

**REPORT No. 73/13**  
DECISION TO ARCHIVE  
PETITION 3683-02  
EL SALVADOR  
July 16, 2013

**ALLEGED VICTIMS:** Brenda Marisol Cabrera Hernández and 86 other alleged victims

**PETITIONERS:** José Ignacio Javier Paniagua Castro represented by the Fundación de Estudios para la Aplicación del Derecho (FESPAD)

**ALLEGED VIOLATIONS:** Right to life and judicial protection

**DATE PROCESSING STARTED:** September 9, 2002

**I. POSITION OF THE PETITIONERS**

1. The petitioners alleged that on January 13, 2001, a powerful earthquake shook El Salvador and one of the consequences was a landslide on the side of a mountain known as La Gloria in the Municipality of Nueva San Salvador. The landslide caused the death of approximately 500 people and destroyed approximately 300 homes in the residential area of La Colina. The petitioners maintain that although the event was an act of nature that would have been difficult to prevent, the authorities had information that would have shown demonstrated the high risk posed by the existence of homes in the zone. In spite of this, urbanization of said lands was tolerated and the necessary measures designed to prevent the consequences that occurred were omitted.

2. They indicated that in order to seek protection and restitution for the affected rights they filed a writ of *amparo* on July 3, 2001 for the alleged omissions committed by the defendant authorities on the basis of their previous knowledge of the zone's risks. The writ of *amparo* was filed on behalf of 37 people who died. According to the petitioners, said claim was declared inadmissible on March 5, 2002.

**II. POSITION OF THE STATE**

3. The State alleged that the petition should have been declared inadmissible as the petitioners did not exhaust domestic remedies. It affirmed that the relatives of the victims did not begin civil, criminal, or contentious administrative proceedings before an administrative or judicial authority which would have permitted the alleged violation to be examined. In that regard, the State referred to a civil suit for damages and a criminal proceeding alleging wrongdoing on the part of the authorities and the attendant compensation sought by the alleged victims.

4. The State also indicated that the verdict by the Constitutional Chamber of the Supreme Court of Justice of March 5, 2002 did not cause *res judicata*, that would have prevented the alleged victims from pursuing other judicial proceedings in through other regular judicial proceedings . The State did not make any allegations regarding the events that allegedly gave rise to said proceedings.

### **III. PROCESSING BY THE IACHR**

5. The IACHR received the petition on September 9, 2002, and registered it as No. 3683-02. A copy of the petition was forwarded on August 15, 2003, to the State, which was given two months to respond, in accordance with the IACHR Rules of Procedure in effect at the time. The State submitted its response on November 21, 2003. The petitioner submitted additional information on June 7, 2004. The State presented additional information on December 17, 2004.

6. On December 16, 2011, the IACHR informed the petitioners that petition 1153-03, in which they were also representatives, had been joined with petition 3683-02 because they concerned similar facts. Likewise, the IACHR requested updated information to determine whether the grounds for the complaint continued to exist. In the same communication, the petitioner was informed that if the Commission did not receive the requested information within one month, the IACHR could archive the petition in accordance with Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the IACHR Rules of Procedure.

### **IV. GROUNDS FOR THE DECISION TO ARCHIVE**

7. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42(1) of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition, once the observations have been received or the set period has elapsed without receipt of observations, the IACHR shall verify whether the grounds for the petition exist or subsist, and if they do not it shall order the case archived.

8. In this case, more than nine years have passed since the last communication was received from the petitioners and, despite a request for updated information that was made on December 16, 2011, to date, the IACHR has not received the information necessary to update the processing of the petition, as was requested.

9. Accordingly, the Commission lacks the necessary information to determine if the grounds supporting the original complaint subsist, or to reach a decision on the alleged human rights violations. Therefore, in accordance with Article 48(1)(b) of the Convention and Article 42 of its Rules of Procedure, the IACHR decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 16th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Antoine, Commissioners.