

**REPORT No. 153/11<sup>1</sup>**  
PETITION 189-03  
ADMISSIBILITY  
DANNY HONORIO BASTIDAS MENESES AND OTHERS  
ECUADOR  
November 2, 2011

**I. SUMMARY**

1. On March 10, 2003, the Inter-American Commission on Human Rights (hereinafter referred to as “the Commission” or “the IACHR”) received a petition lodged by Alberto Rivadeneira Muñoz and Carlos Efraín Carlosama (hereinafter referred to as “the petitioners”) alleging responsibility of the Republic of Ecuador (hereinafter referred to as “Ecuador”, “the Ecuadorian State” or “the State”) for the death of the Colombian nationals Danny Honorio Bastidas Meneses, Segundo Víctor Bastidas Meneses, Oscar Yamid Gómez Cajas, and Weiman Antonio Navia Gómez (hereinafter referred to as “the alleged victims”) on January 18, 2001 on the Colombian side of the San Miguel River, department of El Putumayo, Republic of Colombia.

2. The petitioners alleged that the State was responsible for the violations of the rights enshrined in Articles I, II, XVIII and XXIV of the American Declaration of the Rights and Duties of Man; Articles 1, 2, 4, 8 and 25 of the American Convention on Human Rights (hereinafter referred to as “the Convention” or “the American Convention”); Articles 3, 4 and 5 of the Protocol of San Salvador; and Articles 1, 2 and 3 of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. As for the State, it alleged that it had conducted a serious and adequate investigation to find those responsible and to punish them and requests that the Commission declare the petition inadmissible and proceed to file it.

3. After examining the positions of the parties and compliance with the requirements stipulated by Articles 46 and 47 of the American Convention, the Commission decided to declare admissibility of the claims regarding the alleged violation of Articles 4, 5, 8 and 25, in keeping with Article 1.1 of the Convention; to notify the parties and order publication of the report in its Annual Report to the General Assembly.

**II. PROCESSING BY THE COMMISSION**

4. The Commission recorded the petition under case number No. 189-03 and, on July 17, 2003 it proceeded to transmit a copy of the relevant parts to the State, with a two-month deadline to submit information, in conformity with Article 30 of the Rules of Procedure. On December 30, 2003 the State sent its response, which was remitted to the petitioners for their observations. The petitioners submitted documents with additional information on January 9 and November 22, 2004 and on January 6, 2005, which were then remitted to the State for its observations.

5. On October 4, 2005, the petitioners submitted a document of observations, which was sent to the State for its observations. On February 7, 2006, the State requested an extension of time, which was granted by the Commission. On April 17, 2006, the State submitted a document of observations, which was sent to the petitioners for their observations. On January 23 and April 5, 2007, the petitioners submitted additional written information, which was sent to the State for its observations. On June 23, 2008, the State submitted observations, which were sent to the petitioners for their

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<sup>1</sup> Commissioner Rodrigo Escobar Gil, a Colombian national, considered that he should abstain himself from participating in the discussion or the decision of the present case based on Article 17.3 of the Rules of Procedure of the IACHR. The reason expressed by Commissioner Escobar Gil was that the facts would have occurred in Colombian territory, therefore the Colombian State has jurisdiction to investigate the facts. The Inter-American Commission accepted his disqualification and therefore Commissioner Escobar Gil did not participate in the discussion or the decision on this case.

information. On October 19, 2010, the petitioners were requested to provide up-to-date information on the matter being referred to, which was sent on August 17, 2011 and transmitted to the State for its information. On August 31, 2011, the petitioners sent up-to-date information, which was transmitted to the State for its information.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioners**

6. The petitioners alleged that, on March 18, 2001, the Colombian nationals Danny Honorio Bastidas Meneses, Segundo Víctor Bastidas Meneses, Oscar Yamid Gómez Cajas, and Weiman Antonio Navia Gómez had been killed by gunshots by members of the Ecuadorian Army in the San Miguel River, in the *corregimiento* of Puerto Colón, municipality of San Miguel, department of El Putumayo, Republic of Colombia. As indicated in the file, the legally sanctioned removal of the corpses at the scene of the crime and the autopsies carried out on the alleged victims were under the responsibility of the Inspection of the Municipal Police of La Dorada, department of Putumayo, Republic of Colombia.

7. The petition indicated that, according to statements by the survivors, nine persons, among which the alleged victims, had been sailing the San Miguel River, carrying lumber to build a ranch in the *corregimiento* of Puerto Colón, in the Republic of Colombia and, during the trip, they were surprised by powerful firearms being shot from the Ecuadorian side. They indicated that some of the persons jumped from the boat to flee and that, at that time, helicopters appeared from the Ecuadorian side flying low and firing at the persons who were in the water. They pointed out that they did not see what institution the helicopters were from but that, that same morning, Ecuadorian Army helicopters had been flying over that area. They also pointed out that some of them managed to survive by hiding on one side of the boat and escaping to the Colombian bank of the river. They indicated that the removal of the corpses had been carried out by the Inspection of the Municipal Police of La Dorada, department of El Putumayo, Republic of Colombia.

8. The petitioners alleged that, after the incident, the next of kin of the alleged victims had gone to the Colombian Consulate in Nueva Loja, in the province of Sucumbíos, Republic of Ecuador, to report the incident and that, as a result, the Legal Advisor of the Consulate had, in turn, filed, on May 14, 2001, a complaint with the Third Judge of the Criminal Court of Sucumbíos, which to date has not yielded any results.

9. Furthermore, they alleged that the press had reported two versions of the incident. The press had reported that, accorded to the Joint Command of Ecuador's Armed Forces, a clash had occurred between a military patrol and a group of drug traffickers along the Colombian border, leading to the death and capture of drug traffickers, without specifying how many. As for the information from Colombia, it referred to a land and air assault carried out by the Ecuadorian Army against Colombian rural workers, leading to 8 dead and more than 20 missing persons.

10. On the basis of the information provided by the petitioners, it was concluded that, because of this incident, an investigation was conducted in Colombia for multiple counts of homicide, under aggravating circumstances, of the alleged victims. This investigation pointed out that the assault came from Ecuadorians wearing uniforms and that during this assault there were gunshots and explosions in which Ecuadorian helicopters participated.

11. They pointed out that the file on the criminal proceedings being conducted in Colombia was submitted on May 14, 2001 by the next of kin of the victims as a report in the framework of court case No. 13-2001 that is being heard in the Third Criminal Court of Sucumbíos, in the Republic of Ecuador for drug possession and production. They indicated that the Third Criminal Court was ordered to carry out an investigation of the incidents. They indicated that the next of kin did not appear as complainants and therefore the Legal Advisor of the Colombian Consulate in Nueva Loja, Alberto Rivadeneira Muñoz, took charge of the complaint. They indicated that the Judge sent the file to the District Attorney's Office so that the relevant steps could be ordered.

12. The petitioners allege that, despite repeated requests filed with various authorities, the District Attorney's Office of Sucumbíos, which is in charge of the case, has not taken any steps to investigate the incidents, as a result of which the case continues to be unpunished.

13. Finally, they indicated that the Consulate of Colombia in Nueva Loja took various steps to bring those responsible to court. Regarding this, in the information provided by the petitioners, there is evidence that the Consulate of Colombia in Nueva Loja informed the Ministry of Foreign Affairs of the incidents that took place and that the Government of Colombia decided to file a protest with the Government of Ecuador. It is also evident that, by means of verbal note No. E-109, the Ministry of Foreign Affairs of Colombia repeated to the Government of Ecuador that actions being taken against criminal organizations along the border zone must be carried out jointly and requested that an investigation be conducted against the Armed Forces of Ecuador in order to clarify what had happened.

14. In short, the petitioners allege that the State violated the rights enshrined in Articles I, II, XVIII and XXIV of the American Declaration of the Rights and Duties of Man, Articles 1, 2, 4, 8 and 25 of the American Convention, Articles 3, 4 and 5 of the Protocol of San Salvador, and Articles 1, 2 and 3 of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. As for meeting the requirement of prior exhaustion of remedies under domestic law, the petitioners contend that the case has remained unpunished.

#### **B. Position of the State**

15. The State alleges that it has not been proven that its agents were involved in the attack against Colombian citizens, and therefore there are no grounds for holding the State liable. The State alleges that there are no criminal proceedings filed to investigate, try and punish those responsible for the alleged incidents. It indicated that there are criminal proceedings filed against the alleged drug traffickers arrested on January 18, 2001 during an anti-drug raid by the Armed Forces of Ecuador and that, on the basis of the reports drawn up by the Ministry of National Defense, it was concluded that the Colombian nationals who were killed were never in any way involved in the raid.

16. The State also alleges that the alleged violations had taken place outside Ecuadorian territory and as a result domestic judges are not competent *ratione loci* to hear the present case. Afterwards, it alleged that, since no legal proceedings had been filed in Ecuador, remedies under domestic law had not been exhausted. Finally, it indicated that the State has undertaken a serious and adequate investigation to find those responsible and punish them and requested that the Commission declare the petition inadmissible and proceed to archive it.

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

#### **A. Competence**

17. The petitioners are entitled, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition points out that the alleged victims are Danny Honorio Bastidas Meneses, Segundo Víctor Bastidas Meneses, Oscar Yamid Gómez Cajas, and Weiman Antonio Navia Gómez and contends that the alleged violations to their detriment are attributable to the Ecuadorian State. Regarding the State, the Commission notes that Ecuador is a State Party to the American Convention since December 28, 1977, date when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to hear the petition.

18. As for its competence *ratione loci*, the petition alleges that the incidents had been perpetrated by members of the Ecuadorian Army in the San Miguel River, in the *corregimiento* of Puerto Colón, municipality of San Miguel, department of Putumayo, Republic of Colombia, and therefore contends that the alleged victims were subject to the jurisdiction of the Republic of Ecuador. As for the State, it alleges that the Inter-American Commission is not competent to hear the case for territorial reasons because it deems that the incidents were said to have occurred outside Ecuador's territory.

19. Although jurisdiction usually refers to the authority over persons located inside the territory of a State, human rights are inherent to all human beings and are not based on their nationality or location. Under Inter-American human rights law, every State is bound, as a result, to respect the rights of all persons in its territory and of those persons present in the territory of another State but subject to control of its agents.<sup>2</sup> This position matches that of other international organizations, which when examining the scope of enforcement of international human rights instruments have envisaged their extraterritoriality.

20. Regarding this, when adopting the American Convention, the scope of protection was extended to the rights recognized in the American Convention, to the extent that the States could not only become internationally liable for deeds or omissions that were attributable to them within their own territory but also to those deeds or omissions perpetrated outside their territory, but within the sphere in which they have jurisdiction.<sup>3</sup>

21. Thus, the Inter-American Commission has decided, as other international organizations have done, that it is competent *ratione loci* regarding a State for incidents occurring in the territory of another State when the alleged victims have been subjected to the authority and control of its agents.<sup>4</sup> Otherwise, there would be a legal loophole regarding the protection of the human rights of persons that the American Convention is striving to protect, which would be contrary to the purpose and end of this instrument.<sup>5</sup> Likewise, the Commission has pointed out that “in certain cases, the exercise of its jurisdiction over extraterritorial events is not only consistent with but required by the applicable rules. The essential rights of the individual are proclaimed in the Americas on the basis of equality and nondiscrimination: ‘without distinction as to race, nationality, creed, or sex’.”<sup>6</sup>

22. Because individual rights are inherent to the human being, all American States are required to respect the protection rights of any person subject to their jurisdiction. Although this usually refers to persons located inside the territory of a State, in certain circumstances it can refer to the conduct with an extraterritorial *locus*, where the person is not present in a State’s territory. In that regard, when examining the scope of jurisdiction of the American Convention, it must be determine whether or not there is a causal connection between the extraterritorial conduct of a State and the alleged violation of the rights and liberties of a person.

23. In principle, the investigation does not refer to the nationality of the alleged victim or to his presence in a given geographical area, but rather to whether or not, under those specific circumstances, the State observed the rights of a person subjected to its authority and control.<sup>7</sup> In view of the above, the Commission shall consider, when examining the merits of the case, evidence regarding the participation of the agents of the Ecuadorian State in the incidents, regardless of whether the incidents took place outside its territory. Because of the above, the Commission concludes that it is competent *ratione loci* to hear this petition because the petition claims violations of the rights protected under the American Convention that were said to have been perpetrated by agents of the State of Ecuador.

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<sup>2</sup> IACHR. Report No. 112/10, Interstate Petition PI-02, *Franklin Guillermo Aisalla Molina* (Ecuador – Colombia). October 21, 2010, paragraph 91 and IACHR. Report No. 86/99, Case 11.589, *Armando Alejandro Jr., Carlos Costa, Mario de La Peña and Pablo Morales* (Republic of Cuba), September 29, 1999.

<sup>3</sup> IACHR. Report No. 112/10, Interstate Petition PI-02, *Franklin Guillermo Aisalla Molina* (Ecuador – Colombia). October 21, 2010, paragraph 90.

<sup>4</sup> IACHR. Report No. 109/99, Case 10.951, *Coard and others* (United States). September 29, 1999, paragraph 37; IACHR; IACHR. Report No. 31/93, Case 10.573, *Salas* (United States), October 14, 1993, paragraph 6.

<sup>5</sup> European Court of Human Rights, *Cyprus v. Turkey*, Judgment of May 10, 2001, paragraph 78.

<sup>6</sup> IACHR. Report No. 86/99, Case 11.589, *Armando Alejandro Jr., Carlos Costa, Mario de La Peña and Pablo Morales* (Republic of Cuba), September 29, 1999, paragraph 23.

<sup>7</sup> IACHR. Report No. 86/99, Case 11.589, *Armando Alejandro Jr., Carlos Costa, Mario de La Peña and Pablo Morales* (Republic of Cuba), September 29, 1999, paragraph 23.

24. The Commission is competent *ratione temporis* because the obligation to respect and guarantee the rights protected under the American Convention were already in force for the State on the date that the incidents alleged in the petition occurred.

25. Regarding allegations about the violations of the American Declaration, in compliance with the provisions of the Commission's Statute and Article 23 of its Rules of Procedure, the Commission is, in principle, competent *ratione materiae* to hear violations of the rights enshrined in this declaration.<sup>8</sup> Nevertheless, the IACHR has previously established<sup>9</sup> that, once the American Convention enters into force with respect to a State, it is that instrument—not the Declaration—that becomes the specific source of law that shall be applied by the Inter-American Commission, as long as the petition alleges violations of substantively identical rights enshrined in the two instruments.<sup>10</sup> In the present petition, it is observed that Articles I, II, XVIII and XXIV enshrined rights that are substantively identical to those protected under the American Convention. Furthermore, on the basis of Article 19.6 of the Protocol of San Salvador, the Commission is competent to hear the incidents tied to the violation of Articles 8 and 13 of that instrument, and therefore is not competent *ratione materiae* to rule on the alleged violations of Articles 1, 2 y 3 of said instrument in the context of an individual petition.

26. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

## **B. Requirements for the petition's admissibility**

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

27. Article 46.1.a of the American Convention requires prior exhaustion of remedies available under domestic law in conformity with the generally recognized principles of international law, as a requirement for admitting claims about the alleged violation of the American Convention.

28. Article 46.2 of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when:

- 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 stipulated in the Commission's Rules of Procedure and as stated by the Inter-American Court, whenever a State alleges that the petitioners have not exhausted domestic remedies, it is required to identify the remedies that must be exhausted and to prove that the remedies that were not exhausted are "adequate" to resolve the alleged violation; it must be stressed here that the role of these remedies within the domestic law system is appropriate to protect the legal situation that is being infringed.<sup>11</sup>

<sup>8</sup> Inter-American Court of Human Rights, *Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, July 14, 1989, Series A, No. 10, paragraph 41.

<sup>9</sup> IACHR, Report No. 03/01, Case 11.670, *Amilcar Menéndez, Juan Manuel Caride, and others* (Argentina), January 19, 2001, paragraph 41.

<sup>10</sup> Inter-American Court of Human Rights, *Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, July 14, 1989, Series A, No. 10, paragraph 46.

<sup>11</sup> Article 31.3 of the Rules of Procedure of the Commission. See also Inter-American Court of Human Rights, *Case Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 64.

29. In the present case, the State alleges that the claim of the petitioner does not meet the requirement of prior exhaustion of remedies under domestic law, as provided for in Article 46.1 of the American Convention, because no legal proceedings have been filed in Ecuador. The State reports that it has filed proceedings regarding drug trafficking and a raid carried out on that same date, but that the death of the four alleged victims is not associated with these proceedings. It contends that the petitioners have not reported the alleged incidents in Ecuador. As for the petitioner, he alleges that, despite repeated requests addressed to various authorities, the District Attorney's Office of Sucumbíos, which is in charge of the case, has taken no action to investigate the incidents, as a result of which the case has remained unpunished.

30. According to the allegations by the parties, because of these incidents, an investigation is being conducted in Colombia for multiple counts of homicide, under aggravating circumstances, of the alleged victims, indicating that the assault was perpetrated by the Ecuadorian Army. Likewise, in Ecuador there is court case No. 13-2001 in the Third Criminal Court of Sucumbíos, Republic of Ecuador, for the crime of drug possession and production. The Commission observes that the next of kin of the alleged victims requested the Third Court to order an investigation of the incidents and that the Legal Advisor of the Colombian Consulate, Alberto Rivadeneira Muñoz, had taken charge of the complaint. It also notes that the Third Judge sent the file to the District Attorney's Office so that it could be duly processed. In other words, although the State of Ecuador indicates that the petitioners had not reported the alleged incidents to the country's legal authorities, according to available information, they were reported and led to an investigation that is supposedly continuing in Ecuadorian courts.

31. The Commission also took note of the allegations that, despite repeated requests by the petitioners addressed to various authorities, the District Attorney's Office of Sucumbíos, in charge of the case, had not taken any action whatsoever to investigate the incidents. Therefore, in view of the features of the present case, the time that has elapsed since the incidents that are the grounds for the petition and that the criminal investigation continues to be pending, the Commission deems that the exception provided for in Article 46.2.c of the American Convention regarding delay in rendering final judgment under domestic law, as a result of which the requirement regarding the exhaustion of remedies under domestic law cannot be enforced, is applicable.

32. Invoking the exceptions to the prior exhaustion of domestic remedies rule provided in Article 46.2 of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as the guarantees on access to justice. However, Article 46.2, given its nature and purpose, is a standard with autonomous content *vis à vis* the substantive standards of the Convention. Therefore, the determination as to whether the exceptions to the exhaustion of domestic remedies rule are applicable to the case at hand must be performed prior to and separate from the analysis of the merits of the case, in that it depends on a standard of evaluation different from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clearly noted that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

## **2. Time-limits for submitting the petition**

33. The American Convention establishes that, for a petition to be declared admissible by the Commission, it must have been lodged within a period of six months from the date on which the party alleging the violation was notified of the final judgment. In the complaint being reviewed, the IACHR has ruled that the exceptions to the requirement of exhaustion of remedies under domestic law pursuant to Article 46(2)(c) of the American Convention are applicable. Regarding this, Article 32 of the Rules of Procedure of the Commission establishes that, in those cases where exceptions to prior exhaustion of remedies under domestic law are applicable, the petition must be submitted within reasonable time-limits, at the Commission's criterion. For this purpose, the Commission must take into account the date when the alleged violation of rights took place and the circumstances of each case.

34. In the present case, the petition was received on March 10, 2003 and the incidents that are the subject of the complaint took place on January 18, 2001, although an investigation was not undertaken until afterwards, and this investigation continues to be pending and its alleged effect in terms, *inter alia*, of the alleged absence of the administration of justice have extended up to the present time. Therefore, in view of the context and the characteristics of the present case, as well as the fact that there is still an investigation that has been suspended in the preliminary stage of inquiries, the Commission deems that the petition was lodged within reasonable time-limits and that therefore this requirement for admissibility, in terms of the time-limits for submittal of the petition, has been met.

### **3. Duplication of procedures and international *res judicata***

35. Article 46.1.c of the Convention provides that admission by the Commission of a petition requires that "the subject of the petition or communication is not pending in another international proceeding for settlement," and Article 47.d of the Convention provides that the Commission shall consider inadmissible any petition or communication that "is substantially the same as one previously studied by the Commission or by another international organization." There are no indications in the file that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously examined by this or any other international organization. Therefore, it must be declared that the requirements set forth in Articles 46.1.c and 47.d of the Convention have been duly met.

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

36. On the basis of the information submitted by the parties and the nature of the case presented for review, the Commission finds that, in the present case, it must determine whether the allegations of the petitioner tend to establish violations of the right to life protected by Article 4 of the American Convention in conformity with Article 1.1 of the same Treaty to the detriment of the four alleged victims. The Commission also finds that, in the present case, it must determine whether the allegations of the petitioner tend to establish violations of the rights to a fair trial and judicial protection protected in Articles 8.1 and 25 of the American Convention to the detriment of the next of kin of the alleged victims.

37. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements. The Commission shall also consider in the review of the merits of the case, the alleged violation of Article 5 of the American Convention to the detriment of the next of kin of the alleged victims.

38. The Commission deems that the petitioners did not submit any allegations substantiating a possible violation of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

## **V. CONCLUSIONS**

39. The Commission concludes that it is competent to hear the complaints lodged by the petitioners regarding the alleged violation of Articles 4, 5, 8.1 and 25, in conformity with Article 1.1 of the American Convention and that these petitions are admissible, pursuant to the requirements set forth in Articles 46 and 47 of the American Convention. It also concludes that it must declare that the petition regarding the alleged violation of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty is inadmissible.

40. 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 as regards the alleged violation of Articles 4, 5, 8 and 25 of the American Convention, in connection with Article 1.1 of this treaty.
2. To notify the Ecuadorian State and the petitioners of this decision.
3. To continue reviewing 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 2nd day of November 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.