REPORT No. 1/11
PETITION 295-03
ADMISSIBILITY
SAÚL FILORMO CAÑAR PAUTA
ECUADOR
January 4, 2011

I. SUMMARY

1. On April 21, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by the Ecumenical Human Rights Commission (hereinafter "the petitioners") alleging the responsibility of the Republic of Ecuador (hereinafter "the State," "the Ecuadorian State," or "Ecuador") for the lack of judicial clarification of the facts surrounding the disappearance and subsequent death, on November 26, 1998, of Saúl Filormo Cañar Pauta (hereinafter "the alleged victim"). They contended that the State failed to act with due diligence in responding to the facts and in investigating and punishing the persons responsible for the alleged victim's disappearance and death.

2. The petitioners claimed that the State was responsible for violating the rights to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, established in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in conjunction with Article 1.1 of the same treaty. In turn, the State claimed that the petitioners' contentions were inadmissible in that they had failed to comply with the prior exhaustion of domestic remedies requirement set out in Article 46.1.a of the American Convention.

3. After analyzing the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission resolved: to rule the claims admissible with respect to the alleged violation of Articles 4, 5, 7, 8, and 25, in conjunction with Article 1.1, and, under the principle of *iura novit curia*, with respect to Articles 3 and 16 of the American Convention, in conjunction with Article 1.1 thereof, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture; to notify the parties; and to order the publication of the decision in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

4. The IACHR recorded the petition as No. P295-03 and, after carrying out a preliminary analysis, on December 8, 2003, it duly forwarded the relevant parts to the State, along with a deadline of two months for it to submit information in compliance with Article 30 of the Rules of Procedure. The State submitted its response on May 18, 2004, which was conveyed to the petitioners for their observations. The IACHR received the petitioners' observations on May 9, 2006, which it forwarded to the State.

5. On March 27, 2007 the Commission received additional information from the petitioners, which was forwarded to the State for observations. On August 28, 2009, in compliance with Article 30.5 of the Rules of Procedure, the Commission asked the State to provide up-to-date information. On September 24, 2009 the petitioners submitted up-to-date information, which was conveyed to the State for its observations. The State requested extensions on November 9 and December 3, 2009, which the Commission granted. On January 4, 2010, the State filed its final observations, which were forwarded to the petitioners for their information.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. The petitioners state that Saúl Filormo Cañar Pauta was a leader of the January 14 Housing Cooperative and of the Ecuadorian Confederation of Single Class Workers' Organizations

(CEDOCUT), in which capacity he supported and led a group of individuals facing eviction from the Salento Hacienda, which they had previously invaded, in La Maná canton, province of Cotopaxi. They further state that the alleged victim set up a trade union for workers at the local tobacco company, where he championed the claims made by the inhabitants of the districts of La Esperanza, La Soledad, Tres Coronas, and El Zapotal against that tobacco company for its closure of a public road that denied them access to their homes.

7. They report that on November 26, 1998, Saúl Filormo Cañar Pauta attended a meeting at the Ministry of Social Welfare in the city of Quito, after which he left for the January 14 Cooperative, where he never arrived. They state that Mélida Bravo Ruilova, the alleged victim's partner, consequently went to the police, where she was told that she had to wait 48 hours before she could report the disappearance. After 48 hours had gone by, Saúl Filormo Cañar Pauta had not returned home, and so on November 30, 1998, his partner filed a disappearance claim, in which she indicated that the alleged victim, out of habit and as a security measure, invariably informed her where he was going and whom he was with.

8. The petitioners report that on December 3, 1998, in the city of Latacunga, Cotopaxi province, some 100 kilometers from Quito, a municipal worker found a burlap sack in a river, and that the sack contained a body, its hands and feet tied and showing signs of torture. They claim that in spite of the publicity given to Saúl Filormo Cañar Pauta's disappearance in the media, it was not until December 7, 1998, that the police informed his family that the body had been found. They state that the autopsy report indicated that the alleged victim died of asphyxiation caused by strangulation, and that the body was marked with numerous wounds caused by direct, heavy blows.

9. The petitioners state that the President of CEDOCUT told the media that he had received a telephone call from individuals who were with the alleged victim at the time of his disappearance, who claimed that at 1:30 p.m. on November 26, 1998, the alleged victim was detained in the Villaflora district of the city of Quito by eight unidentified armed individuals traveling in two blue Toyota jeeps. The witnesses, who declined to provide their names out of security concerns since they had received death threats, reported that one of the unidentified men said, "Colonel, this is the son a b… we're looking for." They then began to beat him and bundled him into one of their vehicles.

10. The petitioners report that on December 9, 1998, the Second Criminal Court of Cotopaxi ordered the issuing of a trial commencement deed and the institution of proceedings against the perpetrators, accomplices, and accessories after the fact in the death of Saúl Filormo Cañar Pauta. They claim that during the investigations, the police issued reports setting out various theories on the alleged victim's death and that the final report, dated April 13, 1999, concluded that the killers were people who lived in La Maná canton, since the alleged victim had made many enemies on account of his work fighting the *Corporación San Juan* tobacco company.

11. They state that on April 19, 1999, the Minister of Defense sent a report to the Ombudsman indicating that according to information from residents of La Maná, groups of hit men working for the tobacco company were operating in the area and that in addition, the area was home to an association called the Pangua Peasants' Defense Council, with 1,700 members. They also claim that the report further indicates that company workers refused to assist in the investigation of the case at hand because they were threatened by the company's manager. In addition, they contend that during the investigation, the President of CEDOCUT provided the police with the license plate number of one of the vehicles in which Saúl Filormo Cañar Pauta was abducted; it was established that the registration was for a blue Toyota jeep belonging to the tobacco company and that, additionally, it had been seen at the company's premises during one of the investigation formalities. The petitioners also report that a commission was established, chaired by a member of parliament and with the support of the national government; however, the only steps taken were a series of formalities to publicize its creation and no further information about its work or any final determination was issued.

12. The petitioners claim that on April 4, 2002, the Second Criminal Court of Cotopaxi ordered a provisional dismissal of the proceedings on the grounds that although the existence of the crime could be proved, the court found that

> […] no individual could be charged, because although the conclusions of the police at first pointed to the filing of charges, they later concluded that they were merely theories or, alternatively, no claims of any kind were made. Or if the police investigation reports indicated facts pointing to clues, when they were brought into the proceedings either silence surrounded them or they were retracted; as a result, although the national authorities pursued a legitimate activity, that undertaking was ultimately tremendously inefficient.

13. The petitioners report that the decision to dismiss was referred for obligatory consultation and that on September 25, 2002, the First Chamber of the Superior Court of Latacunga upheld the first-instance decision, emphasizing that the trial judge had made great efforts to gather as much evidence as possible to cast light on the case and that there was no "follow-up and depth" in the Judicial Police's investigations, "and because of that shortcoming, the court was unable to find elements pointing to the guilt of any party in particular."

14. The petitioners report that on January 22, 2007, five years after the provisional dismissal was ordered, the Second Criminal Court of Cotopaxi ordered the irrevocable dismissal of the proceedings; this order was referred to the Latacunga Superior Court of Justice for consultation and, on February 13, 2007, was upheld. They state that under Ecuadorian procedural law, that decision admits no appeal.

15. The petitioners note that the ruling of the Second Criminal Court of Cotopaxi states that "it accepts an inadequate administration of justice, with the defective provision of services that led to a decision in which the goals of the administration of justice were not attained [...] moreover, when the provision of that service involves a monopolistic exercise to which there are no alternatives, as a result of which the citizen must necessarily assume the competence of those agencies of the regular justice system, as a result of which greater harm would be caused if a correct response with respect to the expectations made is not received." Finally, the Court resolved, first, that its resolution could be used as grounds for indemnification for the alleged victim's family to file suit with the Administrative Disputes Tribunal solely to obtain the corresponding redress, since the harm had already been established; second, it ordered the State to ensure the functioning of the Commission established to clarify the incident; and, finally, it asserted the family's right to pursue action with the Inter-American Commission on Human Rights.

16. To summarize, the petitioners claim that in accordance with the facts in the case at hand, the State is responsible for violating the rights to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

17. Regarding the prior exhaustion of domestic remedies requirement, set out in Article 46.1.a of the American Convention, the petitioners claim that all internal remedies have been exhausted and that with the final ruling handed down by the Latacunga Superior Court of Justice on February 13, 2007, the incident went unpunished.

B. State

18. The State contends that the claim is inadmissible since when the petitioners submitted their petition to the Commission, the remedies afforded by domestic jurisdiction had not yet been exhausted, as required by the American Convention. Specifically, the State claims that on April 4, 2002, the first-instance judge ordered a provisional dismissal, later upheld by the Latacunga Superior Court, because it was unable to identify the perpetrators of the crimes committed, as required by Article 242 of the Code of Criminal Procedure in force at the time.

19. In addition, the State notes that pursuant to Article 249 of the 1983 Code of Criminal Procedure, "provisional dismissal of the proceedings suspends their substantiation for a period of five years […]. Said deadlines are to be calculated from the date on which the corresponding dismissal order was issued." Ecuador therefore contends that the petition was filed with the Commission when the proceedings were temporarily suspended, and so the remedies provided by domestic law had not been exhausted.

20. Finally, the State contends that a specific review of the criminal proceedings pursued into the death of Saúl Filormo Cañar Pauta indicates that all the evidentiary formalities were carried out in accordance with law and in compliance with due process. In consideration of the above arguments, the State requests that the Commission rule the petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

21. First of all, the petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names, as its alleged victim, an individual person with respect to whom the Ecuadorian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

22. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Ecuador, which is a state party to that treaty.

23. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. The Commission notes that the Inter-American Convention on Forced Disappearance of Persons came into force for Ecuador on July 27, 2006; consequently, the IACHR has competence *ratione temporis* in accordance with the obligation set out in Article I.b of that instrument as regards the ongoing nature of the failure to resolve the crime of forced disappearance. In addition, the Inter-American Convention to Prevent and Punish Torture came into force for Ecuador on November 9, 1999: in other words, after the date on which the facts addressed by the petition occurred. Regardless of that, the Commission has competence *ratione temporis* to enforce the Inter-American Convention to Prevent and Punish Torture as regards the obligation of investigating and punishing incidents of alleged torture and the alleged denial of justice arising from events taking place after its ratification.

24. Finally, the Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Article 46.1.a of the American Convention requires the prior exhaustion of the remedies available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention.

26. According to Article 31 of the Commission's Rules of Procedure and the established doctrine of the Inter-American Court, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted

are "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is applicable to protecting the violated juridical situation.[1]

27. In the case at hand, the State claims that the petition does not satisfy the requirement of the prior exhaustion of the remedies afforded by domestic jurisdiction set out in Article 46.1.a of the American Convention since when the petitioners lodged their claim, the criminal proceedings had been temporarily suspended. In turn, the petitioners claim that the domestic remedies had been exhausted but that they had proven ineffective.

28. In light of the parties' contentions, it is first necessary to clarify which domestic remedies need to be exhausted in a case such as this. The precedents established by the IACHR recognize that whenever a publicly actionable offense is committed, the State is obliged to bring and pursue criminal proceedings[2] and that, in such cases; this is the best way to clear up incidents, prosecute the guilty, impose the applicable punishments, and enable other forms of redress. The Commission believes that the facts reported by the petitioners constitute, in domestic law, publicly actionable criminal acts in connection with which the State itself must pursue an investigation and prosecution. It should be noted that the partner of the alleged victim in the instant case reported his disappearance and an investigation into the incident was opened.

29. The Commission notes that more than nine years after the incident reported in the petition occurred; the criminal investigation was irrevocably dismissed on January 22, 2007, by means of a decision that was upheld on February 13, 2007, without having identified the alleged perpetrators or having established any criminal responsibility. In connection with this, the Commission notes that the effectiveness of the investigation carried out by the Judicial Police was questioned and described as defective by the domestic courts themselves.

30. The Commission notes that although Article 348 of the 1983 Code of Criminal Procedure, under which the criminal investigation was carried out, provided that an irrevocable dismissal order was liable to appeal, the effectiveness of such remedy 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.[3] The Inter-American Court has stated that the obligation of conducting an investigation "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."[4] In summary, the Commission believes that pursuing domestic proceedings in cases such as this must not depend on the initiative of the alleged victims' next-of-kin.

31. In consideration whereof, the Commission believes that the decision of February 13, 2007, whereby the Criminal Chamber of the Cotopaxi Superior Court of Justice upheld the irrevocable dismissal order, exhausted the remedies provided by domestic law and so the petitioners' claim satisfies the requirement set in Article 46.1.a of the American Convention.

2. Filing period

32. Article 46.1.b of the American Convention requires that for the Commission to admit a petition, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the case at hand, the petition was received on April

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[1] See: Article 31.3 of the Rules of Procedure, and I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, para. 64.

[2] 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 and Others, para. 392.

[3] IACHR, Report No. 2/10, Petition 1011-03, Fredy Marcelo Núñez Naranjo and Others, para. 31.

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

21, 2003, and the final decision adopted before domestic venues was issued on February 13, 2007. Consequently, the Commission believes that the admissibility requirement dealing with the timeliness of the petition must be taken as met.

3. Duplication of international proceedings and *res judicata*

33. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Colorable claim

34. Having seen the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR believes that the petitioners' contentions on the extent of the State's alleged responsibility with respect to the lack of judicial clarification of the facts surrounding the disappearance and subsequent death of Saúl Filormo Cañar Pauta could tend to establish potential violations of the rights to a fair trial and to judicial protection set out in Articles 8 and 25 of the American Convention, in conjunction with Article 1.1 thereof.

35. With respect to the petitioners' contentions regarding the alleged violation of the rights to life, humane treatment, and personal liberty, enshrined in Articles 4, 5 and 7 of the American Convention, the Commission points out that the claims made, together with the alleged violation of the State's duty of respecting and ensuring those rights, warrant an analysis of the merits under the standards of the American Convention.

36. In addition, under the principle of *iura novit curia,* the Commission will establish, in the merits stage, the State's possible responsibility for the alleged violation of the right to juridical personality and the right of freedom of association, set out in Articles 3 and 16 of the Convention, in conjunction with Article 1.1 thereof, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture. In accordance with *iura novit curia*, the Commission will also consider, at the merits stage, the possible violation of Article 5 of the American Convention with respect to the alleged victim's next-of-kin.

V. CONCLUSIONS

37. The Commission concludes that it is competent to examine the claims presented by the petitioners regarding the alleged violation of Articles 3, 4, 5, 7, 8, 16, and 25 of the American Convention, in conjunction with Article 1.1 thereof, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture, and that those claims are admissible under the requirements set out in Articles 46 and 47 of the American Convention.

38. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this filing admissible as regards Articles 3, 4, 5, 7, 8, 16, and 25 of the Convention, in conjunction with Article 1.1 thereof, Article I of the Inter-American Convention on Forced Disappearance of Persons, and Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To give notice of this decision to the Ecuadorian State and to the petitioners.

3. To continue with its analysis of the merits of the complaint.

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

Approved by on the 4th day of January 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.