

**REPORT No. 32/12**  
PETITION 170-00  
INADMISSIBILITY  
JOSÉ HERNÁN SUSANIVAR SUSANIVAR ET AL  
PERU  
March 20, 2012

**I. SUMMARY**

1. On April 18, 2000, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission," "the Commission," or "the IACHR") received a petition lodged by José Hernán Susanivar Susanivar (hereinafter also "the petitioner"), on his own behalf and representing Dominga Trujillo Huamanchay, Carolina Aydée, José Javier, Mercedes Elvira, and Jhon Michael Susanivar Trujillo (hereinafter "the alleged victims") against the Republic of Peru (hereinafter also "the State," "the Peruvian State," or "Peru") on account of the alleged violation of rights established in the American Convention on Human Rights (hereinafter also "the American Convention," or "the Convention"). The petitioner alleged that the Peruvian State did not guarantee compliance with judicial decisions in criminal complaints and civil actions brought against the Rural Community (*Comunidad Campesina*) of Jucul. He maintained that one of those judgments ordered the defendant to pay a certain sum in compensation in addition to other obligations, but the Peruvian State had not adopted the measures needed to ensure full compliance.

2. The State described the criminal charges and civil actions for compensation filed by Mr. José Hernán Susanivar against the leaders of the Rural Community of Jucul. It pointed out that the criminal proceedings had been archived since the end of the 1980s and that a civil action that was decided on September 25, 1990 was reopened in March 2002 at the request of Mr. Hernán Susanivar. It added that during the execution process, payment of principal was made by the Rural Community of Jucul, leaving approximately 625 new soles still to be paid on account of legal interest.

3. After analyzing the position of the parties, the Commission concluded that it is competent to hear the claim, but that it is inadmissible because it fails to satisfy the requirements provided for in Articles 46(1)(a) and 47(b) of the American Convention. The Commission decided to notify the Parties of this Inadmissibility Report, publish it, and include it in its Annual Report to the General Assembly of the OAS.

**II. PROCESSING BY THE COMMISSION**

4. The IACHR received the petition on April 18, 2000, and registered it as number 170-00. The petitioners presented further information on May 2, 2000 and December 5, 2007. On February 20, 2008, the petition was forwarded to the State, which was given two months to submit its response, pursuant to the IACHR's Rules of Procedure.

5. On April 24, 2008, the State presented its reply and on April 31 of the same year remitted the corresponding annexes. The petitioners submitted additional briefs on May 9, June 10, September 2, and October 23, 2008; on January 27, June 8, July 27, August 7, 11, and 31, and October 16, 2009; on June 7, August 25, and October 5, 2010; and on April 19, 2011. For its part, the State submitted further communications on October 17, 2008; June 19, 2009; and July 16 and December 17, 2010.

6. On May 19, 2011, the IACHR requested further information from the petitioner, who sent a communication on July 22 of that same year. On August 9, 2011, the IACHR again requested further information from the petitioner, who submitted additional writs on November 21, 2011 and March 9, 2012.

7. On October 3, 2011, the IACHR requested information from the State and reiterated that request on November 29. The Peruvian State sent its reply on January 5, 2012.

**III. POSITIONS OF THE PARTIES**

## A. The petitioner

8. The petitioner stated that in March 1984 members of the Rural Community of Jucul spread libelous information about him and damaged irrigation canals on his farm in a rural area of the province of Huaura, in the department of Lima. He said that the raid on his property killed dozens of heads of cattle and other livestock and deprived his family of drinking water. He added that members of the aforementioned community had prevented his children from going to school and had deprived them of their rights as members of the community.

9. The petitioner mentioned the existence of criminal charges and civil suits against the leaders of the Rural Community of Jucul. He pointed out that in a civil suit registered as case No. 1091-89, the First Civil Court of Huaura handed down a judgment on September 25, 1990, ordering the defendants:

[...] to compensate the plaintiff, Mr. José Hernán Susanivar Susanivar, for damages in the amount of FIFTY MILLION INTIS, plus legal interest from the date the damage was done to be determined in the execution of judgment; furthermore, the community of Jucul shall restore to the plaintiff the exercise of his rights as an active member of the community as well as the goods and services taken from him and his family; they shall also be liable for restitution of access to water for his home and farm [...].

10. According to the information provided by the petitioner, on September 3, 1991, the First Civil Court of Huaura issued resolution No. 27, in an execution of judgment session, ordering the defendant community to pay Mr. José Hernán Susanivar approximately 181,000 soles. According to the petitioner, the conversion of the 50 million intis awarded in the judgment of September 25, 1990 to 181,000 soles in the resolution of September 3, 1991 involved a reduction in the value of the debt and disregard for the real damage caused on his property by members of the Rural Community of Jucul. It was also argued that the initial sum of 50 million intis should have been converted into 50 million soles.

11. The petitioner indicated that on March 14, 2002, he had asked the First Civil Court in Huaura to re-open case No. 1091-89 and to resume the enforcement of judgment process. He pointed out that on October 3, 2002, the First Civil Court in Huaura handed down resolution No. 99, indicating in the relevant section:

THIRD. - That it transpires from the proceedings that the last interlocutory order was dated November 18, 1993 and that on March 14 of the current year, the plaintiff requested the reopening of the case for processing.

[...]

FIFTH. - That, by means of the writ on page 300, the defendant paid the plaintiff the sum of 293 new soles, thereby settling both the balance of the principal and the interest owed.

SIXTH. - That no document in the file indicates that the plaintiff has had the exercise of his rights as an active member of the community restored, nor that the goods and services of which he and his family were deprived have been restored.

SEVENTH. - [...] since the defendant has made the payment ordered in the judgment and paid for the settlement carried out, there remains still pending the balance of the payment of interest mentioned on page 188 in the amount of 725.30 new soles, given that, according to the contents of page 209, only 100 new soles has been paid.

EIGHTH. - That, in light of the above, the Court RESOLVES: To declare the defendant's request for PRESCRIPTION GROUNDLESS and, as for the restitution of services pertaining to an active member of the community: That the defendant shall comply with presentation of the document stating that the plaintiff has the status of an active member of the community, and that it shall do so within 10 days.

12. The information submitted indicates that, given failure to comply with item 8 of the resolution cited above, criminal proceedings were opened (case No. 2003-064 FL87) against the head of the Rural Community of Jucul, Isaac De la Cruz Nivin, for the crime of disobedience and resisting authority to the detriment of José Hernán Susanivar and the State. That information indicates that Mr. De la Cruz Nivin was convicted in first instance by the Second Criminal Court of Huaura, in a judgment handed down on November 26, 2004. However, on June 7, 2005, the Superior Court in Huaura issued resolution No. 54, acquitting the accused on the following grounds:

The judgment issued by the civil body ordered the Rural Community of Jucul to comply, not the convicted person. Moreover, that occurred in 1990, when said convicted person was no longer the representative of the aforementioned community; therefore he cannot be assigned a duty to comply with a court order when he was not the one responsible for complying with it [...].

13. The information in the file indicates that said resolution of the Superior Court in Huaura was appealed by Mr. José Hernán Susanivar. On August 25, 2005 that appeal was declared inadmissible by the Mixed Chamber of the Superior Court of Huaura. Subsequently, the plaintiff filed a remedy of complaint, which was declared by the same Mixed Chamber in Huaura to be time-barred and insufficiently substantiated, in a resolution handed down on September 9, 2005.

14. The petitioner attached a copy of a complaint filed on October 22, 2004 with the Judicial Oversight Office of the Supreme Court of Justice, requesting the opening of a disciplinary process on account of alleged irregularities committed by the judges of the Superior Court of Huaura in criminal case No. 2003-064 FL87. In addition, a resolution was attached, dated November 4, 2005, in which the National Judicial Council (*Consejo Nacional de la Magistratura*) announced that in order to begin processing the disciplinary complaint it required the delivery, within five days, of a legible copy of Mr. Hernán Susanivar's I.D., payment of an administrative fee, and other documents. The petitioner did not say whether those demands were met. Nor did he indicate the outcome of the disciplinary complaint of October 22, 2004.

15. The petitioner provided a copy of letters addressed to Presidents of the Judiciary Branch and Human Rights Commission of the National Congress, to then First Lady Keiko Sofía Fujimori, the Ministry for Women's Affairs, the Archbishopric of Lima, and to the Office of the President during the governments of Alberto Fujimori and Alan García, among other bodies, requesting that they intervene to ensure that the members of the Rural Community of Jucul paid fair compensation for the harm done to his family. Finally, Mr. Hernán Susanivar attached certificates of medical treatment and requested that the IACHR "order a commission to investigate [the] facts and conduct an appraisal to assess and verify the Calamitous State of [his] properties."

## **B. The State**

16. The State declared that between 1984 and 1989, Mr. José Hernán Susanivar had filed three criminal charges against leaders of the Rural Community of Jucul, with whom he maintained hostile relations. It stated that in 1984 the alleged victim brought criminal charges for libel against Dolores Gómez García, who had allegedly accused him of terrorism. According to the information provided, that suit led to an unappealable conviction on October 3, 1998 that brought the proceedings to an end.

17. The State indicated that on May 6, 1986, Mr. José Hernán Susanivar filed criminal charges against Samuel Avendaño Silvestre and Rufino Avendaño Salas for crimes against property in the form of robbery, seizure, and damage. It pointed out that on April 22, 1991, the First Court of First Instance in Huaura considered that the liability of the accused had not been substantiated, for which reason it had ordered the case dismissed and the file definitively archived.

18. The State reported that on July 8, 1988, Mr. José Hernán Susanivar filed charges of libel against Rufino Avendaño Salas and other members of the Rural Community of Jucul. It said that the corresponding criminal proceedings were archived on March 25, 2008, "since they had stagnated due to inertia of the plaintiff [...] who had failed to move the case forward for over 18 years."

19. The State declared that on July 17, 1989, Mr. Hernán Susanivar brought a civil suit against the Administrative Board and legal representative of the Rural Community of Jucul, in which he requested payment of compensation for damage done as a result of the dissemination of libelous information against him. That had given rise to case No.1091-1989. According to the copy of the court resolutions provided by the State, on September 25, 1990, the First Civil Court of Huaura found the claim substantiated and ordered the aforementioned Community to pay compensation and the corresponding legal interest. The same resolution considered that it had been proven that the leaders of the Community had deprived Mr. José Hernán Susanivar of the use of safe water for human consumption and for farming, for which reason it ordered the defendant to restore his access to goods and rights to which he was entitled as an active member of the Community. The information furnished by the State indicates that the judgment handed down by the First Civil Court in Huaura had been declared unappealed on February 20, 1991.

20. The State maintained that on March 14, 2002 Mr. José Hernán Susanivar requested the First Civil Court in Huaura to reopen case No. 1091-1989, after almost 10 years had elapsed without the proceedings being moved forward in any way. It asserted that when the execution of judgment process resumed, the First Civil Court in Huaura issued resolution No. 99 of October 3, 2002, which found that the Rural Community of Jucul had paid the established amount of compensation, leaving interest in the amount of 625.30 new soles to be paid, and ordered that José Hernán Susanivar's rights be restored as an active member of the Rural Community of Jucul. Peru reiterated the information provided by the petitioner regarding the decisions handed down by the courts and criminal chambers of the Superior Court of Justice in Huaura between November 2004 and September 2005 in the criminal proceedings on account of disobedience and resisting authority (case No. 2003-064 FL 87).

21. Finally, the State declared that “the judgment handed down in the civil law suit for damages brought by José Hernán Susanivar Susanivar against the Rural Community of Jucul before the First Civil Court in Huaura is being complied with [...] particularly since payment to the petitioner has been verified, with legal interest still pending.”

#### IV. ANALYSIS OF ADMISSIBILITY

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

22. The petitioner is entitled under Article 44 of the American Convention to lodge petitions with the Commission. The alleged victims are individuals whose rights under the Convention the Peruvian State pledged to observe and guarantee. Peru ratified the American Convention on July 28, 1978. Therefore, the Commission is competent *ratione personae* to examine the petition.

23. The Commission is competent *ratione loci* because the petition alleges violations of rights protected under the American Convention that took place within the territory of a State Party to that treaty.

24. The Commission is competent *ratione temporis* because the obligation to observe and guarantee the rights protected by the American Convention was already in force for the State at the time when the facts alleged in the petition occurred.

25. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

##### B. Exhaustion of domestic remedies and colorable claims

26. Article 46(1)(a) of the American Convention provides that, for a petition submitted to the Inter-American Commission in accordance with Article 44 of the Convention to be admitted, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. Article 47(b) of the same instrument establishes that the Commission shall consider inadmissible any petition if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

27. This petition alleges noncompliance with a court judgment of September 25, 1990 in which the First Civil Court of Huaura ordered the Rural Community of Jucul to compensate the alleged victims and adopt certain measures. The information available indicates that the process for execution of that judgment was kept open until November 18, 1993, when it was archived for lack of activity by the parties. On March 14, 2002, Mr. José Hernán Susanivar asked for the case to be re-opened, following which the First Civil Court of Huaura found, on October 3, 2002, that the defendants had paid the principal amount of the compensation, but not the legal interest in the amount of 625.30 new soles, which remained pending.

28. On May 19, 2011, the IACHR asked the petitioner for up-to-date information regarding:

1. "the remedies or any other type of writ in which you informed the competent judicial authorities concerning the alleged failure to comply with the court orders to pay you compensation for damages, and the outcome thereof;
2. if you did not make any written presentation or file any appeal with the competent judicial authorities, please explain why not."

29. In a communication received by the IACHR on July 22, 2011, the petitioner remitted a copy of a disciplinary complaint filed on October 22, 2004 with the Judicial Oversight Office of the Supreme Court of Justice. Based on the documents provided, that complaint has to do with the allegedly improper conduct of the judges of the Superior Court in Huaura who heard a criminal case for the crime of disobedience and resisting authority brought against a member of the Rural Community of Jucul, without any indication of the outcome of that case.

30. In the absence of a specific reply to the request for information made on May 19, 2011, the IACHR asked the petitioner again, on August 9, 2011, to provide up-to-date information on the existence of any proceedings in relation to enforcement of the judgment ordering compensation for

damages. On November 21, 2011, the petitioner sent another communication in which he reiterated that the defendants had not fully complied with the court judgment in his favor. However, he did not submit information on measures possibly taken to ensure that the First Civil Court in Huaura ordered the defendant to comply with the judgment of September 25, 1990.

31. On October 3, 2011, the IACHR requested that the State provide information regarding the following:

1. whether the Rural Community of Jucul had paid the legal interest referred to in paragraph 7 of resolution No. 99 of October 3, 2002, handed down by the First Civil Court of Huaura in case No. 1091-89; and
2. whether the Rural Community of Jucul had fulfilled its obligation to restore the rights of Mr. José Hernán Susanivar and his family as active members of the community, pursuant to paragraph 8 of aforementioned resolution No. 99 of October 3, 2002.
3. It also requested that the State provide a copy of any written statement made by the parties involved in the judgment execution process in relation to case No. 1091-89, and of any resolutions issued by the First Civil Court of Huaura after October 3, 2002.
4. Finally, it asked whether any item in the compensation judgment in favor of Mr. José Hernán Susanivar and his family was still pending execution.

32. On November 29, 2011, the IACHR reiterated its request for information to the Peruvian State, which presented its observations in a communication received on January 5, 2012. Regarding the first item in the IACHR's note of October 3, 2011, Peru stated that the Rural Community of Jucul had complied with a payment of S/. 393.00 (three hundred and ninety-three new soles) to Mr. José Hernán Susanivar, while payment of legal interest was still pending. As regards the second item, the State furnished a copy of a document of November 30, 2004, in which the legal representative of the defendant pointed out that

[...] as can be seen in the files, the plaintiff seeks restitution of goods and services of which he and his family were deprived, as stated in the judgment of September 25, 1990. In that regard, this party points out that it has restored to the plaintiff the goods and services referred to in the preambular paragraphs of the judgment. In addition, the exercise of his rights as an active member of the community has been reinstated, so that the plaintiff has nothing to claim because this party has complied fully with the orders imparted in the judgment.

FURTHERMORE: We point out that the plaintiff has not lived in the Rural Community of Jucul for approximately 17 years, where neither he nor his family reside, and his properties have been abandoned, as a result of which he makes no use of the water or services of the community, whereby he also fails to fulfill his communal work obligations on behalf of the community, as required by the General Law on Communities, No. 24656.<sup>1</sup>

33. The State maintained that, while a sum is still pending payment in respect of legal interest, because this concerns execution of judgment against a private entity

the Court cannot pursue the matter *ex officio*. It is incumbent upon the interested party to take that initiative. Accordingly, for several years, Mr. Susanivar did not ask the Court to require the community to pay the sum pending [...]. Only as late as March 22, 2011 did the petitioner formally request in writing payment of that debt [...]. There is a lack of diligence on the part of the petitioner in moving the enforcement of judgment proceedings (still under way), because it was his own inertia that caused the delays in said proceedings and hence the failure to comply fully with the provisions of the judgment that was decided in his favor at the national jurisdiction level.

34. The observations of the Peruvian State copies in the two foregoing paragraphs were forwarded to the petitioner on January 30, 2012. The IACHR had received no observations by the time this report was adopted.

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<sup>1</sup> Communication from the Peruvian State received by the IACHR on January 5, 2012 attaching a document presented by the representative of the Rural Community of Jucul to the Judge of the First Civil Court of Huacho, November 30, 2004, page. 2

35. In cases of alleged failure to comply with resolutions regarding property-related obligations of private entities, the IACHR has pointed out that it is not incumbent upon it to replace the judicial authorities in determining matters of domestic law, such as embargoes, the auctioning of property, orders of preference, or other measures of execution. In that respect, it has indicated that, before resorting to an international body, the alleged victims should in principle pursue enforcement mechanisms under domestic law.<sup>2</sup>

36. The information submitted by the Parties indicates that the proceedings for enforcement of the compensation judgment handed down on September 25, 1990 remained archived for several years, due to inactivity with respect to the proceedings on the part of the Parties concerned. In March 2002, the execution proceedings were re-opened, without the petitioner having reported on any measures possibly taken to ensure that the First Civil Court of Huaura acted in accordance with domestic law, applying coercive mechanisms to enforce full compliance with the judicial order against the Rural Community of Jucul.

37. The IACHR considers that, with respect to the requirement set forth in Article 46(1)(a) of the American Convention, it was up to the alleged victims to invoke the mechanisms provided for under domestic law in connection with the proceedings for enforcement of the above-mentioned compensation judgment against the Rural Community of Jucul. However, the petitioner restricted himself to arguing alleged noncompliance with the judgment before this international body, without informing it of measures filed with the competent judicial authorities. Furthermore, given the lack of specific information from the petitioner, the IACHR lacks evidence that the alleged failure to comply with the compensation judgment handed down on September 23, 1990 may be assigned to the Peruvian State. Therefore, the facts alleged in the petition do not *prima facie* tend to establish a violation of rights protected in the American Convention.

38. The Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.<sup>3</sup>

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<sup>2</sup> IACHR, Report No. 119/11, Petition 648-98, Inadmissibility, Marcos Mauricio Lecca Vergara et al, Peru, July 22, 2011, paragraph 21; Report No. 17/11, Petition 277-01, José Luis Forzzani Ballardo, Peru, March 23, 2011, paragraph 21; and Report No. 158/10, Petition 167-99, Inadmissibility, Members of the Workers Trade Union of Unión Productores de Leche S.A., Peru, November 1, 2010, paragraph 24.

<sup>3</sup> IACHR, Report No. 14/10, Petition 3576-02, Inadmissibility, Workers Dismissed from *Lanificio del Perú S.A.*, Peru, March 16, 2010, par. 35; Report No. 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, Peru, November 12, 2009, par. 37; and Report No. 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, par. 38.

## **V. CONCLUSIONS**

39. Based on the foregoing arguments of fact and law, the Commission considers that the petition does not meet the requirements set forth in Articles 46(1)(a) and 47(b) of the American Convention and, therefore,

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

#### **DECIDES:**

1. To declare this petition inadmissible because it does not fulfill the requirements established in Articles 46(1)(a) and 47(b) of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 20th day of March 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González; Second Vice-President, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Belle Antoine, Commission Members.