REPORT No. 2/10
PETITION 1011-03
ADMISSIBILITY
FREDY MARCELO NÚÑEZ NARANJO *ET AL.*
ECUADOR
March 15, 2010

I. SUMMARY

1. On December 1, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented by Sixto Rodrigo Núñez Naranjo, Napoleón Amores, and José Santana (hereinafter "the petitioners") in which they alleged that the Republic of Ecuador (hereinafter "the State," "the Ecuadorian State," or "Ecuador") was responsible for the failure to judicially clarify the events surrounding the abduction, in 2001, of Fredy Marcelo Núñez Naranjo (hereinafter "the alleged victim") by more than 400 members of the Puñachizag Community, from the jail of the Police Department of the Quero District, in the province of Tungurahua, with the acquiescence of agents of the Ecuadorian State, and his subsequent disappearance. They alleged that the State has not acted with due diligence to respond to these events and to investigate and sanction those responsible for the alleged victim's disappearance.

2. The petitioners alleged that the State was responsible for the violation of the rights to life, humane treatment, personal liberty, and judicial guarantees, established in Articles 4, 5, 7, and 8 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in conjunction with Article 1(1) of that Treaty. For its part, the State alleged that the petitioners' complaints were inadmissible because they had failed to comply with the requirement of prior exhaustion of domestic remedies, as provided under Article 46(1)(a) of the American Convention.

3. After analyzing the parties' positions and the compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decided to declare admissible the complaints regarding the alleged violation of Articles 4, 5, 7, and 8(1) in conjunction with Article 1(1) of the same Treaty and, in application of the principle of *iura novit curia*, Articles 3 and 25 in conjunction with Article 1(1) of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons, notify the parties, and order the publication of the report.

II. PROCESSING BY THE COMMISSION

4. The IACHR registered the petition under the number P1011-03 and after a preliminary analysis, requested additional information from the petitioners on September 29, 2004. On January 31, 2005, the IACHR proceeded to transmit the pertinent parts to the State, with a deadline of two months to present information in accordance with Article 30(3) of the Rules of Procedure. On July 1, 2005, the State presented its observations,[1] which were transmitted to the petitioners for their observations. The IACHR received the petitioners' observations on September 12, 2005 and these were transmitted to the State with a deadline of one month.

5. On November 3, 2005, the State presented its written observations,[2] which were transmitted to the petitioners for their observations. On December 20, 2005 and February 20, 2006, written observations by the petitioners were received and were transmitted to the State for its observations. In response, the State requested an extension of 30 days, which was granted by the

[1] Official Document 17343 of the Office of the Attorney General of the State of June 16, 2005, submitted with Official Communication No. 4-2-123/05 of June 30, 2005.

[2] Official Document 20400 of the Office of the Attorney General of the State of October 26, 2005, submitted with Official Communication No. 4-2-208/05 of November 1, 2005.

Commission. On June 7, 2006, the State presented its written observations,[3] which were transmitted to the petitioners for their observations. On September 7, 2006, a written submission from the petitioners was received and transmitted to the State for its observations. On February 26, 2009, a written submission from the petitioners was received and was transmitted to the State for its observations.

III. POSITIONS OF THE PARTIES

A. Petitioners' Position

6. The petitioners state that on July 15, 2001, in the "Latinos" pool hall, owned by Gregoria Naranjo, located in the Quero district, in the province of Tungurahua, Octavio Morales and other persons provoked an "uproar," causing material damages to the hall, and then left the building. They allege that later, Fredy Marcelo Núñez Naranjo, the owner's son, had a confrontation with these individuals while trying to exact payment for the damages. They allege that the police intervened and detained Octavio Morales and Fredy Marcelo Núñez Naranjo and held them in the jail of the Police Department of the Quero District.

7. The petitioners allege that a half an hour after the detention, 400 members of the Puñachizag community, of which Octavio Morales is a member, entered the jail by force, liberating their comrade and kidnapping Fredy Marcelo Núñez Naranjo. They also allege that members of the Puñachizag community abducted Gregoria Naranjo and Marcia Núñez, mother and sister, respectively, of the alleged victim, from their home. They allege that Fredy Núñez, Marcia Núñez, and Gregoria Naranjo were tortured and later taken to the Shaushi community, in the Quero district, province of Tungurahua. They maintain that Gregoria Naranjo and Marcia Núñez were freed due to police intervention. However, Fredy Núñez was put into a van with an unknown destination and his whereabouts presently remain unknown.

8. On a side note, the petitioners stated that after the disappearance of Fredy Núñez, on June 29, 2001, approximately 4,000 *campesinos* (small-scale and subsistence farmers) belonging to communities of the Quero district and that make up the *Consorcio de Juntas del Campesinado* (a consortium of *campesino* defense groups), as well as representatives of the *Juntas del Campesinado* (*campesino* defense groups) of the provinces of Cotopaxi, Bolívar, and Chimborazo, gathered in the central plaza of Quero to express their discontent about abuses committed by groups of criminals. They also allege that Fredy Núñez was called a member of a criminal group and that warnings were given to such groups that "if they continue with their criminal acts […] actions will be taken by our own accord to remove them from the area and others."[4] The petitioners maintain that the *Juntas de Defensa del Campesinado* are irregular groups that have been formed as parallel justice organizations and that they generate a situation of insecurity in the population since their acts of violence remain in impunity.

9. The petitioners indicate that Sixto Rodrigo Núñez Naranjo presented a complaint regarding the disappearance of his son before the National Police and that on August 16, 2001, the Headquarters of the National Police in Tungurahua prepared an investigative report in which it is stated that relatives of Fredy Marcelo Núñez Naranjo had received threats from members of the Puñachizag and Shaushi communities. The petitioners indicate that on November 21, 2001, the prosecutor for the District of Tungurahua had declared the initiation of a preliminary investigation and that on May 8, 2002, had issued a resolution to open a prosecutorial investigation for the crime of kidnapping against Fredy Marcelo Núñez Naranjo and requested the judge to issue orders for the preventive detention of seven suspects from the Puñachizag and Shaushi communities.

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[3] Official Document 25056 of the Office of the Attorney General of the State of May 25, 2006, submitted with Official Communication No. 4-2-174/06 of June 2, 2006.

[4] National Police of Ecuador, Report No. 1123-PJT-CP9-2001, August 16, 2001. Annex to the original petition received by the IACHR on December 1, 2003.

10. The petitioners allege that on May 10, 2002, the Fourth Criminal Court took cognizance of the case, charged the seven suspects with the crime of conspiracy to create civil discord and commit kidnapping, and ordered their preventive detention in the Ambato Social Rehabilitation Center. They allege that on June 14, 2002, the Fourth Court ordered the immediate arrest of the seven suspects and that on June 30, the *Central de Juntas del Campesinado del Cantón Quero* sent an official letter to the Attorney General of Tungurahua in which they claimed that Fredy Núñez had taken flight, changing his identity "[…] and that moreover, with this new identification he had joined the FARC […] and now we live under threat" and they also asked for the revocation of the arrest orders stating that "[…] [we are] certain that we will not have any problems with our petition because due to the great respect we have for the high authorities and the Police, we do not want to cause any problems or, worse, enter into any type of confrontation."[5]

11. The petitioners allege that, in parallel, on July 11, 2002, the seven suspects filed a *recurso de amparo de libertad* (a constitutional remedy for the protection of personal liberty) before the Superior Court of Justice of Tungurahua against the Fourth Criminal Court. They allege that on July 31, 2002, the Second Chamber of the Superior Court of Justice of Tungurahua accepted the *recurso de amparo preventivo de libertad* and revoked, for the moment, the arrest orders issued by the Fourth Criminal Court by virtue of the fact that they did not contain clear and precise indications that would allow individualized determination of whether the suspects were perpetrators or accomplices and that therefore one of the requirements of Article 167 of the Code of Criminal Procedure had been omitted.

12. The petitioners allege that the Second Chamber of the Superior Court of Justice did not have jurisdiction to resolve the *recurso de amparo de libertad*, but rather that the President of the Superior Court of Justice had the jurisdiction in accordance with Article 423, section a of the Code of Criminal Procedure, which establishes that "[i]f the detention order has been issued within a proceeding, the *recurso* shall be placed before the superior judge or tribunal, in the following manner: (a) if the order is from a criminal judge, the President of the respective Superior Court shall hear it […]." They also allege that in accordance with Article 429 of the Code of Criminal Procedure, there is no appeal from a decision granting a *recurso de amparo de libertad.*

13. The petitioners allege that on August 1, 2002 the Fourth Criminal Court ordered the Police Force to refrain from capturing the seven suspects. They allege that on September 23, 2002, the prosecutor of the District of Tungurahua brought charges against the seven suspects as coauthors of the crime of kidnapping and requested that the Fourth Court issue a summons to a trail against the defendants. They indicate that on November 11, 2002, they filed a petition for recognition of the private accusation lodged by Sixto Rodrigo Núñez Naranjo and that on November 21, 2002 the Fourth Criminal Court accepted it for processing.

14. The petitioners allege that on December 10, 2002, a preliminary hearing was held and that on December 11, 2002, the Fourth Criminal Court issued an order of provisional dismissal of the proceedings and of the seven indicted in accordance with Article 241 of the Code of Criminal Procedure. They allege that, in its decision, the Fourth Criminal Court had downplayed the probative value of the evidence gathered in the investigatory phase because the prosecutors' office had failed to comply with Article 26 of the Organic Law on the Attorney General's Office, which requires that the defendants' representatives be summoned to participate in the probative proceedings, and stated that in the indictment process "there is no evidence […] since there are no elements supporting the presumption of the existence of the crime, except for the informative reports of the National Police […], it is not possible to speak of any responsibility."

15. They state that, in accordance with Article 246 of the Code of Criminal Procedure, the "provisional stay of proceedings suspends the substantiation of it for five years and the order of provisional dismissal of the indicted suspends it for three years. These time periods are counted from the

[5] The petitioners make reference to Official Document No. 88-CJDCQ-2002 of the *Central de Juntas de Campesinado del Cantón Quero,* June 30, 2002. Annex to the original petition received by the IACHR on December 1, 2003.

date of issuance of the respective stay […].” In this regard, they allege that the time periods expired in 2005 for the order of provisional dismissal of the indicted and in 2007 for the order of provisional dismissal of the proceedings without any new accusation being made.[6]

16. The petitioners allege that they have carried out various actions to determine the whereabouts of Fredy Marcelo Núñez, without success. They allege that through an official letter dated October 15, 2004, the Chief of the Judicial Police of Tungurahua stated that they would continue the investigations to determine the whereabouts of Fredy Núñez and that the results of these investigations would be provided to the competent authority. They also allege that on October 18, 2004, the Fourth Criminal Court certified that the order of provisional dismissal had become final by operation of law and that since this order was issued, the Court had not received any other official paperwork from the prosecutor’s office.

17. In summary, the petitioners allege that the State is responsible for the violation of the rights to life, humane treatment, personal liberty, and judicial guarantees protected in Articles 4, 5, 7, and 8 of the American Convention in conjunction with Article 1(1) of that Treaty, by virtue of the fact that Fredy Marcelo Núñez Naranjo was abducted from the Police Department of the District of Quero and subsequently disappeared, that his whereabouts are still unknown, and that there has been no judicial clarification of the material facts of the complaint.

18. With respect to compliance with the prerequisite of exhaustion of domestic remedies, as required by Article 46(1)(a) of the American Convention, the petitioners allege that such remedies have been exhausted and that therefore this requirement is fulfilled. Nevertheless, they allege that the remedies “were ineffective and unjustifiably delayed, and that they had expired due to the State’s inaction […].”[7]

B. Position of the State

19. The State alleges that the petitioners’ complaint is inadmissible because they have not exhausted the remedies available under domestic law, as required by the American Convention. Specifically, the State alleges that according to Article 343 of the Code of Criminal Procedure, the petitioners could have appealed the dismissal of proceedings issued by the Fourth Criminal Court.[8]

20. The State maintains that “the rule of prior exhaustion of domestic remedies is conceived in the interest of the State, as it seeks to excuse it from responding to an international body before it has the opportunity to remedy supposed violations through its own means.”[9] In this sense, it alleges that the appeal of the dismissal of proceedings was the effective remedy to resolve the legal situation alleged by the petitioners, independently of the favorableness or unfavorableness of its resolution.[10]

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[6] The petitioners make reference to Articles 247 and 248 of the Code of Criminal Procedure of 2000: “New accusation.- Within the time periods referred to in the previous article and based on new investigations, the prosecutor can formulate a new accusation.” Article 248: “Permanent Dismissal.- If the time periods referred to in Article 246 are completed and no new accusation is formulated, the judge shall issue a permanent dismissal of the proceedings and of the indicted, upon the request of a party or [upon the court’s own motion], observing that which is provided under Article 245 of this Code.” Written submission by the petitioners received by the IACHR on January 13, 2006.

[7] Written submission by the petitioners received by the Commission on March 7, 2006.

[8] The State makes reference to Article 343.1 of the Code of Criminal Procedure, which provides: “Propriety.- The remedy of appeal is proper when one of the parties files it in the following cases: 1. From a dismissal of proceedings […].” Official Document 17343 of the Office of the Attorney General of the State of June 16, 2005, submitted with Official Communication No. 4-2-123/05 of June 30, 2005.

[9] The State cites I/A Court H.R., *In the Matter of Viviana Gallardo.* November 13, 1981. Official Document 17343 of the Office of the Attorney General of the State of June 16, 2005, submitted with Official Communication No. 4-2-123/05 of June 30, 2005.

[10] The State cites I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 67. Official Document 17343 of the Office of the Attorney General of the State of June 16, 2005, submitted with Official Communication No. 4-2-123/05 of June 30, 2005.

21. With respect to the petitioners' disagreement with the resolution of the *recurso de amparo de libertad* brought by the accused in the criminal proceedings, the State alleges that the petitioners want the Commission to act as a court of appeals to review the actions of the Superior Court of Justice. They allege that the Commission has previously established that it "cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved."[11] Finally, they allege that the national tribunals in their resolutions always preserved all the petitioners' judicial guarantees and they were not issued without due process or in violation of any other right protected in the Convention; therefore, the Ecuadorian State has not violated Articles 8 and 25 of the American Convention. In view of the foregoing arguments, the State asks that the Commission declare the petitioners' complaint inadmissible and proceed with the archiving of the case file.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBLILITY

A. Competence

22. The petitioners are entitled, in principle, by Article 44 of the American Convention to present petitions before the Commission. The petition states as the alleged victim an individual person, whose rights under the American Convention the Ecuadorian State has committed itself to respect and guarantee. With regard to the State, the Commission notes that Ecuador has been a State Party to the American Convention since December 28, 1977, the date it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

23. Additionally, the Commission has competence *ratione loci* to examine the petition, as it alleges violations of rights protected under the American Convention that occurred within the territory of Ecuador, a State Party to this treaty.

24. The Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention were already in force for the State on the date the incidents alleged in the petition occurred. The Commission observes that the Inter-American Convention on Forced Disappearance of Persons (hereinafter "Convention on Forced Disappearance") entered into force in Ecuador on July 27, 2006. Therefore, the IACHR has competence *ratione temporis* with respect to the obligation set forth in its Article I.b., in light of the ongoing nature of the lack of clarification of the crime of forced disappearance.

25. Finally, the Commission has competence *ratione materiae*, because the petition denounces possible violations of human rights protected by the American Convention.

B. Requirements for Admissibility

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction according to generally-recognized principles of international law, as a prerequisite for the admission of complaints regarding alleged violations of the American Convention.

27. Article 46(2) provides that the requirement of prior exhaustion of domestic remedies does not apply when:

[11] The State cites IACHR, Santiago Marzioni, *Report No. 39/96, Case 11.673*, Argentina, October 15, 1996. Official Document 023728 of the Office of the Attorney General of the State of Ecuador of March 22, 2006, submitted with Official Communication 4-2-130/06 of April 17, 2006. Official Document 20400 of the Office of the Attorney General of the State of October 26, 2005, submitted with Official Communication No. 4-2-208/05 of November 1, 2005.

a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

As established by the Inter-American Court, any time a State alleges failure by the petitioners to exhaust domestic remedies, it has the burden of showing that the remedies that have not been exhausted are "adequate" to repair the alleged violation, meaning that the function of these remedies within the domestic legal system is appropriate to protect the legal situation violated.[12]

28. In the present case, the State alleges that the petition does not satisfy the requirement of prior exhaustion of domestic remedies, as provided in Article 46(1)(a) of the American Convention, given that the petitioner did not file an appeal against the provisional dismissal. For their part, the petitioners allege that the domestic remedies were exhausted, but that they had not been effective.

29. In light of the parties' allegations, it is necessary in the first place to clarify which are the domestic remedies that must be exhausted in a case like the present one. The precedents established by the Commission indicate that any time a crime of public action is committed, the State has the obligation to initiate and impel the criminal proceedings[13] and that in such cases, this constitutes the proper means to clarify the facts, prosecute those responsible and establish the corresponding criminal sanctions, and make other forms of monetary reparations possible. The Commission considers that the facts alleged by the petitioners during and after the abduction of Fredy Marcelo Núñez Naranjo constitute publicly-actionable criminal acts under the domestic legislation for which the investigation and prosecution must be impelled by the State itself.

30. The Commission notes that more than eight years have passed since the facts alleged in the petition occurred, the criminal investigation remains provisionally suspended, and no person has been held criminally responsible. In this respect, the Commission observes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve evidence, and protect the rights of any person considered as a suspect in the context of the investigation. As the Inter-American Court has stated, although any criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies must not cause international action in support of the victims to be halted or delayed to the point that it is ineffective.[14]

31. The Commission observes that the effectiveness of the remedy of an appeal against the dismissal would have depended on the relatives of the victims to provide the elements of proof that would have allowed the prosecutor's office to formulate a new accusation. In this respect, the Inter-American Court has stated in relation to the obligation to investigate that it "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."[15] In summary, the Commission concludes that the impulsion of domestic proceedings in cases like the present one must not depend on the initiative of the relatives of the alleged victims.

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[12] Article 31.1 of the Rules of Procedure of the IACHR. See also, I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 64.

[13] IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas, Annual Report of the IACHR 1997*, paras. 96 and 97. See also Report No. 55/97, Case 11.137, *Abella et al.*, para. 392.

[14] I/A Court H.R, *Velásquez Rodríguez v. Honduras Case. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 93.

[15] I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, para. 177.

32. Therefore, given the characteristics of the present case, the fact that there is a pending open investigation without any information about concrete measures since 2004, and the amount of time that has passed since the facts alleged in the petition occurred, the Commission considers applicable the exception provided in Article 46(2)(c) of the American Convention with respect to delay in the domestic criminal proceedings. As a result, the prerequisite of exhaustion of domestic remedies is not required.

33. The invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights consecrated therein, such as the guarantees of access to justice. Nevertheless, Article 46(2), by its nature and purpose, is a norm with autonomous content *vis á vis* the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable in the case in question must be carried out previously and in a separate manner from the analysis of the merits of the issue, since it depends on a different standard of evaluation than that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the report that the Commission will adopt on the merits of the case in order to determine whether or not these constitute violations of the American Convention.

2. Deadline for presentation of the petition

34. The American Convention establishes that for a petition to be declared admissible by the Commission, it must be presented within six months of the date on which the alleged victim was notified of the final decision. In the petition under review, the IACHR has established the application of the exceptions to the exhaustion of domestic remedies in accordance with Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Rules of Procedure of the Commission establishes that in the cases in which the exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable time, in the judgment of the Commission. To this effect, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

35. In the present case, the petition was received on December 1, 2003 and the events giving rise to the complaint occurred on July 15, 2001 and their effects in terms of the alleged lack of administration of justice extend into the present. Therefore, in light of the context and characteristics of the present case, as well as the fact that the investigation is subject to a provisional dismissal and remains pending as a result, the Commission considers that the petition was presented within a reasonable time period and that the admissibility requirement referring to the deadline for presentation is satisfied.

3. Duplication of proceedings and *res judicata*

36. It does not appear from the case file that the substance of the petition is the subject of other proceedings pending before an international body, nor does it reproduce a petition already examined by this or any other international body. Therefore, the prerequisites established in Articles 46(1)(c) and 47(d) of the Convention are fulfilled.

4. Characterization of the alleged facts

37. In light of the elements of fact and law presented by the parties and the nature of the issue placed before it, the IACHR considers that the petitioners' allegations regarding the scope of the State's presumed responsibility with respect to the lack of judicial clarification of the facts surrounding the abduction, with the State's acquiescence, of Fredy Marcelo Núñez Naranjo from the jail of the Police Department of the Quero District and his later disappearance, as well as the lack of due diligence by the State to prevent these occurrences, investigate them, and sanction those responsible, could characterize possible violations of the right to judicial guarantees protected in Articles 4, 5, 7, and 8(1) in conjunction with Article 1(1) of the American Convention. The extent to which the alleged facts, with the alleged participation of armed groups like the "*juntas de defensa*," could give rise to State responsibility under the American Convention will be analyzed in the merits stage. Additionally, in application of the principle of *iura novit curia*, the Commission is competent to establish whether the State is responsible for the violation of the rights to juridical personality and judicial protection set forth in Articles 3 and 25 of the Convention in conjunction with Article 1(1) of the same Treaty.

38. Additionally, in application of the principle of *iura novit curia*, the Commission is competent to establish the State's possible responsibility for the alleged violation of Article I of the Inter-American Convention on Forced Disappearance of Persons due to the ongoing nature of the lack of judicial clarification of the crime of forced disappearance based on the petitioners' allegations regarding the State's acquiescence in the presumed disappearance of Fredy Marcelo Núñez Naranjo.

39. The Commission will also consider *iura novit curia* in the merits phase whether there has been a violation of Articles 5, 8(1), and 25 of the American Convention against the relatives of the alleged victims.

40. The Commission also emphasizes that the alleged facts occurred in the context of a situation of violence presumably perpetrated by members of the *Juntas de Defensa del Campesinado*, which have been formed as organized groups of *campesinos* in rural areas to maintain security and

prevent theft of livestock and crops. The Commission observes that, according to publicly-available information, such groups have been formed due to what the petitioners consider is the limited capacity and lack of resources of the National Police in rural areas and they operate in the provinces of Bolívar, Cotopaxi, Chimborazo, Tungurahua, and Los Ríos.[16]

V. CONCLUSIONS

41. The Commission concludes that it is competent to examine the complaints presented by the petitioners regarding the alleged violation of Articles 3, 4, 5, 7, 8(1), and 25 in conjunction with Article 1(1) of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons in relation to the alleged disappearance of Fredy Marcelo Núñez and its judicial clarification, and that they are admissible under the requirements established in Articles 46 and 47 of the American Convention.

42. Based on the arguments of fact and law set forth above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible in relation to Articles 3, 4, 5, 7, 8(1), and 25 in conjunction with Article 1(1) of the Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons.

2. To notify the Ecuadorian State and the petitioner of this decision.

3. To continue with the analysis of the merits of the case.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).

[16] "The Ecumenical Commission of Human Rights (CEDHU) has carried out monitoring of the processes of private security and the actions of self-defence groups, and registered information about 47 accusations, involving 87 victims having suffered violations of their human rights due to the *Juntas de Defensa del Campesinado*. The [United Nations] Working Group [on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination] was informed by NGOs that the *Juntas de Defensa del Campesinado* intervene in cases of security, land conflicts and common crimes. In many of these cases, they apparently assume functions of public authorities, with accusations of abuses to include violation of the right to privacy, acts of tortures and degrading treatment, homicides, and disappearances, as exemplified by the case of Mr. Fredy Núñez, who went missing in 2001." Human Rights Council, Fourth Period of Sessions, Report of the Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, A/HRC/4/42/Add.2, February 23, 2007, para. 25.