Policeman Valencia did not fire any shots from inside the bedroom; on the contrary, the shots were fired by Lieutenant Cabezas and Lieutenant Piedra."

- **César Gonzalo Sánchez Salcán**<sup>40</sup>, aged 17, who was playing at the tennis club, said that "they told [the policemen] that [Mr. Valencia] had gone into a room and then we heard some shots and the policemen told us to hide, so we threw ourselves to the ground. After quite a while a policeman came out and announced that ... the policeman who had gone into the room was dead." He said that he heard "about four or five shots but did not know who was shooting."
- **Hernán Cabezas Gallegos**<sup>41</sup> said that Mr. Valencia replied to them from inside the security guard's quarters that "we would never take him alive and he fired some shots from inside." He said that "after hearing a shot inside" they waited "for a few minutes" and heard "no response, so they ... shouted to him." Then, he, together with second Lieutenant Piedra and Captain Patricio Ramirez, went into the bedroom where Mr. Valencia was dead.
- **Luis Piedra Meza**<sup>42</sup> said that Mr. Valencia told them that if they approached "he would kill [them] and then the only way they would get him out of there would be if he was dead." He stated that "after hearing the last shots [they] proceeded to wait for a while, after which Captain Patricio Ramírez, Lieutenant Hernán Cabezas Gallegos, and [he] proceeded to go into the security guard's quarters together, at the same time, where we saw that the Policeman had committed suicide."

69. With respect to the declarations of Mr. Luis Alcivides Valdiviezo to the effect that Mr. Piedra Meza had gone "straight into the room where the dead policeman was hiding, whereupon two shots were heard and that subsequently his fellow officers had gone in," the policeman Piedra Meza said that "[he did] not know Mr. Valdiviezo and that [...] At no point had he entered alone and that he did so at the same time as Captain Ramírez and Lieutenant Cabezas. With respect to whether he had shaken Lieutenant Cabezas "as a sign of victory," he said that such accusations were "slanderous." Mr. Hernan Cabezas said that at no moment had there been any "congratulations" about Mr. Valencia's death.<sup>43</sup>

70. Police Corporal Manuel Mesías Pillajo Castro<sup>44</sup> said that while he was "out on traffic duty" he heard over the patrol car's radio that a policeman had been killed, so he drove over there "purely out of curiosity" and stated that the corpse "was lying face down and there was a bloodstain on the floor, but [he] was unable to see the face." Later, when asked if he actually saw the corpse as it appears in the photographs or if he saw it lying face down, he said that "because of the time that ha[d] passed, [he could] not recall what position it was in; however, [he] should point out that [he] did not see its face."

71. For his part, National Policeman Luis Alfredo Verdezoto Rodríguez<sup>45</sup>, who had been violently dispossessed of his rifle by Mr. Cabezas, said that he stayed at the station and that hours later he asked Second Lieutenant Cabezas about his rifle "and learned that the weapon had been fired" and that it was

<sup>40</sup> Appendix 14. Testimony of César Gonzalo Sánchez Salcán. June (day illegible), 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>41</sup> Appendix 6. Testimonies of Hernán Cabezas Gallegos. March 9, 1993, and December 20, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>42</sup> Appendix 7. Testimony of Luis Piedra Meza. August 11, 1993, and Additional Testimony of Luis Piedra Meza, December 20, 1996. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>43</sup> Appendix 7. Additional testimony of Luis Piedra Meza. August 11, 1993, and Additional Testimony of Luis Piedra Meza, December 20, 1996. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>44</sup> Appendix 15. Testimony of Manuel Mesías Pillajo Castro, January 24, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>45</sup> Appendix 16. Statement of Luis Alfredo Verdezoto Rodríguez, January 24, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011. Appendix 5 (ex Appendix 7). Police report of Luis Alfredo Verdezoto Rodríguez. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

missing "18 rounds from the magazine." He said that the rifle was turned over to him by Corporal Lorenzo Marquez and that "the rifle was missing 18 rounds, given that he only gave [him] two, with respect to which he told [him] not to worry because the second lieutenant had the rounds and he would return them to [him] ..., and he proceeded right then to give [him] back the 18 rounds for the rifle." He said that on his rifle "the magazine held 20 rounds." When asked "what condition his rifle was in, if it had its magazine, and if the ammunition was there?" he replied that "Corporal Márquez gave [him] the rifle, which had the magazine, and that all that was missing were the 18 rounds."

**B. The investigation and criminal proceeding in the police jurisdiction following the death of Luis Jorge Valencia Hinojosa**

72. Following the verbal reports of the death of Jorge Valencia Hinojosa by the Chimborazo National Police, the Riobamba Police Magistrate's Court proceeded to order the removal of the corpse.<sup>46</sup> According to the record of that procedure, the body was found in a "supine decubitus" position on a tile floor and "an external examination revealed a circular wound in the right temple, a 'wound' orifice in the occipital bone; the face, head, and part of the blood-covered body where the head rests was lying in a pool of blood on the floor measuring approximately 70 centimeters by 30 centimeters."<sup>47</sup> According to the report, the weapon was lying on the floor by the left knee.<sup>48</sup>

73. On December 3, 1992, the National Police Commissioner issued the order to institute proceedings.<sup>49</sup> In that order, the judge designated a public defender to "represent all those who might prove to be perpetrators, accomplices, or accessories in the death of Luis Valencia Hinojosa." It also ordered an examination, identification, and autopsy of the corpse, as well as an inquiry into the facts.

74. The examination, identification, and autopsy of the corpse were performed on December 4, 1992.<sup>50</sup> The autopsy found that:

An extensive, irregular fracture line was confirmed in the anterior cranial fossa, starting at the orifice in the right temporal bone, traversing (through the entire anterior cranial fossa in that direction) through the orbital roof bilaterally, and ending at the orifice in the left parietal bone [...]

The characteristics of the head wound on the right side of the scalp or skull indicate or are consistent with an entry wound caused by a firearm projectile. By the same token, the characteristics of the head wound on the left side of the scalp or skull indicate or are consistent with an exit wound caused by a firearm projectile.

Said projectile's path would appear to have been from right to left, slightly upward, and slightly from front to back. It may be concluded, categorically, that it was a single projectile from a single shot. The time of death was between 24 and 48 hours earlier. The death was

<sup>46</sup> Appendix 17. Record of removal of the corpse. December 3, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 17, 2011.

<sup>47</sup> Appendix 17. Record of removal of the corpse. December 3, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 17, 2011.

<sup>48</sup> Appendix 18. Report of Chimborazo Province Police Commandant No. 5, December 3, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>49</sup> Appendix 19. National Police Commissioner of Riobamba Canton. Order to institute proceedings. December 3, 1992. Appendix 9 to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>50</sup> Appendix 20. Autopsy. December 4, 1992. Autopsy report. December 4, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

violent, sudden, and instantaneous. All of the foregoing is consistent with a gunshot from close range and very probably suicide.<sup>51</sup>

75. According to the "list of physical evidence" submitted by the Chief of Police of Chimborazo Province to the National Police Commissioner of Riobamba Canton, the following were collected: 3 cartridge cases, 1 ballpoint pen, 1 red handlebar, 2 discharged rounds, one of them with cement, 1 Smith & Wesson .38 revolver, utility belt and holster with its accessories, and 8 undischarged .38 rounds.<sup>52</sup> An "evidence" record of the National Bureau of Investigations of the National Police dated December 15, 1992, states that the following objects were collected: 1 Smith & Wesson .38 revolver with a modified barrel; 1 olive green nylon belt, 1 brown leather revolver holder, used, with an attached brown holster, used; 5 cartridges, .38 caliber; paraffin residue on the right hand of Jorge Valencia Hinojosa; 1 black ballpoint pen, used; 1 gold handlebar, used. Attached to that report was a "note" stating that at the National Police criminalistics laboratory there were: 6 cartridges, .38 caliber; 6 cartridge cases, .38 caliber; 2 projectile fragments.<sup>53</sup>

76. On December 4, 1992, the experts designated by the National Police Commissioner of the Canton to perform an examination of a firearm, projectiles, and other objects, indicated that the .38 long Smith & Wesson revolver with the serial number AUF2290 on the grip had a cylinder with six rounds "three of which are discharged." They also stated that a holster was found that consisted of an olive green nylon belt for 12 projectiles, with eight projectiles found intact, that is, not discharged, as well as a plastic holder containing three cartridges of the same caliber; and two fragments of discharged and deformed lead bullets with traces or residue of a dry lime mixture, possibly from the wall.<sup>54</sup>

77. The report of the medical experts Carlos Moreno Paredes and Pedro Usiña Castañeda regarding the autopsy was submitted on December 7, 1992, and stated that Mr. Valencia Hinojosa had died of a "massive brain hemorrhage" caused "by the impact of a bullet that traveled from right to left, front to back, and upward."<sup>55</sup> The body was described as having been found lying "face up" and the shot that ended his life was "from right to left, front to back, and upward."<sup>56</sup> As an "appendix" to that report there is a note from the National Police Medical Doctor, Alberto Lema Carpio, who said that "virtual Tardieu spots were automatically ruled out as they have to occur within a context of asphyxia ... as part of a panorama of injuries ..., they cannot

<sup>51</sup> Appendix 20. Autopsy. December 4, 1992. Autopsy report. December 4, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>52</sup> Appendix 21. List of physical evidence. December 4, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>53</sup> Appendix 22. National Police of Ecuador, Evidence. December 15, 1992. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>54</sup> Appendix 23. National Police Commissioner of Riobamba Canton. Record of firearm examination. December 4, 1992. (Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011).

<sup>55</sup> Appendix 24. Report of the medical experts to the National Police Commissioner, December 7, 1992. Appendix 9 to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>56</sup> General inspection/Head, face, ears covered with blood; small, 4mm diameter excoriation on the bridge of the nose; bruising on the both inferior palpebrals, bleeding from both ears and from the nose, distal cyanosis of both hands, livor and rigor mortis; in the right temporal bone we found an elliptical wound with inverted edges measuring six centimeters long by one centimeter wide, running forward and downward, the exterior of the right outer ear and the lower end eight centimeter from the inferior edge of the right ear lobe; at the lower edge the anterior two thirds of the wound is blackened (Fisch ring). In the posterior left parietal region there is a wound with uneven edges ... measuring four by two centimeters with the presence of brain matter and some bone fragments. On the edge of the scalp we noted hematomas on the inner surface of the wounds described externally; in the squamous part of the right temporal bone there is a 1 centimeter-wide orifice with regular edges; in the left posterior parietal region we found an elliptical orifice measuring 2.5 by 1.5 centimeters; from the lower edge of this orifice two fracture lines part from the lower edge of this orifice in an inverted V-shape, from the superior edge of the orifice in the right temporal bone and from its anterior edge parts a fracture line that circumscribes the squamous part of the right temporal bone, joins the fracture of the vertex, and descends to the right side of the os occipitale. Appendix 24. Report of the medical experts to the National Police Commissioner, December 7, 1992. Appendix 9 to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

exist unilaterally but must, perforce, be bilateral,” and he concludes that “it is a loose conclusion, very bold and highly unlikely.”<sup>57</sup>

78. In his testimony before the judge, Dr. Luis Lema Carpio explained that he reached the conclusion that “the probable cause” of the death of Mr. Valencia was suicide because, “first, there was a single projectile; (2) the entry wound was consistent with the method most often used by suicides; (3) he probably shot himself while standing and then fell backwards.”<sup>58</sup> He said that although the report of the medical experts established the presence of Tardieu spots, he ruled them out because “they cannot occur on their own but must be part of a mosaic of other symptoms within a context of asphyxia.” When asked why Mister Valencia, upon pulling the trigger, did not keep hold of the revolver and “loosened his grip on it,” he responded that “that sign is known as the *Puppe* sign and it occurs when the damage to the brain compromises the pre-rolandic area; if the post-rolandic area or a sensitive area is compromised the sign does not occur; in that regard, “the result was negative because the patient released it when he fell. The result was negative only because the patient released the weapon.”<sup>59</sup>

79. On December 7, 1992, the Second District Prosecutor’s Office presented to the Second District Police Lower Court a formal request (*excitativa fiscal*) enclosing press reports on the death of Luis Valencia Hinojosa. According to that request “it was said that he killed himself, which the victim’s relatives reject.”<sup>60</sup>

80. An inspection of the scene of the incident was carried out on December 8. According to the record prepared on the property of the “Tennis Club” of the city of Ríobamba:<sup>61</sup>

We saw a house in which the security guard has his quarters. In the section indicated we observed three wooden doors ... leading to the same number of rooms. The house has ... brick walls and a reinforced cement roof. The exterior of the front which looks on to the courts has a window with spaces for four panes, each space measuring approximately 20 centimeters wide by 1.4 meters high. On the left side of the window’s edge, approximately 1.5 meters above the floor we noted that the plasterwork and brick has fallen away where a projectile has struck it; the second window, from left to right, has a bullet hole in it with cracks and breakages radiating out from it. The door to the first room has a lock, part of the exterior of which is broken ... . There are two beds, in the upper part of the far wall there is a window with four panes. The third pane from left to right has a bullet hole in it; in the space for the fourth window pane ... in the top right corner the iron structure shows the mark of where it was struck by a bullet. It should be noted that there are traces of hair around the perforation in the third window pane. The side wall of the construction on the right-hand side has a window, in the lower edge of which we noted the impact of a projectile that has caused part of the plasterwork to fall away. On the outside of the far wall at the same height as one of the bullet holes in the aforementioned window, there is some broken glass from the window or louver, the upper part of which shows the mark of a bullet’s impact.

81. According to the expert’s report on the weapon prepared by the National Bureau of Investigations of the National Police on December 10, 1992,<sup>62</sup> the alleged victim was carrying a .38 Smith &

<sup>57</sup> Appendix 25. Annex to the record of the autopsy signed by the doctor, Second Lieutenant Alberto Lema Carpio. Undated. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>58</sup> Appendix 26. Testimony of the expert who performed the autopsy. December (day illegible), 2012. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>59</sup> Appendix 26. Testimony of the expert who performed the autopsy. December (day illegible), 2012. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>60</sup> Appendix 27. Brief of the Second District Prosecutor to the Judge of the Second National Police District, dated December 7, 1992. Appendix 10 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>61</sup> Appendix 28. Record of examination of the scene of the incident. December 8, 1992. Record of reconstruction of the scene of the incident. May 26, 1994. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

Wesson firearm, serial number AUF2290. Also found were six “undischarged centerfire” .38 cartridges; six “discharged centerfire” casings of the same caliber, and two bullet fragments that are “deformed,” whose caliber, therefore, cannot be determined.

82. On December 10, 1992, the Judge of the Second National Police District initiated the criminal proceeding in the police jurisdiction with the respective order to open an inquiry, based on the official request presented by the prosecutor, and instructed the taking of: (i) statements “without an oath, in view of the possible criminal liability” that might be incurred, from Police Corporal Luis Lema and from all the other police personnel who were involved in the operation; and (ii) witness testimony from “all those with knowledge of the act under investigation.”<sup>63</sup>

83. On December 14, 1992, the National Police Commissioner of Riobamba Canton indicated that Mr. Valencia had been on “duty on the first shift” on December 3, 1992, and therefore requested that “the case, with all the procedures carried out thus far be transferred to the National Police Magistrate’s Court for the relevant legal purposes.”<sup>64</sup>

84. On December 28, 1992, the Chimborazo Province Police Commandant submitted to the National Police Commissioner a report on the events prepared by the National Bureau of Investigations of the National Police of Ecuador, dated December 17, 1992.<sup>65</sup> That report states that at the facilities of the Tennis Club Sports Complex it was possible “to observe that there is a security guards’ building ... on the front of which there are two impact marks caused by a firearm projectile: one in the wall and another in one of the window panes. At the rear of the building in the second pane of the left window there is a firearm project shall exit hole; in the next windows along the panes are partially destroyed On the left side of that building there is a large window broken.

85. On January 4, 1993, the National Police Commissioner sent the National Police District Judge the relevant documentation connected with the death of Mr. Valencia.<sup>66</sup> That same day, Mrs. Patricia Alexandra Trujillo Esparza, Mr. Valencia’s widow, presented a private indictment against “Police Second Lieutenant Hernán Cabezas Gallegos, Second Lieutenant Luis Piedra Meza, Captain Patricio Ramírez, and policemen Segundo Márquez, Homero Bermeo, Guillermo Páez.”<sup>67</sup>

86. On January 20, 1993, Mrs. Patricia Trujillo Esparza presented a written communication in which she desisted from the indictment against Captain Patricio Ramírez, she being willing to acknowledge the signature and initials.<sup>68</sup> On January 29, 2093, the National Police Commissioner of Ríobamba Canton

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[... continuation]

<sup>62</sup> Appendix 29. Expert’s report on the firearm, submitted by Police Major Carlos Echeverría Benitez. December 10, 1992. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>63</sup> Appendix 30. Written communication from the Judge of the Second National Police District, dated December 10, 1992. Appendix 10 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>64</sup> Appendix 31. National Police Commissioner’s written communication of December 14, 1992 Appendix 8 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>65</sup> Appendix 4. National Police of Ecuador. National Bureau of Investigations, Report 1887-OID-CH., December 17, 1992. Appendix 9 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>66</sup> Appendix 32. Written communication of the National Police Commissioner to the Judge of the Second National Police District, dated January 4, 1993. Appendix 3 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>67</sup> Appendix 33. Private indictment. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>68</sup> Appendix 34. Desistance communication from Mrs. Patricia Alexandra Trujillo Esparza, January 20, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

submitted the “viscera laboratory” results, which found “gunpowder test: skin of right hand; negative; pesticides test: organochlorines, positive”; “alcohol test: positive: 0.24%.”<sup>69</sup>

87. On March 3, 1993, the Judge of the Second National Police District began his examination of the case and ordered the initiation of “legal action” against Police Corporal First-Class Edgar Gonzalo Vargas Trujillo, Police Corporal First-Class Lizardo Pilco Taipe, Police Corporal Second-Class Luis Humberto Lema Cajas and National Policeman Luis Hernán Moposita Estrella. He also extended the scope of the preliminary inquiry and charged Police Second Lieutenants Hernán Cabezas Gallegos and Luis Piedra Meza, and National Policemen Segundo Márquez, Homero Bermeo, and Guillermo Páez.<sup>70</sup> In keeping with that ruling, Mrs. Patricia Alexandra Trujillo Esparza recognized a desistance communication “in keeping with the interlocutory order of February 1 of this year.”<sup>71</sup> According to a written communication from the Police Justice Lieutenant, the desistance communication was in relation to Police Captain Patricio Ramírez.<sup>72</sup>

88. In July 19, 1993, a written communication from Mrs. Patricia Trujillo was presented to the Second National Police District Court in which she desisted from the private indictment against Messrs. Hernán Cabezas Gallegos and Luis Vicente Piedra Meza “and undertook to neither move forward or pursue this trial, much less bring a claim for possible damages.” In that communication she stated, “I will recognize the signature and initials affixed to this communication.”<sup>73</sup>

89. On August 13, 1993, the secretary of the court noted for the record that by an interlocutory order of August 5, 1993, Mrs. Patricia Trujillo Esparza was ordered to come before the court on Wednesday, 11th, to recognize her signature and initials on the communication desisting from the private indictment; however, she failed to appear.<sup>74</sup>

90. On September 1, 1993, Mrs. Patricia Trujillo Esparza said that although the other party had summoned her to appear to recognize her signature and initials even with the assistance of the police, she said that said summons “was inadmissible since desistance is a free and voluntary act that is finalized with the acknowledgment of the signature and initials.” According to her, “without recognition of said signature and initials the aforesaid supposed desistance is rendered void,” which was why she was again insisting on her private indictment.<sup>75</sup>

91. On September 2, 1993, Mrs. Patricia Trujillo Esparza presented to the Second National Police District Court a brief in which she stated that she was “freely and voluntarily” desisting from her indictment “against Second Lieutenant Hernán Cabezas Gallegos, Second Lieutenant Luis Piedra Meza, Capitán Patricio Ramírez, and Policemen Segundo Márquez, Homero Bermeo, and Guillermo Páez.”<sup>76</sup>

<sup>69</sup> Appendix 35. Written communication of the National Police Commissioner of Riobamba Canton regarding the laboratory results of the viscera study. January 29, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>70</sup> Appendix 36. Second National Police District Court. Ruling of March 3, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>71</sup> Appendix 36. Second National Police District Court. Ruling of March 3, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>72</sup> Appendix 37. Written communication O96-J-II-Dm from the Police Justice Lieutenant to the Second National Police District Court, February 16, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>73</sup> Appendix 38. Desistance communication of Mrs. Patricia Alexandra Trujillo Esparza, January 19, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>74</sup> Appendix 39. Notice of the Secretary of the Second National Police Court, August 13, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>75</sup> Appendix 40. Brief of Mrs. Patricia Alexandra Trujillo Esparza presented by her defense counsel on September 1, 1993 to the Second National Police District Court. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>76</sup> Appendix 41. Desistance from the private indictment. September 2, 1993. Appendix 16 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

92. Also on September 2, 1993, Mrs. Patricia Trujillo Esparza appeared before the Judge of the Second National Police District Court to recognize her signatures and initials, saying that they “were in due legal order.”<sup>77</sup> On September 24, 1993, the judge “separated from the case” Mrs. Patricia Trujillo Esparza as a private accuser and, as the offense was publicly actionable, ordered “that the case continue to be heard with the designated ad hoc prosecutor and the public defender.”<sup>78</sup>

93. On November 25, 1993, the Judge of the Second National Police District Court ordered the number of evidentiary procedures, including the taking of testimony from nine policemen (Police Corporal Lizardo Pilco Taípe, Police Corporal Luis Lema, Police Corporal Gonzalo Vargas Trujillo, SGRS Víctor Hugo Sanpedro, National Policewoman Germania Corral, Police Lieutenant Colonel Carlos Rosero Barrezueta, Police Corporal José Gonzalo Sarango Abad, Police Corporal José Raúl Muquinche Pinto) and more than 20 citizens, as well as examination of the firearm, projectiles, and other objects.<sup>79</sup>

94. On July 7, 1993, the Judge of the Second National Police District Court issued an order prohibiting Police Second Lieutenant Hernán Cabezas Gallegos from leaving the country.<sup>80</sup> In addition, on February 11, 1994, the pretrial detention was ordered of Police Second Lieutenants Hernán Cabezas Gallegos and Luis Piedra Meza, which precautionary measure was suspended on March 23 due to an offer of bail.<sup>81</sup>

95. On February 8, 1994, one of the experts who prepared the medical report, Vicente Pedro Usiña, gave additional testimony, stating with regard to the presence of Tardieu spots that “these spots may be caused by asphyxia.” He said that the spots cannot occur on their own and that in this case, “there were nail beds, which is another symptom.” However, as to whether or not there had been asphyxia, he said that “it would not be possible to say for certain, given that ... it could be confused with shock caused by the projectile in the brain.”<sup>82</sup>

96. On February 11, 1994, the Judge of the Second National Police District, “inasmuch as Segundo Márquez and Homero Bermeo are not mentioned in the police seniority listing,” recused himself from examining the case and ruling on responsibility in relation to those two individuals, and referred the record to the case allocation chamber of the Superior Court of Chimborazo.<sup>83</sup> With respect to the foregoing, the Commission notes that the report contains a statement by “Márquez Rodríguez Lorenzo Celestino,” who identifies himself as a “Police Corporal Second Class” (*Cabo Segundo de Policía*) [Translator’s note: Segundo is the Spanish word for “second” as well as being a common Spanish name] and says that orders came from Major Juan Ávila to pursue Mr. Valencia in the patrol car.<sup>84</sup> In addition, there is a statement dated September

<sup>77</sup> Appendix 42. Recognition of signatures and initials. September 2, 1993. Appendix 16 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>78</sup> Appendix 43. Decision of the Second National Police District Court of September 24, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>79</sup> Appendix 44. Second National Police District Court. Decision of November 25, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>80</sup> Appendix 45. Second National Police District Court. Decision of July 7, 1993. Appendix 1 to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>81</sup> Appendix 46. Official letter from the Second National Police District Court announcing the pretrial detention order. February 11, 1994. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>82</sup> Appendix 47. Statement of Pedro Vicente Usiña, February 8, 1994. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>83</sup> Appendix 48. Second National Police District Court. Decision of February 11, 1994. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>84</sup> Appendix 49. Statement of Mr. Márquez Rodríguez Lorenzo Celestino, September 15, 1993. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

8, 1993 by "Police Major Homero Agapito Bermeo Alcívar," who said that he heard about the events "from different comments that were made at the the police station."<sup>85</sup>

97. On March 28, 1994, Carlos Gilberto Moreno, another of the medical experts who prepared the autopsy report, gave an additional statement. With regard to the presence of Tardieu spots in the lungs, he said that "asphyxia might have occurred through suffocation concomitant with death" and he said that it is probable that it would have occurred "as a result of the massive brain hemorrhage." He explained with respect to the medical report that "we did not mention the existence of asphyxia at any time," but that although Tardieu spots "occur in a death from asphyxia ... in this case, an investigation in that regard is not warranted." He said that according to the blood alcohol content "a state of inebriation existed" and he said in relation to the finding of gunpowder on the right hand that "there are usually always traces ... on the the firing hand, [but] he could draw no conclusions in that regard."<sup>86</sup>

98. On April 18, 1994, the Judge of the Second National Police District Court requested Chimborazo Province Police Commandant No. 5 to reply to an official letter of March 23, 1994, in which he requested a copy of the receipt for the service revolver issued to Luis Valencia Hinojosa and, if one existed, for Police Lieutenant Luis Piedra Meza, while he was serving in the unit under his command.<sup>87</sup> On April 22, 1994, it was notified that a search of the records revealed that "no receipt for the service revolver issued to former policeman Luis Valencia Hinojosa exists, and that neither is there a receipt for Police Lieutenant Luis Piedra Meza."<sup>88</sup>

99. On May 16, 1994, the Judge of the Second National Police District Court ordered the exhumation of the corpse of the alleged victim, a new reconstruction of the events, and the taking of new testimony. The corpse was exhumed on May 20, 1994.<sup>89</sup> In that procedure, "an oblique, oval-shaped fractured orifice on the sagittal plane consistent with the entry hole of a firearm projectile" was found in the "squamous part of the right temporal bone." In addition, it was found that "in the left parietal bone there is an irregular oval-shaped fractured orifice consistent with the exit wound of a firearm projectile."<sup>90</sup>

100. On June 6, 1994, the Second National Police District Court received a report from the Central Forensics Laboratory [*Laboratorio Central de Peritajes*] on the "investigative studies for gunpowder or trace evidence on the bones samples from National Policeman Luis Jorge Valencia Hinojosa." That report included a close-up photograph of the "occipital bone" and "close-ups of the bullet hole and traces of soot in the contact ring." The report mentioned that the nitroderivatives test performed yielded a positive result and "based on the aforementioned characteristics it was determined that the gunshot was a contact shot."<sup>91</sup> With regard to this opinion, the judge requested a rectification of the mention of an "occipital bone" given that the exhumation "establishes that the medicolegal experts 'should take a sample of the bone where the entry

<sup>85</sup> Appendix 50. Statement of Mr. Homero Agapito Bermeo Alcívar, September 8, 1993. Appendix 6 to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>86</sup> Appendix 51. Statement of Carlos Gilberto Moreno Paredes, March 28, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>87</sup> Appendix 52. Request of the Judge of the Second National Police District Court to Chimborazo Province Police Commandant No. 5, April 18, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>88</sup> Appendix 53. Written communication from Chimborazo Province Police Commandant No. 5, Official letter 94-460-CP-5m, April 22, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>89</sup> Appendix 54. Record of exhumation of the corpse. May 25, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>90</sup> Appendix 54. Record of exhumation of the corpse. May 25, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>91</sup> Appendix 55. Report of the Central Forensics Laboratory of June 3, 1993, received by the Second National Police District Court on June 6, 1993. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011. According to the available evidence, that report was written by Police Lieutenant Patricio Cevallos Iglesias and Police Second Lieutenant Fausto Olivo Cerca.



wound is located at (squamous part of the right temporal bone).”<sup>92</sup> On July 18, 1994, the ballistics experts from the National Police Central Forensics Laboratory said that “occipital bone” appears erroneously in the report due to a “secretarial typing error.”<sup>93</sup>

101. The reconstruction of the events was carried out on May 26, 1994. That procedure concerned the events that occurred at Chimborazo Police Station No. 5 and Ríobamba Tennis Club. According to the report, at the place where Luis Valencia was hiding “there is a bullet hole in both windows 2.15 meters above the ground; there is also the mark of a bullet impact on the outer part of the aforesaid window on the west side of the building, which has destroyed part of the masonry at a height of approximately 1.85 meters; there are no marks of bullet impacts inside the room or traces of blood.”<sup>94</sup>

102. The experts who took part in the reconstruction submitted a new supplementary report on June 24, 1994. According to that report:

103. With respect to the questions of Lieutenant Hernán Cabezas: (i) according to the statement of the witness Luis Valdiviezo, Mr. Cabezas was some 60 meters from the room where Mister Valencia was hiding; (ii) according to the witness Luis Valdiviezo, he was beside the steps that separate the tennis courts, approximately 20 meters from Lieutenant Cabezas; (iii) with regard to the question about “the distance from the end to which Luis Valdiviezo Hidalgo ran and the young people who were at the scene ... and if it is true that they could see from behind that wall where they took cover during the shooting,” they replied that according to the accounts the witness Luis Valdiviezo, “the young people” were approximately 10 meters away; “as regards whether or not the place where he allegedly committed suicide was visible from there, it is not visible because it is inside the building.”

104. As to the questions of Policeman Luis Piedra Meza: i) with respect to the location of the people who hid at the request of the officer “to prevent any bloodshed,” they replied that they were behind the steps beyond the tennis courts; (ii) as regards the location of Mr. Piedra, they replied that according to their accounts he was inside a drainage ditch approximately 10 meters from the back of the security guard's dwelling; (iii) as to whether “from his location ... one could see into the security guard's quarters,” they replied that because the building has high windows it is not possible to see inside the building; (iii) [Tr: *sic*] regarding the distance between the “place where the ‘curious onlookers and players’ were hiding and the his position,” they replied that “according to the accounts of the witnesses, he was approximately 80 meters away; (iv) as for the distance between the location of the “curious onlookers and the entrance” to the security guard's quarters, they said that it was approximately 60 meters; (v) with respect to whether or not there was a clear line of sight between his location and that of the “curious onlookers” and if it was possible to identify people they replied that “according to the accounts of the suspect who was inside the drainage ditch, it was not possible to see the people opposite so as to be able to identify them”; (vi) to question if “there was room for another person” in the place where Mr. Valencia was located next to wall to the left of the doorway, or if that was physically impossible, they replied that “there is room for another person.”<sup>95</sup>

105. On June 30, 1994 the Judge of the Second National Police District Court ordered the preliminary investigation closed and the prosecutor to issue his opinion.<sup>96</sup>

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<sup>92</sup> Appendix 56. Report Rectification Request made by the Judge of the Second National Police District Court, July 15, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>93</sup> Appendix 57. Written communication from the ballistics expert to the Judge of the Second National Police District Court, July 18, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>94</sup> Appendix 28. Record of examination of the scene of the incident. December 8, 1992. Record of reconstruction of the scene of the incident. May 26, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>95</sup> Appendix 58. Additional report on the reconstruction of events presented to the Second National Police District Court on June 24, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>96</sup> Appendix 59. Decision of the Judge of the Second National Police District Court, June 30, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

106. On August 3, 1994, the Police Prosecution Service [*Ministerio Público Policial*] issued an opinion in which it abstained from indicting the suspects. The prosecution found that "according to the reports contained in the record it is not possible to determine if the deceased Valencia committed suicide or if he was struck by some projectile, meaning, in the case of the latter, that he was murdered; what it is possible to say is that the case examined leaves room for a number of doubts, so that it cannot be established if he committed suicide or was murdered." The prosecution said that it would not consider the reports "on the case in which procedural requirements have not been met ... as in the case of that submitted by Dr. Alberto Lema." In that connection, after recounting the available evidence, it said that "under the principle of *in dubio pro reo*, the prosecution abstains from pressing charges against the suspected Second Lieutenants Hernán Cabezas Gallegos and Luis Piedra Meza, and National Policemen Lorenzo Celestino Márquez, Homero Bermeo and Guillermo Páez."<sup>97</sup>

107. On August 16, 1994, the Judge of the Second National Police District dismissed the case with prejudice in favor of Police Lieutenants Hernán Vicente Cabezas Gallegos and Luis Vicente Piedra, and National Policeman Guillermo Modesto Páez Orbes. The judge found that "based on the characteristics of the bullet entry and exit wounds and taking into account the locations of the officers and the room in which he hid, it would be hard to conclude a homicide or murder took place." Consequently, the judge held that "the legal provision contained in Article 134 of the Criminal Code is applicable to the facts under examination," according to which "the basic purpose of a criminal trial is to determine, in accordance to law, the existence of a punishable act or omission" and that "without such evidence, the trial may not continue." Among the reasons supporting his decision, the judge noted that "the attitude of Police Second Lieutenant Alberto Lema Carpio seems odd to the Court, given that, without being designated as an expert, he took it upon himself to sign an annex that sowed doubts and undermined the autopsy ... for which he should be severely cautioned." The decision was referred to the First National Police District Court for consultation in accordance with Article 162 of the Police Code of Criminal Procedure [*Código Adjetivo Penal Policial*].<sup>98</sup>

108. On December 20, 1994, after consulting with the lower court, the first Police District Court ordered the nullity of the proceedings from page 328 onward.<sup>99</sup> That page refers to the decision that separated Mrs. Patricia Trujillo Esparza from the proceeding as a private indicter on September 2, 1993, by reason of her desistance. According to the Court, that decision ran "counter to express laws," given that desistance was only admissible if the accused had expressly consented thereto within the proceeding (Article 47 of the Ordinary Code of Civil Procedure), and also on the basis that upon ordering dismissal with prejudice, the judge had the obligation to rule whether the private indictment was malicious or reckless, which requirement was also not complied with.

109. On September 20, 1995, the judge took over consideration of the nullity ruling and ordered the processing of the case to continue.<sup>100</sup> With regard to the requirement of acceptance of desistance, he said that "in due course the accused Hernán Vicente Cabezas will be summoned to recognize his signature and initials" and that notice would be served to Police Lieutenant Luis Vicente Piedra Meza and National Policeman Guillermo Modesto Páez Orbes "so that they might expressly accept or not said desistance."

110. On October 1, 1996, the Prosecutor for the Second National Police District presented a final opinion in which he said that "having conducted the investigations in the proceeding and made a minute examination of the facts ... no punishable act or omission on the part of Police Lieutenant Hernán Vicente Cabezas Gallegos, Police Lieutenant Luis Piedra Meza, and former National Policeman Guillermo Modesto

<sup>97</sup> Appendix 60. Opinion of the prosecution presented to the Second Police District Court on August 3, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>98</sup> Appendix 61. Second National Police District Court. Decision of Justice Police Captain Pedro Marcelo Carrillo Ruíz of August 16, 1994. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>99</sup> Appendix 62. First National Police District Court. Judgment of December 20, 1994. Appendix 2 to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>100</sup> Appendix 63. Second National Police District Court. Decision of September 20, 1995. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

Paez Orbes has been found in accordance to law arising from the death of Policeman Valencia, for which reason I abstain from pressing charges against the aforementioned individuals.”<sup>101</sup>

111. On November 11, 1996, the Judge of the Second National Police District Court again ordered dismissal with prejudice by reason of the fact that,<sup>102</sup>

Based on the procedures carried out during the preliminary inquiry stage, in particular the paraffin glove test, ballistics tests, and the autopsy, all of which suggest that the gunshot was fired at point-blank range - a contact shot; that the right hand of National Policeman Jorge Luis Valencia Hinojosa tested positive for nitrites-nitrates; that according to Dr. Alberto Corazón Lema Carpio: the death of said policeman's was by suicide because first, there was a single projectile; the entry wound was consistent with the method most often used by suicides; he probably shot himself while standing and then fell backwards; and taking into account the testimonies collected during the inquiry, it is determined: (a) that National Policeman Jorge Luis Valencia Hinojosa committed suicide, which is not a punishable act under Ecuadorian Criminal Law and, therefore, the requirements set forth in Article 134 of the Police Criminal Code that would enable the criminal trial to continue have not been met, particularly since it has not been shown that the accused instigated or assisted the aforementioned policeman's suicide ... .

112. On November 18, 1996, in accordance with the provisions of Article 162 of the National Police Code of Criminal Procedure and by reason of an appeal filed by the accused, the decision ordering dismissal with prejudice was referred to the First National Police District Court for consultation. The First National Police District Court issued its decision on March 5, 1997, confirming the dismissal with prejudice.<sup>103</sup>

113. In its decision, the First National Police District Court found, among other things, that “no legal requirements ha[d] been violated in the processing of the case” and that Valencia Hinojosa died “from the impact of a bullet whose trajectory was from right to left, front to back, and upward.”

114. The decision makes reference to the following evidence: the ballistics report on the firearm and projectiles;<sup>104</sup>the testimony of Police Lieutenant Hernán Cabezas Gallegos,<sup>105</sup> the testimony of National Policeman Modesto Páez Orbe,<sup>106</sup> the statements given in the preliminary inquiry by Police Lieutenant Luis

<sup>101</sup> Appendix 64. Final opinion of the Prosecutor for the Second National Police District, October 1, 1996. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>102</sup> Appendix 65. Second National Police District Court. Decision of November 11, 1996, Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>103</sup>Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>104</sup> Stating as findings “... Right hand: Nitrites-Nitrates; POSITIVE. [...] the six shell casings analyzed correspond to a .38 caliber firearm and were discharged by a firearm of that same caliber”; “That it is not possible to determine the caliber of the bullet fragments as they are completely deformed ... L Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>105</sup> Who mainly stated that he was some 40 meters from the security guard's quarters; he accepted that he fired two or three shots at places that were neutral or a long way from the security guard's quarters as well as some shots into the air without saying how many; he requested Policeman Valencia to give himself up and surrender the weapon as Captain Venegas was in a good condition, to which the policeman replied that if they came near he would kill them and they would never take him alive, and he fired shots from inside the security guard's quarters. “The declarant said that they entered the place where the Policeman was located only once after hearing a shot from inside and letting a few minutes pass, and because they heard no response to their shouts, given that he had previously been answering everything they had said to him.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>106</sup> Who mainly said: “... that on the day of the events he received orders from Major Bermeo to go to the Chimborazo Clinic ... he went to the office of the governor [...] to make a telephone call to Quito and requested a helicopter to evacuate Captain Venegas.” He said “that he did not take part in the operation to locate and pursue the deceased policeman ... and did not know why a private indictment  
[continues ...]

Vicente Piedra Meza,<sup>107</sup> the additional testimony of Lieutenant Luis Piedra Meza,<sup>108</sup> the statement of the private indicter,<sup>109</sup> the testimony of Police Captain Milton Patricio Ramirez,<sup>110</sup> the testimony of Lieutenant Colonel Juan Ávila Hidalgo,<sup>111</sup> the statement of Policeman Luis Hernán Momposita,<sup>112</sup> and the testimony of Corporal Márquez Rodríguez Lorenzo.”<sup>113</sup> “Evidentiary value” was also ascribed to the report on the exhumation and autopsy of the corpse of May 25, 1994,<sup>114</sup> the ballistics expert’s report,<sup>115</sup> the professional

[... continuation]

had been brought against him since at no time did he participate in the operation to pursue Policeman Valencia.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>107</sup> According to whom, “when Policeman Luis Valencia’s lifeless body was found he was with Captain Patricio Ramírez and Lieutenant Hernán Cabezas as all three had entered the scene together; as to whether shots were exchanged with the deceased, the declarant replied that at no time did he fire any shots but that he did hear gunshots both from Policeman Valencia who was inside, and from outside although he did not know which person or persons were shooting from outside.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>108</sup> In which he says that Valencia “fled toward the Riobamba Tennis Club, shooting into the air, whereupon he was pursued to prevent further regrettable incidents, the people there indicating that the policeman had hidden in a security guard’s quarters, from the inside of which Policeman Valencia was firing shots ... to which he replied that if they came near he would kill them and that the only way they would get him out was if he was dead.” “Upon hearing the final shot they proceeded to wait for a while, after which Captain Ramírez, Lieutenant Hernán Cabezas Gallegos and the declarant entered the security guard’s quarters at the same time and found that the policeman had committed suicide. They left the scene to wait for the duty police chief to arrive without touching anything.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>109</sup> According to whom, “two patrol cars and a pickup truck filled with policemen” arrived at her residence. Lieutenant Piedra “instructed them violently to kick down the door and ask her ‘where is your husband?’” As the declarant left “the house, she heard Lieutenant Piedra saying ‘That bastard Valencia is dead because he’s going to die by my hand.’” “Under questioning it was determined that the private indicter did not have personal knowledge about the circumstances of her husband’s death but found out that it was the two lieutenants who pursued her husband.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>110</sup> Who “[...] said that yes, they entered the residence with the woman’s consent and verified that the policeman was not there.” That upon reaching the Tennis Club complex, “the two officers were approximately 30 meters from the building ... they were telling the policeman to give himself up; noting the presence of the declarant, the officers said, ‘Captain, let us go into the building because it appears that the policeman is dead,’ since they heard the sound of a shot from inside it; after a few minutes the declarant said that the two officers entered the building and verified the [Tr: unintelligible word in Spanish] of the corpse.” [Tr: Spanish confusingly punctuated] Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>111</sup> Who mainly said “That ... as the most senior officer in the unit, in view of the attitude of Policeman Valencia, he gave the order for the officers who were at the police station at the time to go out and attempt to locate the policeman.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>112</sup> Who said that “he was present when the row broke out in which Captain Venegas acted as procedure required. He added nothing with respect to the shoots fired by Policeman Valencia.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>113</sup> Who said that he received “[...] the order from Major Juan Ávila” to go in pursuit of the policeman who had wounded Captain Venegas, “whereupon Lieutenant Hernán Cabezas and Lieutenant Piedra boarded the patrol car.” However, he said that subsequently he parked the car while the pursuit continued on foot, and the two officers later “told him that the policeman had committed suicide.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>114</sup> “[...] Who in the report’s conclusions said: “1. [...] [H]e died approximately 29 months ago and we believe that his death was caused by: LACERATION, BRAIN HEMORRHAGE, AND FRACTURES OF THE VAULT AND BASE OF THE SKULL AS A RESULT OF THE ENTRY AND EXIT OF A FIREARM PROJECTILE, all of which were the apparent cause of his violent death. 2.- TRAJECTORY OF THE PROJECTILE. [...] [I]ts path was from right to left, upward, and slightly from front to back. 3.- “RANGE. As there was no skin evidence, “bone samples [were taken] from the area of the entry wound (squamous part of the right temporal bone) to be sent to the National Police Central Forensics Laboratory.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State’s communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>115</sup> Who stated in the conclusions, “in the occipital bone of the skull of the deceased National Policeman Luis Valencia, there is an entry wound which presents signs of sooting”. “For which chemical tests produced the result NITRO DERIVATIVES: POSITIVE.” Based on the aforementioned characteristics it was determined that the gunshot was a contact shot. ... [T]he ballistics experts ... informed the judge that the bullet entry wound is located in the squamous part of the temporal bone of the skull, which is connected to the occipital bone, for which reason we took the liberty of making the appropriate correction to report number 94-531-LC-PN, which mistakenly [continues ...]

records of lieutenants Cabezas and Piedra, and the additional statement of Police Captain Milton Patricio Ramírez Herrera.<sup>116</sup>

115. The First National Police District Court found that:

[Based on an] examination of the evidence, it is concluded: (1) That at at Ríobamba Police Station on December 3, 1992, when Captain Jooffre Venegas asked Policeman Luis Valencia, who was inebriated, to give him the firearm that he was carrying, the latter refused and as Captain Venegas was leaving he was hit by a bullet in the back, while Policeman Luis Lema was struck in the arm, which shots were fired by Policeman Luis Valencia [...]. [Policeman Luis Valencia] then fled, thinking that he had killed his colleagues and hid in a hut at Ríobamba Tennis Club ... ; (2) That the depression into which he fell because of his remorse at having shot a superior officer and a colleague, probably due to the fact that he thought that he had killed them and influenced by his inebriated state, prompted him to commit suicide; (3) It has been technically and scientifically established that the gunshot that caused Policeman Luis Valencia's death was fired at short range, a contact shot, making it impossible for it to have been caused by the suspects, given their distance from the hut in which Policeman Valencia was hiding, which rules out the possibility of a homicide or murder.- Based on the foregoing, since the existence of a punishable act or omission has not been proven in accordance to law, in keeping with Article 160 of the Police Code of Criminal Procedure, the decision to dismiss with prejudice referred by the lower court for consultation under appeal is hereby upheld in favor of the accused police lieutenants Hernán Vicente Cabezas Gallegos and Luis Vicente Piedra Meza, and National Policeman Guillermo Modesto Páez Orbe.- The private indictment presented by Mrs. Patricia Alexandra Trujillo Esparza is neither malicious nor reckless.- So ordered.”

## VI. LEGAL ANALYSIS

116. The Commission notes that the main discrepancy between the parties has to do with the circumstances in which the death of Jorge Valencia Hinojosa occurred. While the State considers, based on the investigation, that it was by suicide, the petitioners argue that it was the result of actions by state agents and that there are a number of pieces of circumstantial evidence that were not disproved by the investigation carried out.

117. In this regard, the Commission recalls that the international protection of human rights should not be confused with criminal justice. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from acts attributable to the State.<sup>117</sup>

[... continuation]

mentions the occipital bone as a result of a typing error by the secretary. Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>116</sup> In which he said that “apart from lieutenants Cabeza and Piedra there was no one else there except the [patrol car] drivers, who remained outside; that he did not overhear Lieutenant Piedra say in reference to Policeman Valencia that 'that Valencia is dead because he's going to die'; that he learned that Policeman Valencia had hidden in a hut in the Chimborazo Tennis Club from the patrol car central dispatch and from a group of curious onlookers who made hand signals indicating as much; that he arrived on the scene ... after Messrs. Cabezas and Piedra since he did not hear any shooting whatsoever and the positions of the two officers were that they were lying prone in front of the door of the security guard's quarters at a distance of approximately 30 meters, and when they noticed his arrival they said to him, 'Captain, let's go into the building because Policeman Valencia seems to have killed himself since we heard a shot from inside it'; he instructed them to do so, whereupon the two officers entered the building, making a bit of an effort to force open the door and immediately came out again, signaling that Policemen Valencia was dead ... he repeated that at no point did he hear a gunshot discharged by any party, that first the two officers entered the place where Policeman Valencia was dead, after which the declarant did so; he also indicates that Policeman Valencia is presumed to have taken his own life.” Appendix 2. First National Police District Court. Judgment of March 5, 1997. Appendix to the State's communication of February 7, 2011, received at the IACHR on February 14, 2011.

<sup>117</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, par. 134.

118. In that regard, the Commission should clarify as a preliminary matter that it is not for it to determine if the police agents bear criminal liability for the death of Mr. Valencia Hinojosa, but rather to weigh, based on the information available and bearing in mind the obligations under the American Convention and the applicable rules governing burden of proof, if the acts of those agents engaged the international responsibility of the State.

119. The Commission will determine, first, if the investigation conducted by the State, which concluded in favor of the suicide hypothesis, was compatible with the rights to a fair trial and judicial protection. Second, taking into account the series of circumstantial evidence pointed out by the petitioners and the way in which the investigation was conducted, the Commission will assess if Mr. Valencia Hinojosa's death is attributable to the State of Ecuador. Third, the Commission will analyze if the right to humane treatment of Luis Jorge Valencia Hinojosa's next of kin was violated by the Ecuadorian State.

**A. The rights to a fair trial and judicial protection in relation to the investigations and proceedings instituted as a result of the death of Luis Jorge Valencia Hinojosa**

120. When someone has been killed in violent circumstances, the Inter-American Court has ruled that Article 8 (right to a fair trial) and 25 (right to judicial protection) of the Convention entail the obligation to carry out *ex officio*, a prompt, serious, impartial and effective investigation as a fundamental element essential for the protection of the rights affected.<sup>118</sup> Under Article 1(1) of the American Convention, that duty requires the State to provide a simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered.<sup>119</sup> For its part, Article 2 obligates the State to suppress laws and practices that imply a violation of the guarantees established in the Convention as well as to adopt laws and implement practices leading to the effective observance of the investigation required.<sup>120</sup>

121. The Commission considers that the above obligation becomes particularly acute when the suicide hypothesis is disputed. Thus, in cases where this hypothesis arises in circumstances potentially engaging the responsibility of the State, the European Court has found that the State has a duty "to ensure, by all means at its disposal, an adequate response ... so that the legislative ... framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished."<sup>121</sup>

122. The European Court has found that among the requirements to be met by an investigation that concludes that a person's death was the result of a suicide are the following: (i) that the persons responsible for the investigation must be independent from those implicated in the events;<sup>122</sup> (ii) that the competent authorities must act with exemplary diligence and promptness; (iii) that investigations must be initiated *motu proprio*; and (iv) that the circumstances in which the incident took place and any shortcomings must be ascertained.<sup>123</sup>

<sup>118</sup> I/A Court H.R. Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 75.

<sup>119</sup> I/A Court H.R., Loayza Tamayo Case, *Reparations*. Judgment of November 27, 1998. Series C No. 42, par. 169; I/A Court H.R., Velásquez Rodríguez Case. *Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, par. 91; I/A Court H.R., Fairén Garbi and Solís Corrales Case *Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, par. 90.

<sup>120</sup> *Cfr.* I/A Court H.R., Case of Almonacid-Arellano *et al.* Judgment of September 26, 2006. Series C No. 154, par. 118; I/A Court H.R., Case of Ximenes Lopes v. Brazil. *Preliminary Objection*. Judgment of November 30, 2005. Series C No. 139, par. 83, and *The Last Temptation of Christ* Case (Olmedo Bustos *et al.*). Judgment of February 5, 2001. Series C No. 73, par. 85.

<sup>121</sup> See ECHR, Sergey Shevchenko v. Ukraine, no. 32478/02, § 64.

<sup>122</sup> See ECHR, Sergey Shevchenko v. Ukraine, no. 32478/02, § 64.

<sup>123</sup> See ECHR, Sergey Shevchenko v. Ukraine, no. 32478/02, § 65.

123. Furthermore, in cases where death may have been the consequence of the use of force, the European Court has found that the “most careful scrutiny” must be used, taking into consideration “not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.”<sup>124</sup> Thus, “[a]ny deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard.”<sup>125</sup>

124. In the present case, the Commission notes that, given the circumstances in which Mr. Valencia Hinojosa lost his life, a criminal investigation was the only means by which to clarify the events and establish or discount the participation of police agents. Accordingly, the State had a duty to carry out an independent, impartial, diligent, and effective investigation within a reasonable time.

125. The scope and content of the rights to a fair trial and judicial protection having thus been specified, the Commission will analyze the state's compliance with its obligations in the following order: (i) the independence and impartiality of the police authorities who conducted the investigation; (ii) due diligence in the investigation; and (iii) if the investigation into the events was carried out in a reasonable time.

#### **1. Independence and impartiality of the police authorities in the investigation**

126. The petitioners said that the use of the police jurisdiction to examine the investigation into the death of Mr. Luis Jorge Valencia Hinojosa and the criminal proceeding against the alleged culprits failed to satisfy the guarantees of independence and impartiality required by Articles 8 and 25 of the Convention. For its part, the State held that as the case concerned “the police's own legal interests” the police jurisdiction was applicable as it had statutory legal authority and tribunals established prior to the events.

127. Taking into account the submissions of the parties, the Commission next examines: (i) the regulatory framework governing the police courts at the time of the events; (ii) the proceedings in the police courts in the present case; and (iii) the international responsibility engaged by the use of the police jurisdiction in the investigation of the death of Mr. Valencia and the respective criminal proceeding.

#### **a. Regulatory framework governing the police courts at the time of the events**

128. According to information furnished by the State, at the time of Mr. Valencia Hinojosa’s death, the competence of the police judges originate[d] from the Ecuadorian Constitution of 1984,” which provides:

Art. 131.- Members of the Security Forces enjoy a special jurisdiction and they may only be prosecuted or divested of their rank, honors and pension for the reasons and in the manner provided by law, except for the commission of common offenses, which shall be prosecuted in the regular justice system.

129. The State indicated that this special jurisdiction was reinforced by the National Civil Police Criminal Code, which provided that:

The National Civil Police jurisdiction applies only to violations committed in the performance of the duties that pertain specifically to them as members of this institution, and for violations recognized in this Code and the Disciplinary Rules.

The regular courts shall be competent to try all other offenses committed by members of the National Police, in any of its branches, applying the Common Criminal Code and the Code of Criminal Procedure.

<sup>124</sup> ECHR, *McCann and Others v. the United Kingdom*, Application No. 27229/95, 3 April 1995, § 36.

<sup>125</sup> ECHR, *Milkhalikova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42.

For the purposes of this and all other legal effects the National Civil Police is declared to comprise a single institutional and legal unit.

130. The State supplied the aforesaid Code, which also specifies the extent of the authority of this jurisdiction. As the Code stipulates, that authority encompasses "any imputable act or omission committed by an individual who belongs to the National Civil Police, whether on active duty or in a transitory situation punished by imprisonment or confinement in this Code." In particular, the Commission notes that Title IV of the Code contains a chapter entitled "On Crimes against Life," which includes definitions and applicable penalties for the criminal offenses of "homicide, assault, and bodily harm [*homicidio, golpes y lesiones*]." <sup>126</sup>

131. Finally, the State explained that according to the Disciplinary Rules, "because of the status of the National Police as an institution organized under a hierarchical disciplinary system, it requires strict and constant discipline from its members for the performance of its specific functions, expressed as faithful performance of duty as well as respect consisting of strict observance of the law ... and obedience of the orders of a higher authority."

**b. Proceedings in the police courts**

132. The record available to the Commission shows that the entire investigation and criminal proceeding against the agents identified as possible culprits in the events were conducted in the police jurisdiction. The jurisdiction of the police courts was determined by the fact that Mr. Valencia was a policeman who was on "duty on the first shift." Moreover, the trial of the accused agents who were located in the police seniority listing was also carried out in that jurisdiction. In other words, the application of police jurisdiction derived both from those suing and those being sued.

133. Having examined the record of the investigation, the Commission notes that the main procedures in the inquiry were carried out by members of the police. Thus: (i) The person who carried out the ballistic tests held the rank of "police major"; (ii) one of the doctors who offered an opinion on the autopsy was a "second lieutenant"; and (iii) the doctors who determined the existence of "sooting" and that the shot fired was a contact shot were a "lieutenant" and a "second lieutenant" in the police. Furthermore, the judge of the Second National Police District Court was a "police captain," while commanders and colonels took part in the National Police District Court. Finally, the prosecutor who abstained from pressing charges was a "police justice lieutenant."

**c. International responsibility of the State engaged by the use of the police jurisdiction**

134. The Commission recalls that special jurisdictions, such as the military criminal justice system, should have a restricted and exceptional scope and be designed to protect special juridical interests associated with the entity itself. Thus, the Inter-American Court has had the opportunity to analyze the structure and composition of special tribunals, such as military courts, in the light of the United Nations Basic Principles on the Independence of the Judiciary. A number of relevant factors are: (i) that they are made up of active-duty officers who are hierarchically subordinate to higher-ranked officers through the chain of command; (ii) that their designation does not depend on their professional skills and qualifications to exercise judicial functions; and (iii) that they do not have sufficient guarantees that they will not be removed. This has led to the conclusion that such tribunals lack the necessary independence and impartiality to take cognizance of human rights violations. <sup>127</sup>

135. Taking the above criteria into account, the Inter-American Court has referred to the incompatibility with the American Convention of the use of military criminal tribunals in cases involving human rights violations, noting that the fact that the very same military forces are those "charged with

<sup>126</sup> Appendix 67. National Civil Police Criminal Code, 1960. Supplied by the State with its communication of August 16, 2013.

<sup>127</sup> Cfr. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C, No. 135. Pars. 155 and 156.



prosecuting their peers for executing civilians” is problematic for the guarantee of independence and impartiality.<sup>128</sup> Accordingly, the Inter-American court has found as a special jurisdiction, military courts “should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system.”<sup>129</sup>

136. The Commission underscores that when the investigation finds that the death of a person was either a suicide or an arbitrary deprivation of life, the European Court has emphasized that the minimum requirement is that the persons responsible for the investigation must be independent from those implicated in the events. According to said court, this means the need to ensure the hierarchical, institutional, and practical independence of the authority that takes cognizance of the events.<sup>130</sup>

137. Analogously, in the present case, the Commission notes that the participation of members of the police in judicial functions means that that jurisdiction lacked the necessary safeguards of independence and impartiality to take up cases that could involve human rights violations. In that sense, the Commission believes that, notwithstanding the fact that the alleged victim and the accused were policemen, the police criminal justice system should have had a limited scope and should not have been used in the investigation and trial of possible criminal offenses that could constitute violations of human rights.

138. In particular, the Commission notes that although the Ecuadorian Constitution then in force delegated the possibility of prosecuting members of the police “for the reasons and in the manner provided by law,” it was the National Civil Police Criminal Code that included within the authority of the police justice system crimes “against life,” including “homicide.” The Ecuadorian regulatory framework, therefore, established the obligation to prosecute acts of this nature—which may constitute human rights violations, causing the police courts to overreach their purview beyond crimes or misdemeanors committed in the course of duty that exclusively harm the juridical interests of the police system.

139. Based on the foregoing, the Commission concludes that the State of Ecuador failed to offer Mr. Valencia Hinojosa’s next of kin a criminal investigation and proceeding by independent and impartial judges, in violation of Articles 8 and 25 of the American Convention, taken in conjunction with Articles 1 and 2 of that instrument.

## **2. Due diligence in the investigation**

### **a. General considerations**

140. The Inter-American Court has held that, in keeping with the duty to investigate a person’s death with due diligence, states have the obligation to act with all diligence from the very first stages of a proceeding.<sup>131</sup> Particularly when an investigation is carried out in circumstance in which one of the hypotheses for a person’s death is suicide, the European Court of Human Rights has found that:

The investigation must satisfy certain minimum standard as to effectiveness. Thereby, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations which would be capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved.<sup>132</sup>

<sup>128</sup> I/A Court H.R. *Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, par. 53.

<sup>129</sup> I/A Court H.R. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C No. 209, par. 272.

<sup>130</sup> See ECHR, *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 64.

<sup>131</sup> I/A Court H.R., *Case of Zambrano-Vélez et al. C. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 121.

<sup>132</sup> See ECHR, *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 65.

141. In analyzing whether an investigation has been conducted with due diligence from the initial stages of proceedings, the Commission and the Inter-American Court have taken into consideration the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. As the Court has specified:

At a minimum, state authorities conducting an inquiry shall seek, inter alia: (a) to identify the victim; (b) to recover and preserve evidentiary material related to the death in order to aid in any potential prosecution of those responsible; (c) to identify possible witnesses and obtain statements from them concerning the death; (d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; and (e) to distinguish between natural death, accidental death, suicide and homicide. The Court further notes that: (a) the crime scene must be exhaustively investigated and (b) autopsies, as well as analyses of skeletal remains, must be rigorously performed by competent professionals, employing the most appropriate procedures.<sup>133</sup>

142. The Inter-American Court has also found that in situations in which a violent death has occurred, the investigators must, at the very least: photograph the scene and any other physical evidence, and the body as it was found and after it has been moved; gather and conserve the samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other trace that could be used as evidence, and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the assigned storage for all the evidence collected.<sup>134</sup> The obligations established by the Minnesota Protocol provide that, when investigating a crime scene, the area around the body must be closed off, and entry into it prohibited, except for the investigator and his team.<sup>135</sup>

143. Furthermore, as regards due diligence in the course of the investigation, the Inter-American Court has determined that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."<sup>136</sup> In that regard, the State must show that it carried out an immediate, exhaustive and impartial investigation,<sup>137</sup> and it must be aimed at exploring all the possible lines of inquiry.<sup>138</sup> The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.<sup>139</sup>

144. In light of the foregoing standards, the Commission must determine if the State has conducted the investigations and criminal proceeding in accordance with those standards, in order to

<sup>133</sup>I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 149; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 383. Citing the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991). The Commission has relied on United Nations documents to evaluate basic procedures to be carried out in such cases in previous matters. See IACHR. *Report 10/95, (Manuel Stalin Bolaños Quiñonez)*. Case 10.580 Ecuador. September 12, 1995, par. 53.

<sup>134</sup>I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 301. The Court refers to the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, U.N., Doc E/ST/CSDHA/.12 (1991).

<sup>135</sup>I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 301.

<sup>136</sup>I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 131.

<sup>137</sup>IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al. (Argentina)*, November 18, 1997, par. 412.

<sup>138</sup>IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

<sup>139</sup>I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 230. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

determine if they have constituted effective remedies for ensuring the right of access to justice of Mr. Valencia Hinojosa's next of kin. For the purposes of analyzing the conduct of the State during said investigation, the Commission recalls that:

The investigation by [the] judicial authorities of a State's alleged violation of international obligations may face the [Commission and the] Court with the need to examine the related domestic proceedings. Based on the above, domestic proceedings must be considered as a whole and the duty of the international tribunal is to find out if all proceedings were carried out in compliance with international provisions.<sup>140</sup>

## **b. Analysis**

145. Having analyzed the investigation, the Commission notes that right from the initial stages their arose a series of situations that point to a lack of due diligence on the part of the State, particularly bearing in mind that, as was concluded above, the authorities that had control of the crime scene and the evidence, as well as those who pronounced on the criminal responsibility of the policemen involved in the death of Mr. Valencia, were members of the police themselves.

146. Thus, to begin with, the Commission notes that the crime scene was exposed to various members of the police. Although one of the policemen involved said that they withdrew from the scene "without touching anything," there is nothing in the information provided to suggest that it was cordoned off and secured. On this point, the Commission is surprised at some of the inconsistencies that emerge from the record, such as, for instance, that while the record of the removal of the corpse states that the cadaver was found in a "supine decubitus" position, that it lying face up, Police Corporal Manuel Mesías Pillajo said that when he reached and observed the body, it was in different position; that is, "face down" and, though he subsequently said that "he did not recall," he noted "that he did not see its face."

147. The Commission observes a number of other inconsistencies in the experts' reports that could suggest a difference of opinion as to what happened. The record of the removal of the corpse stated that the body presented a "circular wound in the right temple, a 'wound' orifice in the occipital bone." Subsequently, the autopsy report indicated that the entry wound was "in the right temporal bone." In addition, following the exhumation, the experts again said that they determined the entry wound based on "the occipital bone." However, the police judge himself requested that they correct themselves, given that the bone sample belonged to the "temporal" bone, in response to which, the experts—who were also policemen—said that they retracted themselves because the mistake was due to a "typing error by the secretary." The Commission finds that the above discrepancies over whether the shot entered Mr. Valencia Hinojosa's head from behind or from the side are troubling in a context in which it was the police experts themselves who confirmed, precisely on the basis of the expert evidence, the suicide theory.

148. The Commission also notes that in his report, the Provincial Police Commandant, who was at the scene, stated that the weapon "was lying on the floor by the left knee." However, the photograph of the crime scene marked number 1 shows that the pistol is by the left foot. The Commission notes that although the reasons why the weapon allegedly fired with the right hand did not remain held in that hand at the moment of death were debated in the domestic proceeding, no determination was reached as to how, despite the theory that the weapon was fired with the right hand, it could have fallen on the left side of Mr. Valencia's body in a straight line by the left foot.

149. The Commission also observes that the hypothesis emerged in the investigation that Mr. Valencia might have suffocated because of the appearance of alleged Tardieu spots. On this point, one of the

<sup>140</sup>I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 142; *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, par. 133; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 200; and *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 120.

experts indicated that they should be ruled out because they would have to occur within a "context of asphyxia" as part of a "panorama of injuries." Another expert said that "asphyxia might have occurred through suffocation concomitant with death," while a third said that "it would not be possible to say for certain" as "it could be confused with shock caused by the projectile." The foregoing notwithstanding, one of the autopsy findings was "nail beds," which, according to the expert himself, "is another symptom" connected with the asphyxiation theory. The Commission notes that neither the judge nor the investigating authorities examined these expert findings in a meaningful way and in conjunction with the evidence found at the crime scene. On the contrary, in pronouncing his opinion on this fact, the Judge of the Second National Police District Court merely said that he found "odd" the attitude of the doctor who referred to the presence of the spots, saying that "he took it upon himself to sign an annex that sowed doubts and undermined the autopsy ... for which he should be severely cautioned."

150. Likewise, the Commission finds that one of the medical experts said in relation to the alleged "finding of gunpowder on the right hand" that "there are usually always traces ... on the the firing hand"; however, he clarified that he could "draw no conclusions in that regard." Despite the foregoing, the Commission sees that in the expert findings forwarded by the National Police Commissioner of Riobamba Canton, the determination was "gunpowder test: skin of right hand; negative." Although subsequent tests indicated the presence of traces of paraffin wax on the right hand or of "nitrite-nitrates," it is not clear what technical assessment was made between those tests and their results, or if the judge or investigating authorities determined what evidentiary value each one had. In addition to the foregoing, nor was the possibility pursued of establishing if there was anything to be found on the left hand given that, according to the testimony of Franklin Antonio García, the hand in which Mr. Valencia was carrying the revolver was his left.

151. In addition to the above inconsistencies, which cast doubt on the results of the investigation, the Commission finds that there is nothing in the record to suggest that any attempt was made to find the bullet that ended Mr. Valencia Hinojosa's life. No evidence connected with the weapons of the two officers who took part in the operation was recovered, ordered, or preserved. Neither the weapons that the policemen Cabezas and Piedra were carrying, nor their bullets, were seized, preserved, or examined by means of ballistic tests in order to clarify, for instance, the number of shots that each fired during the operation, and to determine if any of those projectiles might have been the one that struck Mr. Valencia Hinojosa in the head. The absence of such an essential procedure to get to the bottom of what happened precludes a clear identification of the weapon from which the bullet that ended Mr. Valencia Hinojosa's life came.

152. In addition, as to the way in which the investigation proceeded, the Commission finds, based on an analysis of all the judicial proceedings and decisions in the police jurisdiction, that the aim was to dismiss the cases against the accused. In that way, the police officers involved ultimately benefited from the prosecution's decisions to abstain from charging them based on a presumption of innocence that operated within the framework of an incomplete and ineffective investigation that lacked independence and impartiality.

153. Thus, although the testimonies raised doubts about the way in which the events were investigated, the judge did not order any confrontations between the various witnesses whose statements contained contradictions or inconsistencies, nor did he examine in greater depth statements suggesting the possibility of a homicide, such as those of Mr. Hlciviades Valdiviezo. Furthermore, the Judge of the Second National Police District Court removed Messrs. "Segundo Márquez" and "Homero Bermeo" from the criminal proceeding, saying that they were not members of the police. The foregoing in spite of the fact that the record clearly states that someone by the name of "Márquez Rodríguez Celestino" was a "Police Corporal Second Class" (*Cabo Segundo de Policía*) [Translator's note: Segundo is the Spanish word for "second" as well as being a common Spanish name], and that Mr. "Homero Agapito Bermeo" was a "Police Major."

154. In particular, the Commission observes that the judgment of the Police District Court acquitted with prejudice the alleged culprits, taking into consideration only the statements given by the policemen that coincided with the suicide theory and those who said that shots were fired only into the air, while simultaneously discarding—without any reasoning by which to understand the judge's assessment—

the testimonies contained in the record of those who said that the policemen in charge of the operation fired in the direction of the room, and also the testimony of Luis Alciviades Valdiviezo, who said that he saw one of the two policemen going to the place where Policeman Valencia was hiding, that two shots were heard, and that then everything went quiet. The Commission also notes that no reference was made to the fact that the two policemen purportedly shook hands after coming out of the room and said that Valencia was dead. Nor was the testimony of the child Franklyn Antonio García disproved, according to whom the shots did not come from inside the room where Mr. Valencia Hinojosa, but rather the shots were fired by the policemen Cabeza and Piedra.

155. In addition to these omissions, no measures were taken with respect to the death threats that were reportedly made by the policemen during the operation, nor were those references included as relevant circumstantial evidence in the investigation.

156. In this regard, the Commission observes that the standard of the European Court of Human Rights in *Masneva v. Ukraine* for the purpose of satisfying the requirement of due diligence in the investigation when the facts suggest the possibility of a suicide or a homicide caused by state agents is that “[a]n investigation will not be effective unless all the evidence is properly analysed and the conclusions are consistent and reasoned.”<sup>141</sup>

157. Based on the foregoing, the Commission concludes that the investigation was neither diligent nor intended to elucidate the facts and, even though its findings continue to disclose possible evidence of the responsibility of state agents, that evidence was neither investigated nor suitably disproved. In conclusion, coupled with the lack of independence and impartiality on the part of the authorities that participated in the investigation, the Commission considers that it was also not carried out diligently and effectively, and therefore its results were obtained in violation of Articles 8 and 25 Convention.

### 3. Reasonable time

158. The Commission recalls that Article 8(1) of the Convention establishes as one of the guarantees of a fair trial that tribunals must reach a decision on cases submitted for their consideration within a reasonable time. The Inter-American Court has found that a prolonged delay may constitute, in itself, a violation of the right to a fair trial,<sup>142</sup> and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>143</sup>

159. With respect to whether the investigations were carried out in a reasonable time, in its observations on the merits, the State recounted a number of cases in which the organs of the system declared that the delay was unreasonable and, after comparing them with the duration of the present case, concluded that there was no unwarranted delay and that, to the contrary, the judges acted efficiently and the proceeding lasted four years, three months, and one day. For their part, the petitioners said that the time that it took the State to carry out the investigation and complete the criminal proceeding exceeded the limits established in its own system of laws.

160. In that regard, the Commission considers that it would be useful to point out that the reasonableness of the time taken to conduct an investigation is not measured in comparison to other cases presented to the inter-American system, but rather on a case-by-case basis according to relevant criteria

<sup>141</sup>ECHR, *Masneva v. Ukraine*, Application no. 5952/07, 20 December 2011, § 69.

<sup>142</sup>I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, par. 85; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 160.

<sup>143</sup>I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111 par. 142.

applied to each particular situation, which are: (a) the complexity of the matter, (b) the conduct of the judicial authorities, and (c) the procedural activity of the interested party.<sup>144</sup>

161. The criminal proceeding against the accused lasted four years, three months, and one day. Taking into account the above elements of analysis, the Commission finds, in first place, that the victim in this case was a single individual whose identity was established from the outset, the facts were immediately known by the State, and the police officers present during the operation were identified on the very day of the events. Furthermore, the appropriate authorities had free access to the scene of the events and the opportunity to carry out all the relevant technical tests. In such circumstances, the Commission believes that the present case was not particularly complex.

162. As to the conduct of the judicial authorities, the Commission notes that from the initial stage of the proceedings the State had at its disposal the evidence to clarify what happened. It was precisely a lack of proper diligence in this initial stage that made it necessary subsequently to perform additional tests to clarify the circumstances of the events, such as the exhumation of the corpse, which further prolonged the investigation. In particular, much of the delay was caused by the nullity declaration issued by the First Police District Court, which temporarily halted the proceeding. In that regard, the State has failed to offer any explanation with respect to the position of the petitioners in relation to the inaction of the judicial authorities, evinced by the fact that it took nine months for a superior court to take up the case after the First Police District Court declared said nullity.

163. The Commission finds, then, that the proceeding dragged on for more than four years, was conducted and concluded by the authorities in a special jurisdiction that lacked the guarantees of independence and impartiality, and the conduct and omissions of the authorities themselves have obstructed clarification of the events in the ordinary courts to this day.

164. Finally, concerning the procedural activity of the interested party, the Commission notes that Mrs. Patricia Alexandra Trujillo Esparza presented a private indictment on January 4, 1993. The record contains no evidence of any procedural steps on the part of the family of the alleged victim that would have impaired the progress of the investigation. Although there is information about the desistance of the private indictment, as the act in question was a publicly actionable matter, that aspect is irrelevant for the purposes of the analysis of reasonable time. The IACHR notes that Mrs. Patricia Alexandra Trujillo Esparza participated actively in the proceeding by providing her account of what happened.

165. In light of the foregoing considerations, the Commission concludes that the delay in the investigation of the case and the absence, even now, of an independent and impartial investigation of the circumstances in which Mr. Valencia Hinojosa died are unreasonable and were due to the omissions of the authorities in charge of the investigation and prosecution of the case, in violation of Article 8(1) of the Convention.

## **B. Right to life**

166. As was mentioned at the beginning of the analysis, there are two theories as to how Mr. Valencia Hinojosa died. As was concluded in the foregoing section, the criminal investigation, which was the means by which the State should have clarified what happened, violated the American Convention and did not allow the truth of what happened to come to light.

167. Thus faced with that impossibility, which stems from the state's own negligence and actions in breach of the Convention, and taking into account the arguments of the parties on the imputation or not of

<sup>144</sup>IACHR, Report on Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, par. 76. See also I/A Court H.R., *Case of López Álvarez v.* Judgment of February 1, 2006. Series C No. 141, par. 132; *Case of García Asto and Ramírez Rojas* Judgment of November 25, 2005. Series C No. 137, par. 166; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, par. 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, para. 35.

international responsibility, the Commission will examine the possible violation of Article 4 of the American Convention in light of the available information and evidence. Thus, first, it will assess the actions of the State in the planning and deployment of the operation to capture Mr. Valencia Hinojosa, taking into account the obligations that the right to life imposes. Second, the Commission will determine if the State is responsible for the fatal outcome of that operation.

## 1. Planning and regulation of the potential use of force in the operation

168. The European Court has highlighted the importance that the right to life be interpreted and applied so as to make its safeguards practical and effective.<sup>145</sup> In that regard, even in the framework of police operations that seek a legitimate objective, such as the apprehension of a person who has just committed a criminal offense, international law imposes a series of requirements that derive from the protections afforded by the rights protected by the Convention, among them, the right to life.

169. In that regard, in state operations in which the “use of force” is permitted that may give rise, as an unintended consequence, to the deprivation of life,<sup>146</sup> States are required to adopt the necessary measures to create an adequate regulatory framework to deter any threat to this right.<sup>147</sup> The Inter-American Court has held that States have a duty to adapt their national laws and to “see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”<sup>148</sup>

170. The Inter-American court has held that this duty gives rise to the following obligations: (i) The State must be “clear when defining domestic policies on the use of force and pursue strategies to implement the Principles on the Use of Force and the Code of Conduct; (ii) Agents should be provided with different types of weapons, ammunition, and protective equipment that enable them to adapt the elements used in their reaction proportionately to the incidents in which they have to intervene, restricting the use of lethal weapons that can cause injury or death as much as possible; and (iii)<sup>149</sup> The State must train its agents to ensure that they know the legal provisions that permit the use of firearms and are properly trained so that if they have to decide on their use, they have the relevant criteria do so.<sup>150</sup>

171. The Inter-American Court has found that during an incident when a display of authority is deployed, “insofar as possible, the State agents should assess the situation and draw up a plan of action before intervening.”<sup>151</sup> With respect to this same obligation, the European Court considers that “unregulated and arbitrary action by State agents is incompatible with effective respect for human rights.” This means that “policing operations must be sufficiently regulated ... within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.”<sup>152</sup> In the words of the European Court:

<sup>145</sup> ECHR, *Case McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 146. See, in that connection, I/A Court H.R., *Case of Zambrano-Vélez et al. R. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 79.

<sup>146</sup> ECHR, *Case McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 148.

<sup>147</sup> I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 81; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, par. 66.

<sup>148</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251. fr. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par. 66.

<sup>149</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 84

<sup>150</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 80.

<sup>151</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 81

<sup>152</sup> ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 58.

[...] in keeping with the importance of Article 2 [right to life] in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination ... . In [this] connection, police officers should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which ... officials may use force and firearms, in the light of the international standards which have been developed in this respect.<sup>153</sup>

172. In the instant case, with regard to the standards that govern operations of this type, the State forwarded copies of the Police Criminal Code and the Disciplinary Rules of the National Police. However, the aforesaid information does not disclose clear criteria that would be applicable to the use of force by the police, or rules on the different types of firearms and ammunition that should have been used in carrying out the instructions that were received for the operation executed. In addition, the State did not provide any information about the existence of supervision or control protocols for operations in which force might legitimately be used, or about training provided to its police on the "use of force." Neither are there any references to elements of this nature in the judicial inquiry.

173. Thus, in the absence of clear rules on the use of force and of a minimal operational plan on such critical aspects as the type of firearms that should be carried full achieving the purpose of said operation, the Commission notes that in the instant case Lieutenant Cabezas took with him a "Ruger rifle," while the policeman Piedra was carrying a "glock" pistol, rather than firearms previously recognized as fit for the requirements demanded by the proportionate use of force. The ignorance of the suitability of weapons of this type for operations of this nature was evinced by the fact that National Policeman Luis Alfredo Verdezoto Rodríguez asked the policeman Cabezas, "Why are you taking my rifle?" after he snatched it from him from behind, and then offered no reply.

174. In this context, the Commission considers that the lack of regulation, planning, and control, created the right climate for the policemen involved in the operation to engage in improper and excessive use of force.

## **2. Deployment of the police operation and use of force**

175. On this point, the Commission will examine the use of force in the framework of the police operation. According to the available information, which has not been contested by the parties, after Mr. Valencia shot Captain Joofre Venegas and Corporal Luis Lema and then took flight, Lieutenant Colonel Juan Ávila Hidalgo sent the duty patrol cars and a police pickup truck to track down Mr. Valencia and bring him back to the police station. The police report confirms that the order was "to search all the places where it was thought that he might be found." The Commission considers that bearing in mind that Mr. Valencia had shot two policemen and was on the run carrying a firearm, the order given by Lieutenant [sic] Ávila Hidalgo was consistent with the legitimate and necessary security functions of the police.

176. Having said that, the Commission notes that the accounts offered by the policemen Cabezas and Piedra as to the manner in which the operation was deployed differ from those of the other persons who witnessed it. According to the account of the two policemen, after looking for Mr. Valencia at his home and then finding him in the "security guard's quarters" of a sports facility, they told him to surrender and give up the revolver, which he refused, saying that "if [they] approached he would kill [them] and that the only way they would get him out of there was dead." According to the policeman Luis Piedra, "it was then that the now

<sup>153</sup>ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 59.



deceased began shooting” and they told him that the captain whom he had shot earlier “was all right.” The policeman Cabezas specified that Mr. Valencia “fired the first shot.”

177. With regard to this version, the Commission considers it pertinent to note that the testimonies of the policemen involved cannot be weighed separately but should be assessed together with all the rest of the evidence in the record and in the light of the rules on the burden of proof under international human rights law, particularly in cases of alleged arbitrary use of force. In this connection, as far as the deployment of the operation was concerned, the following emerges from the rest of the testimonies regarding each step of the operation, from the moment it began to when they managed to establish where Mr. Valencia Hinojosa was and the moments immediately afterwards.

**a. The moment at which police went to look for Mr. Valencia at his home**

- According to the testimony of Patricia Trujillo Esparza, upon asking for Mr. Valencia at their home, Mr. Cabezas said, “That bastard Valencia is dead because he's going to die by my hand.”

**b. The moment at which Mr. Valencia arrived at the sports complex:**

- According to the testimony of Luis Alciviades Valdiviezo and Ana Teresa García Espinoza, after locating Mr. Valencia, Messrs. Cabezas and Piedra came after him shooting into the air and, according to Mr. Alciviades Valdiviezo and Ms. García Espinoza they were shouting at Mr. Valencia to give himself up and throw away the weapon.

- Alciviades Valdiviezo said that, as they were pursuing him, “one dropped to the ground and continued firing, at the same time saying, ‘Drop the weapon, Valencia.’” And, “There was also another uniformed man who was shooting from the other side.” It was then that Mr. Valencia “entered, hugging the wall and went into [the] bedroom.”

- According to the testimony of Franklin Antonio García Espinoza, which was confirmed by Ana Teresa García Espinoza and by the version heard by Policeman Milton Patricio Ramírez Herrera, Lieutenant Piedra said to him, “Tell me where he went or I’ll kill you.”

**c. The moment after identifying the place (security guard's quarters) where Mr. Valencia was hiding:**

- Franklin Antonio García Espinoza said that Second Lieutenant Cabezas stayed where Lieutenant Piedra had “dropped the coat, so they started shooting at the room, while at the same time one of the policemen told [Mr. Valencia] to come out with his hands up and that nothing would happen to him.” He also said that “Policeman Valencia did not fire any shots from inside the bedroom; on the contrary, the shots were fired by Lieutenant Cabezas and Lieutenant Piedra.”

- Luis Alciviades Valdiviezo said that he saw “a policeman with a rifle shooting at the front while another did so from the back.”

- Ángel Geovanny said that “they were firing into the air.”

- César Gonzalo Sánchez Salcán said that “they told [the policemen] that [Mr. Valencia] had gone into a room and then we heard some shots.”

- Ana Teresa García Espinoza said that she “saw a man in a uniform lying on the ground, shooting at the room and that there was another uniformed man behind the room [...] and from then on the only thing you could hear was shooting.”

- According to Franklin Antonio García Espinoza and Luis Alciviades Valdiviezo, the shooting went on for approximately five minutes.

178. Having recounted the available evidence on the events, the Commission finds that the account of the policemen Piedra and Cabezas regarding the circumstances in which the operation was deployed is not consistent with several elements that emerge from the testimonial evidence and that suggest that during the deployment the following occurred: (i) an announcement by a policeman of intent to do Mr. Valencia harm; (ii) a death threat made by a police officer with the aim of finding him; (iii) use of lethal force as the only means employed to persuade Mr. Valencia, out of fear, to give himself up.

179. Thus, to recap, from the outset of the operation and intent was noted to punish Mr. Valencia Hinojosa, whose wife was told that “Valencia is dead because he’s going to die.” By the time they located him, the policemen had already been chasing him, firing “into the air”; they also threatened to kill a child, Franklin García, as a means to locate him in the sports facility. Subsequently, lethal force was used in a bid to persuade him to surrender.

180. Regardless of the analysis made below of the two hypotheses on the cause of Mr. Valencia Hinojosa's death, the Commission finds that, having established that lethal force was used in the moments prior, this use of lethal force must be examined in the light of the American Convention and the relevant standards.

181. The Commission recalls that when state agents use lethal force, it is up to the State to show that they attempted other, less lethal means of intervention that proved fruitless and that the actions of the security forces were necessary and proportionate to the exigencies of the situation, in particular to the threat posed by the victim.<sup>154</sup> Specifically, the Court has stated that force “must be used in keeping with the principles of legality, absolute necessity, and proportionality.”<sup>155</sup>

182. The Commission finds that the *United Nations’ Basic Principles on the Use of Force and Firearms* allow law enforcement officials to use firearms “to arrest a person presenting such a danger and resisting their authority.”<sup>156</sup> As part of the requirements for use of force to be permissible, the Principles say that: (i) it may be made only when less extreme means are insufficient to achieve these objectives; (ii) it “may only be made when strictly unavoidable in order to protect life”; (iii) law enforcement officials must give a “clear warning of their intent to use firearms”; and (iv) said warning must be given with sufficient time, unless to do so would endanger the law enforcement officials or other persons.

183. Upon examination of the present case in the light of the above criteria, the Commission notes to begin with that, in contrast to the accounts provided by the policemen Cabezas and Piedra, the testimony of the other witnesses indicates that the first shots were fired by them and were aimed at the place where Mr. Valencia Hinojosa was located. In particular, the testimony of Franklin Antonio Garcia indicates that “Policeman Valencia did not fire any shots from inside the bedroom; on the contrary, the shots were fired by Lieutenant Cabezas and Lieutenant Piedra.”

184. Taking into account that, according to this testimony, Mr. Valencia was not shooting at the policemen Piedra and Cabezas and, moreover, that according to the expert evidence, there were people at the sports complex who were variously hiding on the steps or behind a wall, while others were 80 and 60 meters away from the security guard's quarters (par. 104), the Commission finds that the policemen Piedra and Cabezas had a duty to explore means other than the use of lethal force to contain Valencia Hinojosa and protect the people in the vicinity. In this regard, the Commission recalls that agents who take part in an

<sup>154</sup>I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 108.

<sup>155</sup>I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 85.

<sup>156</sup>Principles 9 and 10 of the United Nations’ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

operation of this nature must apply the criteria of “differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.”<sup>157</sup> In this case, although there is witness testimony to the effect that Mr. Valencia was told to surrender and that “nothing would happen to him,” according to a number of witnesses, those statements were made amid continuous gunshots, which, according to the testimony of Luis Piedra Meza were “designed to intimidate the Policeman.”

185. The Commission observes that the shooting during the operation continued for the space of five minutes (*supra*, par. 177. c) and approximately six shots made direct impact on the place where Mr. Valencia was situated, including places such as windows and masonry (*supra*, par. 80). Although the domestic inquiry failed clearly to determine the number of shots that they fired, according to the witness testimony, there may have been between five and 10 shots (*supra*, par. 68) and, based on the number of cartridges missing from the rifle that one of them was carrying, Cabezas alone may have fired as many as 18 rounds.<sup>158</sup> By contrast, even though it was also not consistently determined how many shots Mr. Valencia fired, the Commission finds that according to an expert report on “the examination” of the firearm that he was carrying, it was established that only six rounds in the six-bullet cylinder were discharged (*supra*, par. 76). If the suicide theory were true, at least one of those three shots would have been made inside the security guard's quarters. No further steps were taken to determine if the other two were fired before that at the wounded policemen, which would cast into doubt the policemen's account that Mister Valencia fired out at them from his hiding place.

186. In light of the foregoing, the Commission notes that in the evidence available following the State's deficient investigation: (i) there was no consistent evidence suggesting that the policemen necessarily had to use lethal force to repel an imminent attack and protect their lives and those of the people at the sports complex; and (ii) there is nothing to suggest that they attempted other, less lethal means of intervention in the case, or considered if the level of force that they used was proportionate to the level of resistance offered.

187. The Commission considers that even assuming that Mister Valencia had fired the first shot from the security guard's quarters—something that was not clarified in the domestic investigation- according to principles of international law, moderation in the use of force must be constantly adjusted during an operation in line with changes in specific circumstances and taking into account the criteria of necessity and proportionality. Therefore, use of force was not authorized against persons who no longer posed a threat, “even if a failure to use lethal force [might have resulted] in the opportunity to arrest the fugitive being lost.”<sup>159</sup> Based on the available evidence, the Commission finds that even though the people who were in the sports complex had been moved away and Mr. Valencia had been neutralized in a specific place, lethal force was the only means used against him, its use continued for approximately 5 minutes, and it only ended when he was dead.

188. Regarding the use of lethal force “to intimidate” Mr. Valencia Hinojosa, the Commission considers it relevant to point out that while state agents are authorized to use force in certain circumstances to protect their lives and those of others, they also have a duty to protect the life of the person whom they seek to neutralize. In this connection, the Commission reiterates that it is necessary permanently to apply throughout an operation the criteria of differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended.<sup>160</sup>

<sup>157</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 85 ii).

<sup>158</sup>With respect to the number of shots made by the policemen Cabezas and Piedra, the Commission notes that: (i) with regard to the Glock that Second Lieutenant Piedra was carrying, the number was not investigated; however, according to a number of witnesses, he did fire; ii) regarding the rifle that Mr. Cabezas was carrying, the testimony of Luis Alfredo Verdezoto indicates that upon being returned his rifle there were 18 cartridges missing and, according to the testimony of Ana Teresa García Espinoza, the policeman with the rifle wanted to shoot but “he had run out bullets.”

<sup>159</sup> ECHR, *Case of Kakoulli v. Turkey*, Application No. 385/97. November 22, 2005, § 108.

<sup>160</sup> I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, par. 85 ii).

189. With regard to this obligation to protect the right to life, the European Court of Human Rights has held that it is necessary to examine must examine “not only whether the use of potentially lethal force against the applicant was legitimate but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to his life.”<sup>161</sup> With respect to this obligation, the Commission notes that according to the case law of the European Court that persons who are in a vulnerable addition vis-à-vis the state authorities are entitled to the latter's protection and it has emphasized that there are “general measures and precautions which will be available to diminish the opportunities for self-harm, without infringing on personal autonomy” and that such measures will depend on the circumstances of the case.<sup>162</sup> Thus, as the European Court has stipulated, the right to life not only enjoins the State to refrain from the intentional and unlawful taking of life, but “also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk.”<sup>163</sup>

190. On this point, the Commission notes that in *Abdullah Yilmaz v. Turkey*, the European Court took cognizance of the situation of a recruit, who, after having had a disagreement with one of his superiors, appeared with a rifle in a state of anxiety. In this situation of rebellion against a sergeant, he threatened to commit suicide. Fearing that Mr. Yilmaz might attack him, one of the sergeants seized an assault rifle and pointed it at him, whereupon Mr. Yilmaz committed suicide. In that case, the Court found that the State had “a fundamental duty to establish a legislative and administrative framework for effective prevention” and held that while it was not possible to analyze the seriousness and the nature of the psychological process that these actions might have caused in the victim, it was clear that this process became irreversible as a result of one final irresponsible act committed by his sergeant and the failure to adopt measures to protect his life.<sup>164</sup>

191. In the present case, the Commission notes that even if the suicide hypothesis is accepted, the fear caused by the pursuit in which two policemen were firing into the air behind him, one of them armed with a rifle, as well as the continuous shooting at the small and confined space in which he was sheltering, with bullets striking and breaking windows and parts of the masonry, could be analyzed in the light of the aforementioned standards. In other words, accepting the suicide theory, the use of lethal force in the minutes prior to his death has special relevance in the analysis of the possible imputation of international responsibility, even if this hypothesis were true.

192. In view of the aforementioned aspects, the Commission finds that precisely because of the absence of rules on modulation of the use of lethal force, the sequence of events verified in the framework of the operation to “locate” Mr. Valencia from its beginning to its conclusion, resulted in an intentional use of force that might reasonably be inferred to have exacerbated his likely mental state. Faced with this situation, the Commission observes that according to the testimonies of the police, Mr. Valencia Hinojosa himself announced that he believed that death was his only option as a way out of his place of refuge, when he said that “the only way they would get him out of there was dead.” Despite that warning, the use of force was not modulated, nor were other means of containment used as a way of protecting the life of Mr. Valencia Hinojosa in accordance with the above-described standards.

193. In light of the foregoing, the Commission finds it sufficiently proven that the policemen, having no regulatory framework on the use of force in police operations on which to rely, employed lethal force in an unnecessary and disproportionate way throughout the various stages of the operation. Likewise, the Commission considers it sufficiently proven that, even though a situation of risk existed to the life of Mr. Valencia Hinojosa in light of the fear inspired by the shooting and his own warning, the state agents did not adopt the necessary measures to protect him; on the contrary, they continued to use lethal force.

<sup>161</sup>ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 60.

<sup>162</sup>ECHR, *Case Keenan v. The United Kingdom*. Application No. 27229/95, 3 April 2001, § 92.

<sup>163</sup>ECHR, *Case Keenan v. The United Kingdom*. Application No. 27229/95, 3 April 2001, § 92.

<sup>164</sup>ECHR, *Case of Abdullah Yilmaz v. Turkey*. Application No. 21899/02, 17 June 2008, § 66. (Free translation)

### 3. The moment of Mr. Valencia Hinojosa's death

194. In situations that involve a potential loss of life because of the actions of state agents, the Commission underscores that a criminal investigation undertaken *motu proprio* should be capable of getting to the truth about what happened. However, in cases such as this, in which the investigation breached the minimum guarantees established by the American Convention, the Commission reiterates that the lack of a diligent and effective investigation and, therefore, the absence of a satisfactory and convincing explanation of the events, may be a factor to be taken into account in establishing the alleged violation and the attendant international responsibility.<sup>165</sup>

195. The Inter-American Court has held that when someone dies in violent circumstances that might involve state agents, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence.<sup>166</sup> As the Court has held, "in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation."<sup>167</sup> Accordingly, when there is evidence of the participation of state agents, the state must take all necessary steps to ascertain the responsibility of the individuals concerned.<sup>168</sup>

196. Using that criterion, in the absence of a diligent investigation, the Inter-American Court has found that it is possible to consider the State responsible for injuries exhibited by a person who is in the custody of state agents.<sup>169</sup> Furthermore, the Court has held that when a State takes no additional steps to verify the circumstances in which a potential violation of human rights occurred, that situation is imputable to it. Therefore, its own omissions cannot be used to refute the violations denounced by the victims.<sup>170</sup>

197. In the present case, as the Commission has already established, the investigation undertaken in the police jurisdiction did not satisfy the minimum requirements of independence and impartiality or the standard of due diligence. Therefore, the expert examinations and the conclusions of the police authorities regarding the suicide hypothesis, in themselves cannot be accepted by the Commission as refuting the participation of agents of the State in Mr. Valencia's death. Hence, the impossibility, even now, of establishing what happened is imputable to the State.

198. However, based on the conclusions in the sections above, the actions of the policemen Cabezas and Piedras (i) occurred in the absence of specific rules and training for police officers in criteria for employing and modulating the "use of force"; (ii) one of them announced at the beginning of the operation his intention to do Mr. Valencia harm; and (iii) a child was threatened with death for the purpose of locating him. Furthermore, the policemen who took part in the deployment of the police operation used weapons of different calibers and continuous fire as the only means to "intimidate" Mr. Valencia, without exploring other possible options and without complying with the principles that, in accordance with international law, must be observed before using lethal force for such purposes.

<sup>165</sup> I/A Court H.R., *Case of J. L. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275*, par. 353.

<sup>166</sup> I/A Court H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150*, par. 80. In a similar sense, see also *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99*, par. 111.

<sup>167</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110*, par. 154, and *Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103*, par. 128.

<sup>168</sup> I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196*, par. 97.

<sup>169</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010, Series C No. 220*, par. 134.

<sup>170</sup> I/A Court H.R., *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275*, par. 334.

199. These are clearly relevant elements in the analysis as to whether responsibility is attributable to the State. Added to these elements is that the testimony of Alciviades Valdiviezo concerning the moment at which Mr. Valencia Hinojosa died conflicts with the accounts given by the policemen Cabezas and Piedra and by General Milton Ramírez,<sup>171</sup> since the former said that a policeman “wearing a white shirt” entered the security guard’s quarters, two shots were then heard, and then it was announced that Mr. Valencia Hinojosa was dead. For his part, Franklin Garcia said in his testimony that “after the shooting” the policemen went into the room, forcing the lock, while Ana Teresa Espinoza said that after verifying that Mr. Valencia was dead, the policemen Cabezas and Piedra “shook hands” and that one of them even wanted to continue firing into the air.

200. The Commission finds that the witness testimonies on their own do not show that Mr. Valencia Hinojosa was extrajudicially executed by agents of the State. However, it has been proven that the State did not carry out a diligent investigation by which to screen all the circumstantial evidence described and get at the truth by conducting essential evidential procedures, such as determining the number of shots fired from the weapons of the policemen Cabezas and Piedra.

201. For the purposes of the State's international responsibility for violation of the right to life, the Commission concludes that, analyzed as a whole, the available elements of proof with respect to the lack of planning and control of the operation as well as the intentional use of force made during same, are evidence that allow it to infer, given the lack of a diligent investigation, the accuracy of the statement by Alciviades Valdiviezo and, consequently, the hypothesis that the fatal outcome of the operation may have come about as a result of a shot discharged by one of the police officers who entered the place where Mr. Valencia was located. The Commission also reiterates that the deliberate use of lethal force to “intimidate” Mr. Valencia and the absence of other means of containment, may have caused such growing apprehension and dread as to have been pivotal, in the suicide hypothesis, in the decision to end his life, which he himself announced during the operation, without the police officers adopting any measures in that respect.

202. Despite the fact that the Commission is unable to reach a definitive finding on the homicide or suicide hypothesis, it considers, based on the lack of a diligent and effective investigation of the facts and the evidence put forward, that the State failed in its obligations with regards to Mr. Valencia Hinojosa’s right to life. In this regard, as the Inter-American Court has done on other occasions,<sup>172</sup> reaching another conclusion, would mean allowing the State to shield itself behind the negligence, ineffectiveness, and partiality of the investigation, in order to tolerate a lack of disclosure of the truth and succeed in evading its international responsibility.

203. Consequently, the Commission finds that the State is responsible for violation of the right to life recognized at Article 4(1) of the American Convention taken in conjunction with the obligation to respect and ensure rights established in Article 1(1) of the same instrument, to the detriment of Luis Jorge Valencia Hinojosa;

## **B. Right to humane treatment**

204. Article 5(1) of the American Convention on Human Rights provides, “Every person has the right to have his physical, mental, and moral integrity respected.” The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, become victims.<sup>173</sup> Specifically,

<sup>171</sup> According to which, the place was entered only after no more shots were heard, upon which Mr. Valencia was found already dead.

<sup>172</sup> *Cfr.* I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009. Series C No. 196, par. 9; I/A Court H.R., *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 27, 2013. Series C No. 275, par. 356.

<sup>173</sup> I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Bueno-Alves.* Judgment of May 11, 2007. Series C No. 164, par. 102.

the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>174</sup>

205. Concretely, the Commission has concluded that in the instant case a thorough and effective investigation of the events was not conducted. In these circumstances, the Court has held:

The absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>175</sup>

206. Based on the foregoing, the Commission considers that the loss of a loved one in circumstances such as those described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of Luis Jorge Valencia Hinojosa's family. Added to the foregoing is the intimidation that Mrs. Patricia Trujillo Esparza said she suffered when the policemen involved in the operation burst into her home and told her that her husband was "dead because he [was] going to die."

207. Consequently, the Commission considers that the State of Ecuador is responsible for violation of Article 5 of the American Convention to the detriment of Mrs. Patricia Esparza Trujillo.

## VII. CONCLUSIONS

A. Based on the factual and legal considerations contained in this report, the Inter-American Commission concludes that the State of Ecuador is responsible for:

a) violation of the right to life recognized at Article 4 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Luis Jorge Valencia Hinojosa;

b) violation of the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of Ms. Patricia Alejandra Trujillo Esparza; and

c) violation of the right to humane treatment recognized in Article 5 of the American Convention to the detriment of Patricia Alexandra Trujillo Esparza.

## VIII. RECOMMENDATIONS

B. Based on the foregoing conclusions,

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

<sup>174</sup>I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

<sup>175</sup>I/A Court H.R., *Case of Valle Jaramillo et al. T. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102. *Cfr.* I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C No. 163, par. 195; I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 181; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, par. 146, and I/A Court H.R., *Case of García-Prieto et al v. El Salvador*. Judgment of November 20, 2007, Series C, No. 168, par. 102.

1. Conduct a thorough and effective investigation of the human rights violations found in the instant report.
2. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects.
3. Adopt legislative, administrative and such other measures as may be appropriate to ensure that the use of force by state agents is compatible with the standards described in this report.