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REPORT No. 57/15
PETITION 15-09
REPORT ON ADMISSIBILITY

VERÓNICA J. PALACIOS V.
GUATEMALA

Approved by the Commission at its session No. 2046 held on October 17, 2015
156th Regular Period of Session.

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Guatemala. October 17, 2015.



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I. SUMMARY

1. On January 6, 2009, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition that Mr. José Israel Palacios (hereinafter “the petitioner”) lodged against the Republic of Guatemala (hereinafter also referred to as “Guatemala” or “the State”) alleging that Guatemala is internationally responsible for the abduction and extrajudicial execution of his daughter Verónica J. Palacios V (hereafter also referred to as “the alleged victim”), the subsequent denial of justice on the part of the competent judicial authorities, and the threats and other forms of retaliation of which he and his family had been victims for having requested that the competent authorities press forward with the appropriate investigations.

2. The petitioner alleges that his 17-year-old daughter, who had mental and physical disabilities, was abducted and brutally murdered in 2005 by agents of the State and their confederates, in retaliation for certain initiatives that he, as an army officer, was promoting and that were contrary to the interests of high-ranking Army officers. He contends that from the very beginning, the National Civil Police and the Public Prosecutor’s Office were blatantly negligent in their conduct and that any progress in the investigation had depended upon his initiative as an aggrieved party. The petitioner alleges further that because he was so persistent in demanding that the case be investigated and those responsible brought to justice, he and his family had been threatened and tailed by persons linked to the Army and that he himself had been separated from service in the Army, where he had the rank of colonel. The petitioner is claiming that the exception allowed to the rule requiring exhaustion of domestic remedies applies because of the unwarranted delay in rendering a final judgment.

3. The State, for its part, claims that the State cannot be held internationally responsible for the events denounced because the right to life is duly protected under its own laws and because the competent authorities have taken all steps necessary to investigate the death of young Verónica J. Palacios V. The State further contends that the petitioner was discharged from service as a colonel in the Army for cause, based on the rules of military discipline. The State further alleges that it had afforded the petitioner and his family protection. As for the admissibility of the petition, Guatemala argues that internal remedies were not exhausted, because an investigation was purportedly still being conducted into the alleged victim’s death, which had not yet identified any suspect.

4. Without prejudging the merits, after examining the positions of the parties and in keeping with the requirements set forth in articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for purposes of examining the allegations claiming violation of the rights protected under articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of one’s honor and dignity), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in connection with article 1(1) thereof, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all in relation to its duty to investigate and punish possible acts of torture. The Commission further decides to notify the parties of its decision, to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The IACHR received the petition on January 6, 2009, and forwarded the pertinent parts thereof to the State by note of August 9, 2013. In keeping with Article 30(3) of its Rules of Procedure then in

force, the Commission gave the State three months to submit its response. The State's response was received by note of November 21, 2013, and forwarded to the petitioner on April 4, 2013.

6. The petitioner submitted additional information on January 10, May 16 and August 21, 2014. These communications were duly forwarded to the State.

Precautionary measures

7. On December 22, 2008 the petitioner requested precautionary measures for him and his family; however, that request was dismissed by the Commission on April 14, 2009. Furthermore, he requested precautionary measures for the second time on May 14, 2010; but, on June 4, 2012 the Commission decided not to grant precautionary measures.

8. On August 2, 2012, the petitioners again requested the IACHR to grant precautionary measures. The request was registered as number PM-267-12 and is currently in process. On September 16, 2013 the Commission requested information from the State. The proceeding of this request for precautionary measures is still open. According to information received from the petitioner, he was appointed in Nicaragua as military attaché from 2007 to 2011.

III. POSITION OF THE PARTIES

A. Petitioner

9. The petitioner, a former colonel in the Armed Forces, is claiming that his daughter Verónica J. Palacios V., age 17 and suffering from "cerebral palsy, mild mental retardation and difficulty speaking and walking due to spasticity in her arms and legs," was abducted outside her home on June 22, 2005, before 9:00 a.m. The National Civil Police (hereinafter "the PNC") had allegedly refrained from helping the family, claiming that the family had to wait 24 hours before filing a missing person's complaint. In the days that followed, the petitioner and his wife exhausted every avenue in the search for their daughter without result. Then on June 27, a staff member at the Military Medical Center who knew the petitioner's daughter, called him to inform him that her body was in the judicial branch's morgue. Thereafter, it was reportedly determined that the alleged victim had been alive for the 48-hour period following her abduction. On July 7, 2005, the petitioner and his wife filed a complaint with the Public Prosecutor's Office.

10. By way of context, the petitioner explains that as an Army officer and the father of a daughter with a mental disability, in 2004 he embarked upon a plan to have a special education school organized and operated on the premises of the Military Medical Center, to help special needs children of military personnel. The petitioner indicates that the project was in its final stage, with all the equipment needed for the school to go into operation. However, once he had formal authorization from the Director of the Military Medical Center, the heads of the Ministry of National Defense, the Ministry of the Interior, the PNC and the Deputy Director of Criminal Investigations of the PNC presented a project under which the army would share part of the Military Medical Center's facilities with the PNC. This project would be financially advantageous to the parties involved, since it would mean that the contributions to the Guatemalan Social Security Institute would go to the Military Medical Center instead. The special education school for special needs children was located in the spot planned for this joint army/police project. Likewise, according to the petitioner, the eventual establishment and operation of this school for special needs children was an obstacle for certain army officers with ties to drug trafficking, who supposedly used the Military Medical Center's facilities as a logistical point for this illicit activity.

11. The petitioner complains that after a decade of supposed investigations by the Public Prosecutor's Office, not one of the possible intellectual or material authors of his daughter's abduction and murder has been identified. He indicates that his daughter's abductors took advantage of her physical and mental disabilities; they studied the routine she followed in getting from her home to the Military Medical Center where she was receiving treatment. He also said that the perpetrators had to be persons familiar to her, who knew her, because his daughter was not initially suspicious of her abductors. The petitioner narrates

how, shortly after her abduction, an army general appeared at his home to try to sell him a false version of the facts that put the blame on persons who had nothing to do with what happened.

12. The petitioner states that on May 23, 2006, he had a conversation with Lieutenant Colonel Erwin López Samayoa, who gave him the names and particulars of the intellectual and material authors of his daughter's killing and of the place where she was said to have been held captive. The petitioner alleges that even though he had recorded the conversation and handed the recording over to the Public Prosecutor's Office, the latter procrastinated for several years before checking its authenticity. Even though this account was a coherent and detailed narrative of the events that occurred, the Public Prosecutor's Office failed to pursue any of the investigative leads that the information provided. In fact, it was not until 2011 that a search was ordered of the home where the alleged victim had supposedly been held captive; even so, this inquiry was poorly done, because the Public Prosecutor's Office made a mistake in determining the address of the property.

13. The petitioner indicates that at his request, and with the authorization of the judge overseeing the proceedings and following the procedural formalities, two studies were done of the alleged victim's corpse by United States forensic physicians: an examination of the skeletal remains in November 2009 and an autopsy in May 2010. These reports were said to have concluded that the alleged victim's death was caused by brute force trauma to the head and asphyxiation by strangulation. Nevertheless, the Public Prosecutor's Office had reportedly refused to take these reports into account, and instead relied solely on the opinion of the government forensics that, although they participated in the same procedures, had allegedly persisted in claiming that the cause of death was undetermined. This is the official statement that appears on the alleged victim's death certificate to this day. The petitioner questions the qualifications of the court-appointed physicians.

14. The petitioner further alleges that the Public Prosecutor's Office is anything but willing to investigate the events and instead has, on at least two occasions, asked the judge overseeing the proceedings to order the investigations closed. However, on both occasions –May 30, 2011 and July 26, 2012- the court decided to keep the case open and ordered the Public Prosecutor's Office to proceed with the investigations. Furthermore, on December 17, 2008 the Office of the Prosecutor for Human Rights reportedly issued a resolution establishing a violation of the right of access to justice, to the detriment of the alleged victim's next of kin and ordering the Public Prosecutor's Office to conduct a thorough and objective investigation into the kidnapping and murder of Verónica J. Palacios V., so that those crimes would not go unpunished. Later, the Office of the Prosecutor for Human Rights issued a follow-up resolution on June 17, 2013, in which it reiterated the findings of its previous resolution and added an order to the head of the Public Prosecutor's Office instructing him to take the disciplinary and administrative measures called for given the negligence in the handling of the investigations into the case.

15. The petitioner also highlights the fact that between June 2005 and May 2014, the case has been in the hands of a succession of investigators: 7 heads of the Section for Crimes against Life and Personal Integrity and 15 prosecutors and deputy prosecutors. The petitioner contends that the rotation of officials in the Public Prosecutor's Office has posed yet another obstacle to efficient progress in the investigations into the alleged victim's abduction and murder.

16. The petitioner further contends that over the years, he and his family have received threats and been subjected to pressure to dissuade them from pressing for an investigation to identify those responsible for his daughter's abduction and killing. He states, for example, that they have been tailed by strange and hostile persons and have been on the receiving end of anonymous threatening phone calls and unauthorized intrusions into the family home during the petitioner's absence. According to the petitioner this harassment was committed by State agents. He adds that in January 2012, the General that he singles out as being one of those involved in the events, was promoted to the post of Chief of the National Defense Staff and that the petitioner has since allegedly been the target of a number of arbitrary sanctions that ultimately ended in his discharge from the armed forces on October 31, 2012, two months shy of his retirement and following an unblemished career of 32 years and 10 months of service, during which he had never received any disciplinary sanction. The petitioner alleges in this regard that he had exhausted the pertinent

administrative and judicial remedies and that in the end the Constitutional Court issued a ruling in his favor on December 10, 2013, ordering his reinstatement in the army. However, the State allegedly never complied with the Court's decision.

17. Based on the foregoing, the petitioner is alleging that the State violated the rights recognized in articles 1 and 4 of the American Convention, to the detriment of Verónica J. Palacios V., age 17, and the rights recognized in articles 8 and 25 of that instrument, to the detriment of her next of kin, José Israel Palacios (father/petitioner), Mirna V. Villatoro R. (mother) and Ángela A. Palacios V. (sister).

B. State

18. The State of Guatemala underscores that its laws fully protect the right to life and that the observance and protection of this right are based on constitutional provisions. Under the Constitution of the Republic, protection of the individual and of the family is one of the State's fundamental purposes and duties. The State contends that it does not consider itself responsible for violation of articles 4 and 1 of the American Convention by virtue of the death of young Verónica J. Palacios V., since its laws guarantee its inhabitants' right to life and because the alleged victim's abduction and death are under investigation.

19. In this regard, the State contends that internal remedies have not been exhausted since "the criminal case is still under investigation, and no suspect has yet been found." In its response, the State provided a detailed list, organized chronologically, of all the investigative measures on record in the case file (Case C-10680-2005, assigned to the Third Court of First Instance, Drug Trafficking and Crimes against the Environment). Following an explanation of the material in that case file, the State concludes that "it does not have the evidence necessary to name any suspect who might be criminally implicated in the death of Verónica J. Palacios V."

20. The State argues that despite the exhumation conducted, the alleged victim's cause of death could not be established. It reports that the first autopsy, done on June 28, 2005 by a State forensic physician, could not establish the causes of the alleged victim's death "because no type of injury or obvious possible cause was found that would have to be regarded as the probable origin of her death." The same State physician confirmed this finding in a detailed report of February 17, 2009.

21. As for the alleged danger to the petitioner and his family, the State alleges that the following measures were taken through the Ministry of Defense: (a) the petitioner was appointed military attaché at the Guatemalan Embassy in Nicaragua (where he served from 2007 to 2012); (b) his family was provided with protection; (c) they were provided with vehicles; and (d) they were provided with housing in a military complex.

22. The State further contends that the disciplinary measures enforced in the petitioner's case and his dismissal as an officer in the Army were taken in accordance with the Guatemalan Army's Rules of Military Discipline (Governing Agreement 2-2008), as a consequence of the petitioner's flagrant misconduct while serving as an officer, which was in violation of the principles of discipline and obedience regulated by that statute.

23. The State concludes that the rights protected in articles 8 and 25 of the American Convention have not been violated since, in its view, no basis has been established to allege that justice has been denied; the fact that no person has been identified and punished is not the fault of the State, as it has demonstrated that it has fulfilled its obligation to conduct an effective investigation.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

24. In principle, under Article 44 of the American Convention, the petitioner is authorized to submit petitions to the Commission. The alleged victim named in the petition is an individual whose rights

under the American Convention the Guatemalan State agreed to respect and guarantee. As for the State, Guatemala has been a State party to the American Convention since May 25, 1978. The Commission also notes that Guatemala has been party to the Inter-American Convention to Prevent and Punish Torture since January 29, 1987. These are the dates on which it deposited the respective instruments of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention and in the Inter-American Convention to Prevent and Punish Torture, said to have occurred within the territory of Guatemala, a State Party to those treaties.

25. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention and in the Inter-American Convention to Prevent and Punish Torture were already in effect for the State on the date when the events alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae*, in that the petition alleges possible violations of human rights protected by both conventions.

26. The above is without prejudice to the fact that when, in the merits phase of the present petition, possible violations of the American Convention are considered, the IACHR may take into consideration other instruments that are part of the *corpus juris* on the subject of the rights of children and adolescents and on the rights of disabled persons, whenever pertinent.

B. Admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention states that for a complaint alleging a violation of the American Convention to be admissible, the remedies under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to give the domestic authorities the opportunity to examine an alleged violation of a protected right and, if appropriate, resolve the matter before it is brought to the attention of an international body. For its part, Article 46(2) of the Convention provides that the prior exhaustion requirement shall not be applicable when: (i) 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; (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. The petitioner is claiming that the exception to the prior exhaustion rule applies because of the unwarranted delay in the criminal case instituted into the abduction and murder of his daughter Verónica J. Palacios V. He argues that, looking at the process as a whole, it is indefensible that after ten years the case should still be in the investigative stage; the Public Prosecutor's Office has been slow and inefficient, particularly during the first two years of the investigation when that office neither ordered nor conducted any taking of evidence. The State, for its part, argues against this petition's admissibility on the grounds that the investigation is still in progress; that the obligation to investigate is one of means and not results, and that the means have been diligently pursued; it maintains, therefore, that internal remedies have not been exhausted.

29. The Commission has consistently held in this regard that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them,¹ and that in such cases criminal proceedings are the suitable means to clarify the facts, try those responsible, and establish the suitable criminal penalties. Furthermore, the Commission notes that, as a general rule, criminal investigations

¹ IACHR, Report No. 17/15, Petition 1139, Admissibility, Massacre of the Los Josefinos Village, Guatemala, March 24, 2015, par. 22; IACHR, Report 56/14, Petition 886-04, *Ronal Jared Martínez Velásquez and Marlón Fabricio Hernández Fúnez*, July 21, 2014, par. 20; IACHR, Report No. 51/10, Petition 1166-05, Admissibility, *Tibú Massacres*, Colombia, March 18, 2010, par. 110; IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, Nicaragua, pars. 96 and 97; Report No. 62/00, Case 11.727, *Hernando Osorio Correa*, par. 24.

must be conducted promptly in order to protect the interests of the victims, preserve the evidence, and safeguard the rights of anyone considered a suspect in the context of the investigation.²

30. In the present case, the IACHR observes that, *prima facie*, the ten-year period that the State has spent on a criminal investigation is a delay of such a nature that the State cannot now invoke it as grounds for claiming that the petitioner failed to exhaust domestic remedies.

31. Therefore, based on the foregoing considerations, the Commission concludes that the exception allowed under Article 46(2)(c) of the American Convention to the rule requiring exhaustion of domestic remedies applies in this case.

32. With regard to his separation from service as an officer in the armed forces, the petitioner indicates that this came in retaliation to his efforts in seeking justice for the murder of his daughter. In this respect, he explains that on December 10, 2012, the Supreme Court granted a writ of *amparo* in his favor and ordered that the resolution discharging him from the army be suspended. This decision was reportedly subsequently upheld by the Constitutionality Court in a decision of January 31, 2013. The petitioner claims that these court rulings were simply ignored by the Ministry of Defense. He therefore filed another petition with the Supreme Court seeking *amparo* relief. In a decision dated May 21, 2013, the Supreme Court reportedly denied his petition and also reversed the initial ruling in his favor. On May 29, 2013, the petitioner filed an appeal with the Constitutionality Court to challenge the Supreme Court's decision, and the Constitutionality Court ruled in his favor in a decision of December 10, 2013 (Case File 2250-2013), ordering that he be reinstated in the military. However, this decision has allegedly never been complied. The State, for its part, maintains that the dismissal was justified and in keeping with the rules of military discipline. The State did not question of exhaustion of domestic remedies.

33. Therefore, on this point the Inter-American Commission concludes that the petition satisfies the admissibility requirement established in Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

34. Article 46(1)(b) of the American Convention provides that for a petition to be admissible, it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment. In the complaint under review, the IACHR has established that the exception to the prior exhaustion rule provided in Article 46(2)(c) of the American Convention applies. Article 32(2) of the Commission's Rules of Procedure states that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

35. In the case under examination, the IACHR has established that the exception to the prior exhaustion rule allowed under Article 46(2)(c) of the American Convention applies, with regards to the claims concerning Veronica J. Palacios. The petition filed with the IACHR was received on January 6, 2009, and the facts alleged in the complaint were said to have started on June 22, 2005 and their effects are alleged to have continued to the present day. Hence, given the context and the characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time and the admissibility requirement referring to the deadline for filing the complaint has therefore been met. As for the claim pertaining to the petitioner's separation from service as a colonel in the Army, the Commission found that the remedies were exhausted with the Constitutionality Court's decision of December 10, 2013 which, as will be noted, was issued subsequent to the date on which the petition was filed with the IACHR.

² IACHR, Report No. 17/15, Petition 1139, Admissibility, Massacre of the Los Josefinos Village, Guatemala, March 24, 2015, par. 22; IACHR, Report No. 51/10, Petition 1166-05, Admissibility, *Tibú Massacres*, Colombia, March 18, 2010, par. 110.

3. Duplication of proceedings and international *res judicata*

36. Nothing in the case file suggests that the matter addressed in the petition is pending settlement in any other international proceedings, or that it reproduces a petition that has already been reviewed by this or any other international body. Therefore, the requirements provided for under Articles 46(1)(c) and 47(d) of the Convention are considered to have been met.

4. Colorable claim

37. For purposes of admissibility, the IACHR must decide whether the allegations state facts that would tend to establish violations of the American Convention, as provided in Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same article. The standard for evaluating these requirements is different from the one used to examine the merits of a complaint, since the IACHR only undertakes a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits of the matter.

38. Moreover, neither the American Convention nor the Rules of Procedure of the Inter-American Commission on Human Rights require petitioners to identify the specific rights alleged to have been violated by the State in matters submitted to the Commission, although petitioners may do so. It is up to the Commission, based on the system’s case law and jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments is applicable and whose violation could be established if the facts alleged are proven by means of sufficient evidence and legal argument.

39. The petitioner contends, in essence, that his daughter Verónica J. Palacios V., a young girl suffering from physical and mental disabilities, was abducted near her home, held captive for some 48 hours and brutally murdered by state agents and by persons acting in complicity with them. He further maintains that the right of her immediate next of kin to access to justice has been violated, and that to this day no one has made to answer for these crimes. He also alleges that both he and his family have been the target of various forms of intimidation and reprisals, on the part of State agents and persons linked to it, for their activity as private complainants in the domestic criminal case and in the petition filed with the IACHR. For its part, the State argues that it has complied with its duty to investigate the facts denounced and it cannot be held internationally responsible for the alleged victim’s death or for the failure to identify and punish those responsible.

40. Given the elements of fact and of law presented by the parties and the matter put to the Commission for consideration, the IACHR considers that if proved, the facts alleged could tend to establish violations of the rights protected under articles 4, 5 and 7 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Verónica J. Palacios V. They could also tend to establish violations of articles 5, 8, 25 and 11 (the last by virtue of the alleged tailing and intimidation and the alleged intrusions into their home and tapping of telephone lines) to the detriment of the immediate next of kin, who were duly identified in the processing of the petition: Israel Palacios (father/petitioner), Mirna V. Villatoro R. (mother) and Ángela A. Palacios V (sister), again in connection with Article 1(1) of the Convention. The Commission also considers that *prima facie* the facts could tend to establish violations of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all in relation to the duty to investigate and punish possible acts of torture.

41. The Commission will also examine the facts alleged in light of Article 19 of the American Convention, specifically with regard to the State’s special duty to protect under the principle of the best interests of the child and the *corpus juris* on the subject of the rights of children and adolescents.

V. CONCLUSIONS

42. On the basis of the foregoing considerations of fact and of law, the Inter-American Commission concludes that the present petition satisfies the admissibility requirements set forth in articles 46 and 47 of the American Convention and, without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible with respect to articles 4, 5, 7, 8, 11, 19 and 25 of the American Convention, in connection with the obligations set forth in Article 1(1) thereof, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To notify the parties of the present decision;

3. To proceed with the analysis of the merits of the case, and

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

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2015. (Signed):
Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez,
Second Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson, Commissioners.