

Palma Mendoza et al. v. Ecuador

ABSTRACT¹

This case is about the disappearance and murder of a person in Ecuador, and the subsequent investigation and prosecution of his murderers. The Court found Ecuador had not violated the Convention because it duly investigated and prosecuted the case.

I. FACTS

A. Chronology of Events

May 16, 1997: Shortly before 9:30 a.m., a security guard for the Ecuadorian Professional Training Service (“SECAP”) approaches a white pick-up truck without any license plates.² The security guard sees three men inside and asks what they are doing.³ One of the passengers gets out, shows him identification, and says the men belong to an “intelligence force.”⁴ However, the men are actually three members of the private security team of the notoriously violent businessman, Mr. Medardo Cevallos, and also former members of the Ecuadorian Armed Forces.⁵

Meanwhile, Mr. Marco Bienvenido Palma Mendoza (“Mr. Palma Mendoza”) drives with his eleven-year-old son in Manta, in the Ecuadorian province of Manabi, around 9:30 a.m.⁶ As they near SECAP, the three men in the white pick-up truck without license plates stop Mr. Palma Mendoza and his son.⁷ The men emerge from the truck in ski masks and civilian clothing.⁸ One of the men removes Mr. Palma Mendoza’s son from the car; the child then sprints to his mother’s home and

1. Erin Gonzalez, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, Report No. 119/10, Inter-Am. Comm’n H.R., Case No. 12.004, ¶ 57 (Oct. 22, 2010).

3. *Id.* ¶ 59.

4. *Id.*

5. *Id.* ¶ 58.

6. *Id.* ¶ 57.

7. *Id.*

8. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 58.

tells her what occurred.⁹ Meanwhile, the men place Mr. Palma Mendoza in their truck and drive him to an unknown location.¹⁰

Around 10:00 a.m., Ms. Lidia Guadalupe Bravo, Mr. Palma Mendoza's wife, learns of her husband's kidnapping from her son.¹¹ Family, neighbors, and friends begin searching for Mr. Palma Mendoza in jails and police stations without luck; they then notify the media.¹²

May 17, 1997: Ms. Guadalupe Bravo reports Mr. Palma Mendoza's kidnapping to the Eleventh Criminal Court of Manabi and requests that an investigation be opened.¹³ She asks for official notice to be given to the Manta Police's Criminal Investigations Office so she can be updated on information about the kidnapping.¹⁴ She reports that at the location of the kidnapping, a SECAP staff member noted a blue Ecuadorian Armed Forces truck accompanied the white pick-up truck and a separate car with military personnel, and that they were signing and gesturing to each other.¹⁵

In response, the Manabi Eleventh Criminal Court judge requests the Manta Criminal Investigations Office Chief investigate the kidnapping and report any findings.¹⁶

May 22, 1997: Mr. Palma Mendoza's brother, Mr. Carlos Alberto Palma Mendoza, presents a *habeas corpus* writ to the Municipality of Manta.¹⁷ The Mayor of Manta requests heads of various government agencies to bring Mr. Palma Mendoza to him personally and present any relevant documents and reports.¹⁸

May 23, 1997: The Manta Criminal Investigations Office sends the preliminary report on Mr. Palma Mendoza's kidnapping to the Manabi Eleventh Criminal Court Judge.¹⁹ Although the report notes the Ecuadorian Armed Force's possible involvement with the kidnapping, Mr. Palma Mendoza was not detained in any of their offices, and the military did not

9. *Id.*

10. *Id.*

11. *Id.* ¶ 60.

12. *Id.*

13. *Id.* ¶ 61.

14. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 61.

15. *Id.*

16. *Id.* ¶ 62.

17. *Id.* ¶ 63.

18. *Id.*

19. *Id.* ¶ 64.

have any vehicle matching the description of the one involved in the kidnapping.²⁰

May 30, 1997: The petitioners file a *habeas corpus* writ in the Municipality of Quito alleging Mr. Palma Mendoza was possibly detained by Military Intelligence, the Military Intelligence Group, the Army General Command, or the Head of Military Intelligence.²¹

The Guayaquil-based newspaper, *El Universo*, publishes an article about two bodies that were found two weeks prior in the Norcay River.²² The bodies had fabric gags in their mouths and strips of cloth around their necks.²³ Since no family members claimed the bodies, authorities buried them in a local cemetery.²⁴

June 6, 1997: The Quito Mayor's office demands various government authorities bring Mr. Palma Mendoza forward with the proper warrant for his arrest. However, this demand did not result in locating Mr. Palma Mendoza.²⁵

July 1, 1997: The Manabi Eleventh Criminal Court sets the matter for trial.²⁶

July 21, 1997: The petitioners file a complaint alleging members of the Navy participated in Mr. Palma Mendoza's disappearance.²⁷

August 8, 1997: The Chief of Navy High Command responds to the complaint and notes that after a thorough investigation, no evidence showed Navy involvement in Mr. Palma Mendoza's disappearance.²⁸

October 3, 1997: After receiving a communication from the petitioners, the Minister of the Interior and the Police replies that an investigation into Mr. Palma Mendoza's disappearance already occurred and demonstrated no involvement from the Armed Forces.²⁹

20. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 65.

21. *Id.* ¶ 66.

22. *Id.* ¶ 67.

23. *Id.*

24. *Id.*

25. *Id.* ¶ 66.

26. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 68.

27. *Id.* ¶ 69.

28. *Id.*

29. *Id.* ¶ 70.

June 9, 1998: Ms. Guadalupe Bravo and an attorney, Mr. Ignacio Reyes Cardenas, note in an interview that a woman told a friend that her lover, a man named Mr. Lenin Ordóñez, killed Mr. Palma Mendoza.³⁰ At the time, Mr. Lenin Ordóñez worked with a private security team that owned sophisticated technology and new vehicles.³¹ Mr. Palma Mendoza's son states his father and Mr. Lenin Ordóñez argued one month before the kidnapping.³²

September 1, 1998: The National Investigations Office reports they have no information on Mr. Palma Mendoza's whereabouts.³³

January 25, 1999: The petitioners ask the Minister of National Defense to investigate the armed forces' involvement in Mr. Palma Mendoza's disappearance.³⁴

March 17, 1999: The Minister of National Defense responds to the petitioners' request and states that the Ecuadorian Air Force intelligence members at the Eloy Alfaro de Manta Air Base had no involvement in the disappearance and suggests Mr. Palma Mendoza's disappearance was an act of revenge or blackmail because he was economically stable.³⁵

February 16, 2000: Mr. Lenin Ordóñez is arrested for illegally acquiring vehicles, communications equipment, and firearms from the Cevallos family's company, PECIA.³⁶ Upon his arrest, he volunteers a statement about Mr. Palma Mendoza's disappearance and death.³⁷ He states that while he worked as Chief of Security for the Cevallos family in May 1997, someone stole firearms, tires, a fax machine, and computers from the Manabi Company.³⁸ He led the investigation and confirmed Mr. Palma Mendoza's involvement with the theft.³⁹ He admits to kidnapping Mr. Palma Mendoza and taking him and another man to Manabi Motors to change vehicles and then to a different Cevallos family property.⁴⁰ Mr. Palma Mendoza told him the stolen goods would not be recovered, and

30. *Id.* ¶ 71.

31. *Id.*

32. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 71.

33. *Id.* ¶ 72.

34. *Id.* ¶ 73.

35. *Id.*

36. *Id.* ¶ 74.

37. *Id.*

38. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 75.

39. *Id.*

40. *Id.*

Mr. Medardo Cevallos ordered Mr. Lenin Ordóñez to take the kidnapped persons to a business in Palestina, then to Puerto Inca and then Puerto Olmeda.⁴¹ Mr. Lenin Ordóñez bypassed police checkpoints with formal Ecuadorian Armed Forces identification.⁴² Throughout the duration of Mr. Palma Mendoza's detainment, they only gave him water and kept him tied up.⁴³ Mr. Palma Mendoza and the other detainee, Mr. Jorge Jhon Mero Parrales, were killed for trying to escape, and their bodies were thrown in the Norcay River.⁴⁴

After Mr. Lenin Ordóñez gave his statement, the corpses found by the Norcay River in 1997 were exhumed and identified as Mr. Palma Mendoza and Mr. Mero Parrales.⁴⁵

February 29, 2000: The Superior Court of Quito orders Mr. Lenin Ordóñez's arrest and the arrest of those who assisted him in the kidnapping and murders: Mr. Freddy Contreras, Mr. Medardo Cevallos Gomez, and Mr. Ramón Bravo Mera.⁴⁶

March 9, 2000: Mr. Lenin Ordóñez testifies to the kidnapping and murders.⁴⁷

March 13, 2000: The events of the crime are reconstructed.⁴⁸

May 2, 2000: Ms. Rosa Rufina Parrales, the mother of Mr. Mero Parrales, drops the charges against all other defendants except Mr. Lenin Ordóñez after learning outside information.⁴⁹

May 3, 2000: Mr. Mero Parrales's other family members sign an affidavit concurring with Ms. Parrales that they will never bring any criminal or civil action for this murder.⁵⁰

May 4, 2000: Mr. Palma Mendoza's daughter signs an affidavit dropping charges against the other men, only pressing charges against Mr. Lenin

41. *Id.* ¶ 76.

42. *Id.* ¶ 77.

43. *Id.*

44. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 77.

45. *Id.* ¶ 78.

46. *Id.* ¶ 79.

47. *Id.* ¶ 80.

48. *Id.*

49. *Id.* ¶ 81.

50. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 82.

Ordóñez.⁵¹

May 5, 2000: Ms. Guadalupe Bravo drops the charges against the other men and only presses charges against Mr. Lenin Ordóñez on behalf of her and her minor children with Mr. Palma Mendoza.⁵²

May 9, 2000: Ms. Perfelita Matilde Mendoza Aguayo, Mr. Palma Mendoza's mother, unlike the other next of kin of the victims, brings personal charges against the other perpetrators of the kidnapping and murder as those who orchestrated her son's murder.⁵³

The Manabi Eleventh Criminal Court Judge releases Mr. Cevallos, Mr. Ponce, and Mr. Bravo Mera from prison because the family members dropped the charges.⁵⁴

May 12, 2000: The Prosecutor objects to the Judge's release of the Mr. Cevallos, Mr. Ponce, and Mr. Bravo Mera because they were only released due to the family members dropping charges; instead, the Prosecutor argues, the Judge should act *de officio* under the Public Ministry's direction.⁵⁵

May 23, 2000: The Eleventh Criminal Court incorporates the charges filed by the family members against Mr. Reyes Cardenas, Ms. Montaña de Mera, and Mr. Lenin Ordóñez because the court inspected the document dropping charges.⁵⁶

May 26, 2000: Ms. Mendoza Aguayo files a motion to recall the May 23, 2000 order because, according to Article 48 of the CPP, only victims can drop charges—not family members.⁵⁷

January 22, 2001: The trial stage begins with charges against Mr. Lenin Ordóñez, Mr. Contreras, Mr. Domínguez Avíles, Mr. Cedeño Vite, and Mr. Menendez; the Judge dismisses all other accused parties.⁵⁸

March 19, 2001: The Sixth Criminal Court of Manabi enters judgment against Mr. Lenin Ordóñez, Mr. Contreras and Mr. Domínguez Aviles

51. *Id.* ¶ 83.

52. *Id.* ¶ 84.

53. *Id.* ¶ 85.

54. *Id.* ¶ 86.

55. *Id.* ¶ 87.

56. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 88.

57. *Id.*

58. *Id.* ¶ 89.

based on Article 450(1), (4), and (5) of the Criminal Code.⁵⁹ They were sentenced to twelve years in prison and ordered to pay costs and damages to Mr. Palma Mendoza's mother.⁶⁰

June 26, 2002: The Supreme Court of Justice's Second Criminal Chamber denies an appeal.⁶¹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

September 24, 1997: The Ecumenical Human Rights Commission ("CEDHU") files a petition with the Inter-American Commission of Human Rights ("the Commission").⁶²

October 22, 2010: The Commission issues Admissibility and Merits Report No. 119/10.⁶³ It finds the case admissible and that the State violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination), 2 (Obligation to Give Domestic Legal Effect to Rights), and 4 (Right to Life) of the American Convention, to the detriment of Ms. Guadalupe Bravo, Mr. Palma Bravo, Mr. Palma Mendoza, Ms. Palma Bravo, Ms. Mendoza Aguayo, Mr. Palma, and Mr. Palma Pico.⁶⁴

B. Before the Court

February 24, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁵

October 2, 2010: Ecuador presents its answering brief and asks the Court

59. *Id.*

60. *Id.* ¶ 89.

61. *Id.*

62. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 1.

63. *Id.*

64. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R., (ser. C), No. 247, ¶ 1 (Sept. 23, 2011).

65. Palma Mendoza et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.004 (Feb. 24, 2011).

to accept its preliminary objection that the Commission acted as a court of appeal (or fourth instance).⁶⁶

1. Violations Alleged by Commission⁶⁷

Article 5 (Right to Humane Treatment)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25(1) (Right of Recourse before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶⁸

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

III. MERITS

A. *Composition of the Court*⁶⁹

Diego García Sayán, President

Manuel E. Ventura Robles, Vice-President

Leonardo A. Franco, Judge

Rhadys Abreu Blondet, Judge

Albert Pérez Pérez, Judge

Eduardo Vio Grossi, Judge

66. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶¶ 5, 13.

67. Palma Mendoza et al. v. Ecuador, Admissibility and Merits Report, ¶ 4.

68. *Id.* ¶ 2. 002 Ms. Elsie Monge and Mr. César Duque, on behalf of *Comisión Ecuémica de Derechos Humanos*, served as representatives of the victims. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶ 4.

69. Judge Margaret May Macaulay did not attend for reasons beyond her control. *Id.* fn *.

Pablo Saavedra Alessandri, Secretary
Emilia Segares, Deputy Secretary

B. *Decision on the Merits*

September 3, 2012: The Court issues its Judgment on Preliminary Objections and Merits.⁷⁰

The Court unanimously declares the State's preliminary objections inadmissible⁷¹ because:

The Court has international jurisdiction and therefore does not act as an appellate court; it does not determine factual disagreements between the parties – only whether violations of international law occurred.⁷² Additionally, the Court determined that examining the domestic court's legal proceedings is necessary in an analysis of the merits.⁷³

The Court found unanimously that Ecuador had not violated:

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 4 and Article 1(1) of the Convention, to the detriment of Mr. Palma Mendoza and his next of kin,⁷⁴ because:

The Court found no State involvement with Mr. Palma Mendoza's murder.⁷⁵ Additionally, although both the Commission and the representatives alleged the State violated the next of kin's rights to investigate the right to life, the Court determined that the only potential remedies for the next of kin in this case were through Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).⁷⁶

States should do everything in their power to stop unlawful acts once they are made aware.⁷⁷ Once human remains are discovered, States must attempt to determine the deceased's identity as soon as possible, not only

70. See Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits.

71. *Id.* "Operative Paragraphs," ¶ 1.

72. *Id.* ¶ 16.

73. *Id.* ¶ 18.

74. *Id.* "Operative Paragraph," ¶ 1.

75. *Id.* ¶ 80.

76. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶ 80.

77. *Id.* ¶ 92.

to preserve evidence but also to discover what events transpired.⁷⁸ Here, once the two bodies were discovered near the Norcay River, the authorities investigated properly.⁷⁹ Additionally, once Mr. Lenin Ordóñez confessed to Mr. Palma Mendoza's murder, the police exhumed and identified the bodies.⁸⁰

The Commission and the representatives alleged that the State did not take sufficient measures to conduct a proper inquiry into all participants of Mr. Palma Mendoza's murder, although neither disputed the validity of the judicial proceedings.⁸¹ However, domestic judges ordered further investigation into any other possible participants, as seen by the 11th Judge of Manabi's order on March 18, 2000.⁸² Additionally, the determination of whom to indict occurred in a three-step process and based on "weighing probative measures in the case."⁸³ The judicial authorities also properly inquired into possible participation by State agents, and determined there was none,⁸⁴ and as such, this Court found no State intervention in Mr. Palma Mendoza's murder.⁸⁵ Therefore, the State properly complied with its obligation to investigate other potential criminal participants.⁸⁶

The Court also found no unreasonable delay in the judicial proceedings.⁸⁷ Although the State determined what occurred to Mr. Palma Mendoza over two years after his kidnapping, Mr. Lenin Ordóñez, Mr. Contreras, and Mr. Dominguez were convicted within a year of Mr. Lenin Ordóñez' confession, which withstood the appeals process and is now final.⁸⁸ Therefore, the delays caused no detriment to the next of kin.⁸⁹ In conclusion, the Court found the State had not violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).⁹⁰

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Mr. Palma

78. *Id.* ¶ 94.

79. *Id.* ¶ 95.

80. *Id.*

81. *Id.* ¶ 97.

82. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶ 98.

83. *Id.* ¶ 99.

84. *Id.* ¶ 101.

85. *Id.* ¶ 102.

86. *Id.* ¶ 100.

87. *Id.* ¶ 103.

88. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶ 103.

89. *Id.*

90. *Id.* ¶ 104.

Mendoza,⁹¹ because:

*The Court determined the State did not violate the right to personal integrity because no violation of the right to judicial protection was established.*⁹²

The Court declined to address Article 2 (Obligation to Give Domestic Legal Effect to Rights),⁹³ because:

*Domestic courts determined private actors caused Mr. Palma's deprivation of liberty, not the State.*⁹⁴ *As such, any habeas corpus petition filed would not result in any finding of state agency involvement in Mr. Palma Mendoza's deprivation of liberty.*⁹⁵ *Therefore, the Court chose not to examine the effectiveness of the habeas corpus applications under the obligation to guarantee domestic legal effect to rights based on this case.*⁹⁶

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that this case file is closed.⁹⁷

V. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 247 \(Sept. 3, 2012\).](#)

2. Decisions on Merits, Reparations and Costs

[Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits,](#)

91. *Id.* "Operative Paragraphs," ¶ 2.

92. *Id.* ¶ 109.

93. *Id.* "Operative Paragraphs," ¶ 3.

94. Palma Mendoza et al. v. Ecuador, Preliminary Objections and Merits, ¶ 88.

95. *Id.*

96. *Id.*

97. *Id.* "Operative Paragraphs," ¶ 1.

[Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 247 \(Sept. 3, 2012\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Palma Mendoza et al. v. Ecuador, Report on Admissibility and Merits, Report. No. 119/10, Inter-Am. Comm'n H.R., Case No. 12.004 \(Oct. 22, 2010\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Palma Mendoza et al. v. Ecuador, Report on Admissibility and Merits, Report. No. 119/10, Inter-Am. Comm'n H.R., Case No. 12.004 \(Oct. 22, 2010\).](#)

5. Application to the Court

[Palma Mendoza et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.004 \(Feb. 24, 2011\).](#)

VI. BIBLIOGRAPHY

Ecuador gana por primera vez un caso en la Corte Interamericana de Derechos Humanos, afirma la procurador general del Estado, Andes, Oct. 4, 2012, <http://www.andes.info.ec/es/actualidad/7260.html>