

**REPORT NO. 9/11**

PETITION 1205-07

ADMISSIBILITY

ORLANDO ABEL OBANDO REYES ET AL. (PERSONS ARRESTED IN THE RURAL AREA OF THE MUNICIPALITY OF NUEVA GUINEA)

NICARAGUA

March 22, 2011

**I. SUMMARY**

1. On September 17, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a complaint submitted by the Nicaraguan Human Rights Center (CENIDH) (hereinafter the "petitioners") against the Republic of Nicaragua (hereinafter the "State," "Nicaraguan State," or "Nicaragua"). The petition alleges that agents of the State in the rural area of the municipality of Nueva Guinea committed serious human rights violations in the context of an alleged investigation of the crime of cattle-rustling. Specifically, they report that on January 12, 2007 agents of the State subjected Orlando Abel Obando Reyes, William Artola Delgadillo,<sup>1</sup> Gilbert Javier Delgadillo Aguilar,<sup>2</sup> Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, and Martín Antonio Artola Amador to acts of torture and cruel, inhumane, and degrading treatment. They also report that Mrs. Villanueva Delgadillo Obando (mother of William and Raúl Terencio) was executed extrajudicially on March 20, 2007 and that Gilberto Artola Delgadillo (husband of Mrs. Villanueva) was extrajudicially executed and Sheila Carolina Artola Delgadillo and Amparo del Socorro Artola Delgadillo were sexually violated on August 6, 2007.<sup>3</sup> They also allege a failure to investigate and punish those responsible for the crimes reported.

2. The petitioners maintain that Nicaragua violated Articles 5 (right to humane treatment), 8 (a fair trial), 11 (protection of honor and dignity), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention") as they relate to Article 1.1 of the same instrument, to the detriment of the persons identified in the preceding paragraph (hereinafter the "alleged victims"). Regarding the exhaustion of domestic remedies, the petitioners assert the application of the exceptions provided in Article 46 of the American Convention.

3. The State argues that the alleged tortures committed by the police officers have not gone unpunished and that the criminal process against the state agents has not been concluded. For this reason, the State asks that the petition be declared inadmissible because it is out of order and the domestic remedies have not been exhausted.

4. Without prejudging the merits of the complaint, after analyzing the petition and in accordance with the provisions of Articles 46 and 47 of the American Convention as well as Articles 30, 36 and related articles of its Rules of Procedure, the IACHR concludes that it is competent to hear the complaint submitted based on the alleged violation of Articles 5, 8, 11, 24, and 25 of the American Convention in connection with Article 1.1 of the same convention, to the detriment of the alleged victims and their relatives. In addition, in accordance with the principle of *iura novit curia*, the Commission decides to declare the petition admissible with respect to the alleged violation of Articles 4, 7, and 19 of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Convention against Torture") and Article 7 of the Convention of Belém do Pará.

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<sup>1</sup> The petitioners present William Artola Delgadillo as an alleged victim, alleging that he was arrested and tortured by agents of the police as allegedly guilty of the crime of cattle-rustling. Nonetheless, based on the available procedural record, it does not appear that he was tried in court for that crime.

<sup>2</sup> Eighteen years old at the time of the events reported.

<sup>3</sup> Ages 16 and 17, respectively, at the time of the events reported.

Finally, the Commission decides to notify the parties, to publish this admissibility report, and to include it in its Annual Report to the OAS General Assembly.

## **II. PROCESSING BY THE COMMISSION**

### **A. Petition**

5. The petition was received on September 17, 2007 and recorded as P-1205-07. On May 15, 2008 it was forwarded to the State, allowing it a period of two months to submit its observations. The State's response was received on November 5, 2008. The Commission also received information from the petitioners on the following dates: December 23, 2008, June 22, 2009 and March 2, 2011. Those submissions were duly forwarded to the State. In addition, the IACHR received observations from the State on April 27, 2009 and September 11, 2009. These communications were duly forwarded to the petitioners.

### **B. Precautionary Measures**

6. On August 23, 2007, the Nicaraguan Human Rights Center (CENIDH) and the Center for Justice and International Law (CEJIL) required precautionary measures to protect the life and physical integrity of Nubia Geoconda, Amparo del Socorro, Wilberto Antonio, Ludys Cruz, Juan Ramón, all with the surnames Artola Delgadillo; Víctor Manuel and Santos Zeledonio, both with the surnames Artola Amador; Sheila Carolina Artola Aguilar (Delgadillo) and Enrique Alexander Artola Artola. The request was assigned the number 163-07.

7. On August 31, 2007 the IACHR asked the Nicaraguan State to adopt the measures necessary to guarantee the life and physical integrity of Nubia Geoconda, Amparo del Socorro, Wilberto Antonio, Ludys Cruz, Juan Ramón, William, Raúl Terencio, all with the surnames Artola Delgadillo; Víctor Manuel and Santos Zeledonio, both with the surnames Artola Amador; Sheila Carolina Artola Aguilar (Delgadillo) and Enrique Alexander Artola Artola and to report on actions taken to clarify the facts that gave rise to the precautionary measures. The State has not provided information on the implementation of the precautionary measures requested by the IACHR.

8. The petitioners allege that the precautionary measures were not implemented by the State and thus the beneficiaries were at risk and had to relocate to other areas of the country in order to save their lives.

9. It should be noted that the IACHR takes note of the at-risk situation alleged by the petitioners regarding the beneficiaries of the precautionary measures related to this petition and that in their last communication dated March 2, 2011, the petitioners reported that the alleged victim, Raúl Terencio Artola Delgadillo, suffered an attack on his life on August 28, 2010 when he was shot five times by two unidentified persons. The petitioners indicate that his life was saved thanks to surgeries performed on three separate occasions.

### III. POSITION OF THE PARTIES

#### A. The petitioners

10. The petitioners report that in recent years the Municipality of Nueva Guinea has experienced an increase in the crime of cattle-rustling or theft of cattle<sup>4</sup> as defined in Article 271 of the Nicaraguan Penal Code and punishable with a prison term of two to seven years. They allege that due to the National Police's inability to guarantee citizen security, those affected by the thefts had begun to take justice "into their own hands" by hiring armed groups that, according to the petitioners, have murdered alleged cattle rustlers.

11. In this context, they allege that on January 12, 2007 agents of the Police of Nueva Guinea arrested Orlando Abel Obando Reyes, William Artola Delgadillo, Gilberth Javier Delgadillo Aguilar, Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, and Martín Antonio Artola Amador because they considered them guilty of cattle-rustling, to the detriment of cattle ranchers in the region. They report that the men who were arrested were taken to a private home located in a town known as "La Batea" where they were tortured by a noncommissioned police officer and two "voluntary police."<sup>5</sup> They state that in the presence of two Nicaraguan Army soldiers, the police proceeded to beat them about the chest with an AK rifle, handcuffed their hands behind their backs, strung them up from a tree, and used a nightstick to beat various parts of their bodies. They report that Orlando Abel Obando Reyes endured the most serious acts of cruelty as he was beaten with a pistol on the left frontal region, his wrists were shackled, and when he was strung from the tree they beat him with the rifle butt on the anterior region of the thorax and tied "his testicles with a manila rope and proceeded to yank on him."<sup>6</sup> They allege that the police officers sought to wrest a confession from the alleged victims regarding their participation in the alleged crime of cattle-rustling.

12. The petitioners allege that relatives of the alleged victims reported these facts to CENIDH so that staff from the organization went to Nueva Guinea and succeeded in interviewing the Chief of Police, who did not provide relevant information and prohibited them from using a tape recorder and camera when interviewing the alleged victims. They added that the indifference and hostility the authorities displayed toward the team from CENIDH impeded the team's work. They also add that, despite the serious wounds of those who were arrested, the Chief of Police of Nueva Guinea did not present them to the medical examiner for evaluation nor did he transfer them to a hospital center until CENIDH visited the site.

13. The petitioners allege that the alleged victims did not resist arrest and deny that Orlando Abel Obando kicked a member of the Army and tried to flee at the time of the arrest. They maintain that this can be confirmed from the interviews conducted at the scene, both with the police officers and the alleged victims. They allege that there is no evidence or testimony indicating aggression against members of the Army or Police and that even in such a situation the use of force should have been proportional. They maintain that it was in fact disproportionate in the specific case and designed to obtain a confession. They also state that third parties, usually cattle owners, frequently participate in the investigation of cattle-rustling crimes. In this regard, they assert that

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<sup>4</sup> According to the petitioners, based on information provided by the police, 60% of all crimes committed in the Municipality of Nueva Guinea are related to cattle-rustling.

<sup>5</sup> For purposes of this report, the IACHR considers it relevant to report on that institution of the Nicaraguan Police. In accordance with Article 43 of the Law on the National Police of Nicaragua, the voluntary police force is an auxiliary body supporting the National Police, with an organization attached to and subordinate to the police precincts. It is made up of Nicaraguan citizens who after being selected, trained, and sworn in accept voluntary, temporary, and unpaid conditions of service. In addition, Article 45 of the aforementioned law establishes that members of the voluntary police shall primarily carry out support, prevention, surveillance, public security, and traffic tasks, should do so when properly identified with uniforms and their own insignia, and have the status of agents of authority. The law also provides that in order to guarantee the maintenance of order and citizen security, they shall be subject to the fundamental principles of conduct and discipline while performing their missions.

<sup>6</sup> The petitioners attached a forensic report on Obando Abel Obando Reyes dated January 17, 2007.

this is reflected in the lack of impartiality and objectivity in the investigations and means that groups on the fringes of the law are created to enforce private justice.

14. In addition, they allege that on March 20, 2007, Mrs. Villanueva Delgadillo Obando (aged 57) mother of Raúl Terencio Artola Delgadillo and William Artola Delgadillo, was murdered by four unknown men when she was on her way to Nueva Guinea to attend the public oral proceeding regarding her sons.<sup>7</sup> They maintain that, according to testimony from the two persons who were with her, “the murderers carried AK rifles, were hooded, three of them wore military uniforms and the fourth wore a police uniform; their faces were covered by scarves and they wore caps on their heads.” They also report that on August 6, 2007<sup>8</sup> Gilberto Artola Delgadillo (aged 60), Mrs. Villanueva’s husband, was murdered on his property, the Diamante farm located in the community of Buena Vista, Jacinto Baca district of Nueva Guinea, by two unknown men who the petitioners allege were also “dressed in military uniforms” and carried AK rifles. They added that the murderers raped Sheila Carolina Artola Delgadillo and Amparo del Socorro Artola Delgadillo, both of whom were 17 at the time. They allege that these events were subject to prosecution and punishment; nonetheless, they allege that there is a situation of triple impunity because no one was convicted in the criminal proceeding for the murders of Mrs. Villanueva Delgadillo Obando and Mr. Gilberto José Artola Delgadillo. In addition, the person convicted of raping Amparo del Socorro Artola Delgadillo was acquitted on appeal, leaving that crime totally unpunished. They allege that only one person was convicted<sup>9</sup> even though various people participated in several crimes. They stipulate that not only was the person convicted of raping Amparo del Socorro Artola Delgadillo acquitted in the second instance proceeding for that crime, but the sentence was reduced for the crime of raping Sheila Carolina Artola Delgadillo.

15. With respect to the court proceeding filed for the alleged commission of the crime of cattle-rustling, the petitioners report that after a period of three months the Court of the Criminal Trial District of Nueva Guinea convicted Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, Martín Antonio Artolas Amador, Gilberth Javier Delgadillo, and Orlando Abel Obando for that crime on April 24, 2007. They indicate that in the appeal of that decision, the Court of Appeals of the Central Criminal District declared the entire proceeding invalid on April 2, 2008 because the Court felt that the evidence had been obtained unlawfully based on the abuse suffered by the alleged victims at the hands of the police officers. They allege that this is evidence of the acts of torture committed against the persons arrested and prosecuted for the crime of cattle-rustling.

16. Regarding the criminal process against state officials for acts of torture and cruel treatment, they indicate that on February 23, 2007 the Office of the Public Prosecutor proceeded to hear the case for the crime of bodily harm and abuse of authority. They allege that, unlike the speed demonstrated in the proceeding against the alleged victims for the crime of cattle-rustling, the Office of the Public Prosecutor ordered that the case be archived on March 15, 2007, based on lack of merit on the grounds of legitimate defense. They report that on September 3, 2007, due to pressure from the media, the Attorney General of the Republic reversed the decision to archive the case, considering that it was lacking objectivity and legality<sup>10</sup> and ordered criminal proceedings against the police officers. The

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<sup>7</sup> In the processing of precautionary measures 163-07 granted to protect the victims’ relatives, the petitioners alleged that some days after the extrajudicial execution of Mrs. Villanueva, her sister went to CENIDH to report that both she and her family had received death threats. They indicate that they reported those facts to the Judicial Assistance Department of the National Police and asked the Inspector General of the National Police to investigate the execution and harassment, but obtained no response.

<sup>8</sup> The petitioners state that based on these facts they asked the IACHR for precautionary measures to guarantee the personal integrity and lives of the relatives of Mr. and Mrs. Artola Delgadillo.

<sup>9</sup> In fact, the petitioners allege that according to the decision handed down by the Appeals Court of the Central Criminal District on June 10, 2009, a single person was convicted of the crimes of rape against Sheila Carolina Artola Delgadillo (12 years in prison), robbery with intimidation (five years in prison), exposing people to danger (two years in prison), violation of the home (two months’ detention), and conspiracy and instigation to commit a crime (three years in prison), for a total of 22 years and two months in prison.

<sup>10</sup> The petitioners deny that the Office of the Public Prosecutor has taken steps to correct or investigate the actions of the prosecutor who issued the ruling to archive the case given that he failed to fulfill his duty to protect human rights.

petitioners indicate that one year later, on October 23, 2008, the Office of the Public Prosecutor indicted the agents of the State involved in the acts of torture (one police officer and two “voluntary police”) for the crime of bodily harm. They report that the Single Local Court of Los Bueyes entered the indictment, issued the order to arrest those charged, and informed the National Police of Nueva Guinea regarding the decision on November 21, 2008 so that it could enforce the order. They indicate that the arrest warrants were not carried out with respect to the two “voluntary police” charged, as they were fugitives from justice. Regarding prosecution of the police officer, the petitioners allege that on November 25, 2009 – more than a year after the indictment – the parties were summoned for the public oral hearing. They state that the summons had to be suspended on three occasions due to the absence of the witnesses for the Office of the Public Prosecutor, meaning the alleged victims of torture, so that the defense requested the early adjournment of the case. They state that the Single Local Judge of Los Bueyes accepted the request and handed down a “DISMISSAL” in favor of the accused.

17. For their part, the petitioners add that the domestic legal system is insufficient and inadequate to ensure access to justice for the victims of torture and other cruel and inhumane treatment committed by police officers, given that in the investigation and prosecution of those allegedly responsible in this case, the crime considered was bodily harm and abuse of authority rather than torture.<sup>11</sup>

18. Regarding the administrative penalties imposed on the police officers, the petitioners state that although the investigations by the National Police concluded with a ruling from the Director General of the National Police ordering the dishonorable discharge of the police officers, they feel an assessment is needed regarding the actions taken by CENIDH to reverse the first ruling imposing the punishment of restriction at the on duty location – for 16 days – for the implicated officer. They also indicate that the Internal Affairs Office of the National Police is responsible for investigating and punishing the police officers for offenses committed in the performance of their duties and, in the event such offenses constitute a crime, that Office is also responsible for referring them to the competent authorities, thus becoming judge and party to the investigative process at police headquarters.

19. Regarding the exhaustion of domestic remedies, the petitioners assert the application of the exception under Article 46.2.a of the Convention, due to the ineffectiveness of domestic remedies based on the fact that the alleged victims have been stigmatized by the authorities who consider them guilty of the crime of cattle-rustling and deserving of acts of torture. They also allege that there is “unwarranted delay” in the handling of the criminal process regarding the acts of torture, in that the State has not justified complexity in the matter and the courts have not assessed the conduct of the authorities or the parties. They add that the actions taken by the State are not sufficient to punish and make reparation for the facts reported given that access to justice means not only having recourse to the courts but also obtaining a decision from those courts within the periods established by law and reparations for the damage caused, as well as diligent handling of the case, which they allege has not been evident in this case.

20. Based on the foregoing, the petitioners allege that agents of the State committed acts of torture and cruel, inhumane, and degrading treatment, to the detriment of Orlando Abel Obando Reyes, William Artola Delgadillo, Gilberth Javier Delgadillo Aguilar, Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, and Martín Antonio Artola Amador when arresting them on January 12, 2007 in the rural area of the Municipality of Nueva Guinea and in the subsequent denial of justice because those responsible for those acts have not been prosecuted. They also denounce the extrajudicial execution of Mrs. Villanueva Delgadillo Obando and Gilberto Artola Delgadillo, as well as the rape of Sheila Carolina Artola Delgadillo and Amparo del Socorro Artola Delgadillo, aged 16 and 17, respectively, at the time of these events, alleging partial impunity for these acts. Based on the events reported, they allege the violation of Articles 5 (right to humane treatment), 8 (fair trial), 11 (protection of honor and personal dignity), 24 (equality before the law), and 25 (judicial protection) of the American Convention as they relate to Article 1.1 of the same instrument.

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<sup>11</sup> Specifically, they state that the Code in effect at the time of the events did not define the crime of torture, a classification that was incorporated in Article 486 of the Penal Code that took effect in Nicaragua on July 9, 2008.

## B. The State

21. The State asks the IACHR to declare the petition inadmissible because it would be out of order and the petitioners have not exhausted the domestic remedies given that the criminal process underway against the agents of the State has not concluded.

22. It reports that on January 10, 2007, the Police Precinct of Nueva Guinea was informed that various persons had stolen 21 livestock from a property on January 9, 2007. It reports that a group was formed to investigate the reported facts, made up of a noncommissioned police officer, two "voluntary police," a National Army soldier, and three civilians, one of whom was a member of the committee to prevent the crime of cattle-rustling in the community of San Paulo, Nueva Guinea. Regarding the participation of persons affected by the crime of cattle-rustling in the search for suspects, the State alleges that the National Police is assisted by victims to clarify the facts through statements from those affected, recognition of the stolen objects (in this case the cattle that were stolen), as well as the identification of possible perpetrators of the crimes. It asserts that this does not mean that they participate in the investigation, search, and capture of the alleged criminals, which actions are the exclusive province of the National Police.

23. The State indicates that as a result of the investigations conducted, the police succeeded in arresting Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, Martín Antonio Artola Amador, Gilberth Javier Delgadillo Aguilar, and Orlando Abel Obando on January 12, 2007. It states that the last person named kicked the soldier in the group and started to flee, with which the noncommissioned officer and the two voluntary police chased him and finally caught up with him, but since he reacted violently the noncommissioned officer hit him twice with the butt of an AK 47 rifle.<sup>12</sup>

24. It reports that a criminal proceeding was filed against the alleged victims and a first instance decision was handed down on April 24, 2007 by the Judge of the Criminal District of Nueva Guinea, declaring them guilty of the crime of cattle-rustling. Raúl Artola Delgadillo, Martín Antonio Artola Amador, and Felipe Santiago Artola Amador were sentenced to seven years in prison and Gilberth Javier Delgadillo Aguilar and Orlando Abel Obando Reyes were sentenced to six years and six months in prison. The alleged victims filed an appeal. On April 2, 2008 the Appeals Court of the Central District decided to invalidate everything done since the beginning of the process, deeming that "the forensic testimony shows that the accused were subjected to abuse, violating the provisions of our Political Constitution that everyone has the right to respect for their physical, mental, and moral integrity, that no one shall be subjected to torture (...)".

25. The State also reports on the administrative and criminal procedures conducted to judge and investigate the agents involved in the arrest of the alleged victims. Regarding administrative sanctions, it indicates that the Inspector General of the National Police, through resolution No. 30-07, ordered the dishonorable discharge of the noncommissioned officer involved. The noncommissioned officer filed an appeal that was declared admissible, and he was punished with a 16-day work restriction rather than a discharge. Nonetheless, the State indicates that the Director General of the National Police decided to confirm the dishonorable discharge and dispensed with the services of the "voluntary police."<sup>13</sup>

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<sup>12</sup> The State indicates that on January 15, 2007, the Judge of the Criminal Hearings District of Nueva Guinea authorized a medical examination of the accused and on January 17, 2007 the request was made to transfer them to the Jacinto Hernández Hospital. It maintains that the medical-legal assessment was conducted at a prudent time and the police officers who had acted negligently with respect to verifying the physical condition of the detained were disciplined.

<sup>13</sup> The State also reported that on March 19, 2007 the Inspector General of the National Police ordered the "restriction at the on duty location for a 15-day period" against the Chief of the Police Precinct of Nueva Guinea, the Assistant Chief of the National Police in Nueva Guinea, and the Chief of Legal Assistance of the National Police in Nueva Guinea, for their negligence regarding verifying the physical condition of the detained. It emphasizes that the Office of the Inspector General is responsible for ensuring that the members of the National Police adhere strictly to the Constitution and other laws and in doing so is supported by the Internal Affairs Division, which is responsible for the administrative investigation of complaints made by the authorities, individuals, or *ex officio* regarding the conduct of the members of the National Police, and has the power to recommend the imposition of administrative penalties, without thereby excluding or limiting the victim's right to take criminal action.

It adds that if the petitioners feel that any of the administrative rulings were the result of an incomplete investigation they should use the remedies afforded them by law or present evidence to support that assertion.

26. Regarding the criminal investigations of the alleged acts of torture, the State reports that on March 15, 2007, the Assistant Prosecutor of Nueva Guinea decided to archive the case for lack of merit, deeming that the officer had acted in legitimate defense. It adds that the Attorney General of the Republic decided on September 3, 2007 to revoke the decision to archive the case and ordered the Office of the Public Prosecutor to bring criminal action against the officer involved and the two voluntary police, as the alleged perpetrators of the crime of bodily harm and abuse of authority. On October 23, 2008 the Office of the Public Prosecutor filed an indictment with the Criminal Court of Muelle against those officers. On November 11, 2008 the Criminal Judge of Muelle sent a formal request to the Judge of Nueva Guinea ordering the arrest of the accused, which could not be carried out because they were fugitives. The State indicates that again on August 6, 2009 three orders were received to arrest and search the three individuals accused of the crime of bodily harm combined with abuse of authority, and the former police officer was successfully arrested. It reports that with respect to the other two persons accused, enforcement of the order to capture remains pending. The State has not submitted updated information regarding the procedural status of this case.

27. Regarding the criminal classification of the injuries used in the investigations into the events reported, the State indicates that there was no criminal classification of the crime of torture prior to the current Penal Code that took effect in July 2008.<sup>14</sup> Nonetheless, it stipulates that torture was prohibited in the National Constitution and various regulations. It clarifies that although there is now a criminal definition of torture, it is not possible, in accordance with the principle of non-retroactivity, for the former police officers to be accused as alleged perpetrators of torture because the events occurred when the criminal classification was not yet established, and no one can be convicted for an action or omission that is not established as a crime by criminal law prior to the occurrence of the allegedly criminal act.<sup>15</sup> Regarding the petitioners' allegations comparing the speed of the two processes (for the crime of cattle-rustling and the crime of bodily harm), the State argues that the events occurred at different points in time and under different conditions and that all proceedings are conducted in accordance with constitutional guarantees.

28. The State argues that "although it is true that the conduct of the police officers violated human rights, this fact was declared in a decision from the Nicaraguan Judicial Branch and the events have not gone unpunished as alleged by CENIDH, so that in accordance with Article 41(c) the petition is groundless and inadmissible."

29. Regarding the prior exhaustion of domestic remedies requirement, the State alleges that the petitioners have not met the requirement given that the criminal process against the three former officers of the National Police is underway and thus the petition was submitted prior to exhausting the mechanisms of the domestic jurisdiction. The State reports that the victim has had the right to be a party to the criminal process since it began and to challenge the judicial rulings it considers prejudicial to it.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

30. Article 44 of the American Convention authorizes the petitioners to submit complaints to the IACHR. The petition indicates as the alleged victims individuals with respect to whom the State has

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<sup>14</sup> The Penal Code was approved on November 13, 2007 and took effect on July 9, 2008.

<sup>15</sup> In sum, the State asserts that the absence of the criminal definition of torture at the time the reported events occurred should not be interpreted as a situation of impunity, as the Office of the Public Prosecutor used the criminal definition of "bodily injury combined with abuse of authority" to achieve prosecution and criminal punishment in this case.

committed to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Nicaragua has been a State Party to the American Convention since September 25, 1979, the date it deposited its ratification instrument. In addition, the State of Nicaragua has been a party to the Convention of Belem do Pará since December 12, 1995, the date it deposited its ratification instrument, and a party to the Inter-American Convention to Prevent and Punish Torture since November 23, 2009. The Commission is thus competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of rights protected in the American Convention and other treaties, violations that occurred within the territory of Nicaragua, a State Party to those treaties.

31. The Commission is competent *ratione temporis* by virtue of the American Convention and the Convention of Belem do Pará, because both instruments were already in force for the State at the moment of the facts. With respect to the Inter-American Convention to Prevent and Punish Torture, the Commission notes that the State has been a party to that convention since November 23, 2009 when it deposited the respective ratification instrument. In that sense, the Commission is competent *ratione temporis* to rule on possible violations of that instrument occurring since that date. Finally, the Commission is competent *ratione materiae*, because the petition denounces possible violations of human rights protected by the above-mentioned instruments.



## B. Exhaustion of domestic remedies

32. Article 46.1.a of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to learn of an alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body. The prior exhaustion requirement applies when there are effectively available remedies within the domestic system that are adequate and effective for remedying the alleged violation. In this respect, Article 46.2 specifies that the requirement does not apply when there is no due legal process under domestic law for the protection of the right in question, if the alleged victim did not have access to the domestic remedies, or there is unwarranted delay in rendering a decision in those remedies.

33. In the instant case, the petitioners report that agents of the State committed torture to the detriment of persons arrested for the crime of cattle-rustling in Nueva Guinea on January 12, 2007, that Mrs. Villanueva Delgadillo Obando was extrajudicially executed on March 20, 2007, and that Gilberto Artola Delgadillo was extrajudicially executed and two adolescents were allegedly raped on August 6, 2007. In this regard, they allege that these facts have not been clarified and the alleged victims have thus not been guaranteed access to justice. For its part, the State alleges that the domestic remedies have not been exhausted because the criminal process against the officers implicated in the alleged acts of torture on January 12, 2007 has not concluded.

34. In this regard, the Commission notes that the criminal process for the alleged commission of the crime of cattle-rustling, in which there was a first instance judgment against Orlando Abel Obando Reyes, William Artola Delgadillo, Gilberth Javier Delgadillo Aguilar, Raúl Terencio Artola Delgadillo, Felipe Santiago Artola Amador, and Martín Antonio Artola Amador, was overturned by the Court of Appeals of the Central Criminal District on April 2, 2008. That Court ordered the release of the accused because it felt that it had been "demonstrated that the accused suffered abuses at the hands of the police officers who participated in their arrest."<sup>16</sup> The criminal process regarding the alleged acts of torture endured by the alleged victims referred to above culminated with the acquittal of the police officer charged,<sup>17</sup> leaving pending the prosecution of the two voluntary police who were fugitives from justice.

35. Regarding the investigation and prosecution of the alleged extrajudicial execution of Mrs. Villanueva Delgadillo Obando and Mr. Gilberto José Artola Delgadillo and the rape of Sheila Carolina Artola Delgadillo and Amparo del Socorro Artola Delgadillo, the IACHR notes that, according to the second instance judgment handed down by the Court of Appeals of the Central Criminal District on June 10, 2009, a single person was convicted of the crime of raping Sheila Carolina Artola Delgadillo<sup>18</sup> and the crimes of robbery with intimidation, exposing people to danger, violation of the home, and conspiracy and instigation to commit a crime and was given a prison sentence of 22 years and two months.<sup>19</sup>

36. With respect to the events related by the petitioners in the reported situations that include the alleged violation of fundamental rights such as the right to life and the right to humane treatment, *inter alia*, the IACHR feels that such situations are reflected in domestic law as crimes that can be prosecuted *ex officio* and thus the State itself should prompt the investigation and prosecution of such crimes. In effect, the precedents established by the Commission indicate that whenever an *ex officio* prosecutable offense is committed, the State has the obligation to promote and pursue the criminal process<sup>20</sup> and that,

<sup>16</sup> Court of Appeals of the Central Criminal District, Juigalpa Chontales, Decision of April 2, 2008.

<sup>17</sup> Single Local Court of the Municipality of Los Bueyes, Decision of December 14, 2009.

<sup>18</sup> In the second instance decision, the accused was acquitted of the crime of raping Amparo del Socorro Artola Delgadillo.

<sup>19</sup> Court of Appeals of the Central Criminal District, Juigalpa Chontales, Decision of June 10, 2009.

<sup>20</sup> IACHR, 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, Case 11.137, Abella et al., para. 392.

in such cases, this constitutes the suitable route for clarifying the facts, trying those responsible, and establishing the respective criminal penalties, as well as facilitating other monetary types of reparations.

37. The information available indicates that although investigations and a criminal process were initiated for the alleged extrajudicial executions and rapes, the criminal process culminated with the conviction of a single person,<sup>21</sup> despite the fact that, given the nature and multiplicity of the events reported, various people participated in them. Regarding the acts of torture committed on January 12, 2007, allegedly by agents of the State, the IACHR notes that two police officers continue to be fugitives, although nothing is known regarding measures taken to bring them to justice for the respective oral proceeding. Regarding the acquittal of the police officer charged, the IACHR feels that his indictment occurred a year and a half after the events occurred and notes that the petitioners assert that the alleged victims have had to move from the region in view of their at-risk situation, indicating in particular that the State has not responded to the request for precautionary measures decreed by the IACHR. In that sense, the Commission reiterates that as a general rule a criminal investigation must be conducted promptly in order to protect the interests of the victims, to preserve the evidence, and even safeguard the rights of anyone who might be considered a suspect in the context of the investigation. As the Inter-American Court has indicated, although the conduct of all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not cause international action to aid the victims to be held up or delayed to the point that it becomes useless.<sup>22</sup>

38. Based on the above, the Commission will analyze in detail in the merits phase whether the State of Nicaragua provided an effective remedy through these criminal processes, with due process guarantees for the alleged victims. However, it feels that for purposes of admissibility, the circumstances of this case, including allegations regarding multiple violations such as torture, extrajudicial executions, and sexual assault against members of a family, allegedly perpetrated by agents of the State, and the time that has elapsed since the alleged commission of the crimes without clarification of the facts, constitute a manifestation of unwarranted delay, justifying the application of the exception provided in Article 46.2.c of the American Convention.

39. The Commission reiterates that invoking the exceptions to the rule of exhaustion of domestic remedies as provided in Article 46.2 of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as guarantees on access to justice. However, Article 46.2 of the American Convention, given its nature and intent, is a provision with autonomous content *vis à vis* the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies provided in the Convention are applicable to the case in question must be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of assessment that is different from that used to determine the violation of Articles 8 and 25 of the Convention.

### **C. Deadline for submitting the petition**

40. Article 46.1.b of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months from the date when the interested party was informed of the final decision that exhausted the domestic jurisdiction. This rule does not apply when the Commission finds one of the exceptions to the exhaustion of domestic remedies established in Article 46.2 of the Convention. In such cases, the Commission must determine whether the petition was submitted within a reasonable period of time, given the circumstances, in accordance with Article 32 of

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<sup>21</sup> For the crimes of raping Sheila Carolina Artola Delgado, robbery with intimidation, exposing people to danger, violation of the home, and conspiracy and instigation to commit a crime.

<sup>22</sup> I/A Court HR *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, para. 93. In addition, the Inter-American Convention to Prevent and Punish Torture establishes in Article 8 that “if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.”

the Commission's Rules of Procedure. As indicated, the Commission concluded that in the instant case the exception provided in Article 46.2.c of the American Convention is applicable. Taking into consideration the alleged failure to investigate and punish those responsible for the alleged torture, extrajudicial executions, and sexual violence, the fact that the events occurred starting on January 12, 2007, and that the petition was submitted on September 17, 2007, the Commission feels that it was submitted within a reasonable period of time.

#### **D. Duplication of proceedings and international *res judicata***

41. In order to declare a petition admissible, Article 46.1.c of the Convention requires that the matter not be pending settlement in another international proceeding and Article 47.d requires that it not duplicate the content of a petition already examined by this or any other international organization. The petitioners assert that the petition is not pending settlement in any other international proceeding and the file does not present any evidence to the contrary. Therefore, the IACHR feels that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

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

42. For purposes of admissibility, the Commission must decide whether the alleged facts, if proven, tend to establish a violation of rights as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of the same article. The criterion for evaluating these requirements differs from that used to render an opinion regarding the merits of a petition. The Commission must perform a *prima facie* evaluation to determine whether the petition establishes the basis for the possible or potential violation of rights guaranteed by the Convention, but not to establish the existence of a violation of those rights. This determination constitutes a preliminary analysis that does not involve any prejudgment of the merits of the case.

43. The Commission feels that the allegations made by the petitioners refer to facts that, if true, would characterize violations of various rights guaranteed by the American Convention, the Convention of Belém do Pará, and the Convention to Prevent and Punish Torture. In effect, the account presented in the petition indicates alleged acts of torture, extrajudicial executions, and sexual violence carried out by police and military personnel, events that have not been clarified by the courts, and thus those responsible have not been punished and the victims have not been compensated. In this respect, the IACHR feels that the facts reported merit a more precise and complete examination in the merits phase. In this respect, the Commission will analyze in the merits phase whether there is a possible violation of the rights protected in Articles 5, 8, 11, 24, and 25 as they relate to Article 1.1 of the American Convention. In addition, although the petitioners have not invoked Articles 4, 7, and 19 of the American Convention on Human Rights, Article 7 of the Convention of Belem do Pará, and Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture, the Commission decides, by virtue of the principle of *iura novit curia*, to admit those articles for purposes of evaluating their alleged violation in the merits phase. Those provisions will be analyzed in the light of the allegations made regarding extrajudicial executions and the alleged acts of sexual violence that have not been punished and effectively compensated, as will the facts relating to the alleged arbitrary arrests followed by torture at the hands of alleged agents of the State, particularly considering that some of the alleged victims were children at the time the reported events occurred.

44. In view of all the above, the IACHR concludes that the petitioners have demonstrated *prima facie* the points required in Article 47.b of the American Convention.

#### **V. CONCLUSIONS**

45. The Commission concludes that it is competent to hear the complaint submitted by the petitioners and that the petition is admissible in accordance with Articles 46 and 47 of the Convention, for the alleged violation of Articles 5, 8, 11, 24, and 25 of the American Convention in connection with Article 1.1 of the same Convention, to the detriment of the alleged victims and their relatives. The Commission

also decides, applying the principle of *iura novit curiae*, to declare this petition admissible with respect to alleged violations of Articles 4, 7, and 19 of the American Convention; Article 7 of the Convention of Belém do Pará; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

46. Based on the factual and legal arguments presented above and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

**DECIDES:**

1. To declare this petition admissible with respect to alleged violations of the rights protected in Articles 5, 8, 11, 24, and 25 as they relate to Article 1.1 of the American Convention.

2. To declare, applying the principle of *iura novit curiae*, this petition admissible with respect to alleged violations of Articles 4, 7, and 19 of the American Convention; Article 7 of the Convention of Belém do Pará; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

3. To forward this report to the petitioners and the Nicaraguan State.

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

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

Done and signed in the city of Washington, D.C., on the 22nd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice President; Rodrigo Escobar Gil, Second Vice President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.