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**REPORT No. 68/15**  
**PETITION 882-03**  
REPORT ON ADMISSIBILITY

VICTIMS OF THE MILITARY DICTATORSHIP  
PANAMA

Approved by the Commission at its session No. 2051 held on October 27, 2015  
156<sup>th</sup> Regular Period of Session.

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**I. SUMMARY**

1. On October 23, 2003 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a complaint filed by Alberto Santiago Almaza Henríquez, Director General of the Office to Monitor the Objectives of the Truth Commission, and Jacinto González Rodríguez, Legal Support officer of the Office to Monitor the Objectives of the Truth Commission, representing the Committee of Families of Persons Assassinated and Disappeared of Panama, Héctor Gallego, (COFADEPA-HG) and the Committee of Families of Disappeared Persons of Chiriquí (COFADECHI) ("the petitioners"), on behalf of the victims of the military dictatorship that ruled Panama between 1968 and 1989, against the Republic of Panama ("the Panamanian State", "Panama" or "the State"). The petition alleges that in the context of violence and abuse of power that prevailed during the military dictatorship instituted in Panama from October 11, 1968 until December 20, 1989, 109 persons<sup>1</sup> ("the alleged victims") were victims of extrajudicial executions or forced disappearances allegedly attributable to elements of the State security forces.

2. The petitioners contend that the State of Panama violated Articles 4 (right to life), 5 (right to humane treatment) and 7 (right to personal liberty) set out the American Convention on Human Rights ("the Convention" or "the American Convention"), to the prejudice of the alleged victims. They further say that the State is responsible for violation of Article I (right to life, liberty and personal security) of the American Declaration of the Rights and Duties of Man ("the American Declaration"), and of Articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons. As to the admissibility requirements, they argue that their petition is admissible inasmuch as in those cases in which domestic remedies have not been exhausted, the exceptions set out in Article 31(2) of the Rules of Procedure of the Inter-American Commission on Human Rights ("the Rules of Procedure") apply.

3. The State contends that some of the cases are inadmissible, because domestic remedies have not been exhausted, and that this failure to comply with the necessary requirements for a petition to be admissible cannot be circumvented by the use of exceptions to the rule on prior exhaustion of domestic remedies.

4. After examining the parties' positions, but without prejudging the merits of the complaint, the Commission decides, in keeping with the requirements set out in Articles 46 and 47 of the American Convention, to declare the case admissible for the purposes of examining the alleged violation of the rights set forth in the following Articles: i) 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the obligations established in Articles 1(1) and 2 of that instrument, to the prejudice of the 39 alleged victims who allegedly disappeared; ii) I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, to the prejudice of the 39 alleged disappeared victims; iii) 19 of the American Convention to the prejudice of the two minor children presumed to be disappeared; iv) I, XXV and XXVI of the American Declaration, to the prejudice of the 28 alleged victims allegedly executed prior to June 1978; v) 4, 5, 7, 8 and 25 of the Convention, to the prejudice of the 39 alleged victims allegedly executed after June 1978; vi) 19 of the American Convention to the prejudice of the minor child allegedly executed extrajudicially; vii) 5, 8 and 25 of the American Convention in connection with the obligations established in Articles 1(1) and 2 of that instrument, and viii) XVIII of the American Declaration, to the prejudice of the families of all of the 106 alleged

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<sup>1</sup> The petitioners lodged the complaint on behalf of 111 alleged victims. Given that two names on the list of victims are repeated, the total number of alleged victims is 109.

victims. The Commission also decides to notify the parties of this decision, to publish it and to include it in its annual report to the OAS General Assembly.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. The petition was received on October 23, 2003 and registered as P-882-03. It was forwarded to the State on October 6, 2004, which was granted a period of two months in which to present its observations, in accordance with the Rules of Procedure in effect at that time. The State presented its observation briefs on October 6, 2004, January 20, 2005, June 1, 2005 and October 3, 2005, which notes were duly forwarded to the petitioners.

6. The Commission also received information from the petitioners on the following dates: January 21, 2005, February 4, 2005, February 26, 2005, November 27, 2006 and May 19, 2015.<sup>2</sup> Those communications were duly forwarded to the State.

7. On April 6, 2004, the Costa Rican organization *Servicios Interamericanos de Abogados en Derechos Humanos* [Inter-American Human Rights Lawyers Services] presented an *amicus curiae* brief in which it discussed the scope and legal value of the Truth Commission of Panama. The brief was duly transmitted to the parties.

8. On March 2, 2005, during the 122<sup>nd</sup> period of sessions, a working meeting of the parties was held in the IACHR to explore the possibility of reaching a friendly settlement, but in the end, no such agreement was reached.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

9. The petitioners denounce the forced disappearance and extrajudicial execution in Panama of 109 persons between October 1968 and December 1989. According to their allegation, these violations were committed by officials of the military regime, under the general policy instituted by the military government of eliminating the opposition.

10. It is alleged in the petition that starting on October 11, 1968, the date of the military coup d'état of General Omar Torrijos, and up until the invasion by United States troops on December 20, 1989, Panama was under a military dictatorial regime during which many serious human rights violations were committed. During that dictatorship, officials of the National Guard dissolved the National Assembly, and named a Provisional Government Junta, which was run by the military.

11. The petitioners say that over that period, political activity was practically suppressed by a harsh military regime that engaged in the persecution and arbitrary, systematic detention of those who opposed the dictatorial government. They say in particular that a plan of repression was conducted against community leaders, student movements and supporters of the Civic Front [*Frente Cívico*]<sup>3</sup> who did not support the military government, and that this repression manifested itself in many acts of violence which, it is alleged, was the reason for the increase in the number of armed clashes, incarcerations and deaths in unexplained circumstances that occurred during this period.

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<sup>2</sup> Between 2006 and 2015, a Panel of Rapprochement was set up among the State and the petitioners for the purpose of finding a friendly settlement, which was officially recognized in December 2011 through Executive Decree No. 449. In their last communication, the petitioners say that in the years following, no progress has been made on the agreed agenda.

<sup>3</sup> According to the petition, the Civic Front was made up of followers of the deposed President of Panama, Arnulfo Arias, who were also known as "arnulfistas".

12. Within this context of violence and abuse of power, the petitioners present alleged violations of the fundamental rights of 109 persons. For each alleged victim, the petitioners identify the victim, describe the particular facts of the rights violations that were documented to the Truth Commission, and detail the judicial activity that took place in connection with those acts. They also describe the profile of the victims, saying that they were young people at the time of their death or disappearance, and most of them came from low-income social groups.

13. In particular, they claim that there were 39 forced disappearances allegedly attributable to agents of the Panamanian Army, two of which were committed against children. The petitioners identify as alleged victims of forced disappearance the following: 1) Marco Aurelio Rosas Martínez, 2) Everett Clayton Kimble Guerra, 3) Luis Castro Quintero, 4) Javier Sánchez, 5) Luis Antonio Quiroz Morales, 6) Carlos Milar González Caballero, 7) Benjamín Miranda Castillo, 8) Eulogio Rivera Delgado, 9) Alfredo Aguilar Fonseca, 10) Carlos Alberto Araya Bernal, 11) Teodoro Palacios Hurtado, 12) Juan Lekas, 13) Berardo Castillo González, 14) Héctor Manuel Candanedo Valenzuela, 15) Jorge Galván, 16) Alonso Sabín Castillo, 17) José Manuel Morantes Madrid, 18) Julio Mario Villarreal de las Casas, 19) Anel Saldaña Araúz, 20) Julio Alberto Samudio Silvera, 21) Cecilio Serracín Fuentes, 22) Javier Enrique Guerra González, 23) Daniel Emilio Heart Pérez, 24) José Enrique Pimentel, 25) Tomás Palacios Salinas, 26) Ignacio Salinas, 27) Rubén Morales, 28) Alberto Morales, 29) Encarnación González, 30) Alcibiades Bethancourt Aparicio, 31) Jesús Héctor Gallego Herrera, 32) Andrés Emilio Fistonich Herrera, 33) Reinaldo Sánchez Tenas, 34) Jorge Enrique Falconett González, 35) Edwin Heredio Amaya Amaya, 36) Nelson Eddie Martínez Cubilla, 37) Martha Morán Jiménez, and the two minor children, 38) Ever Quintanar Guzmán, aged 17, and 39) Juan Demóstenes Araúz Miranda, aged 16.

14. In addition, they state that during the period indicated, there were 70 extrajudicial executions allegedly attributable to members of the Panamanian army, in one of which there was an attack on the life of a female child. The following alleged victims are identified: 1) Lindbergh Augusto Gante, 2) Cruz Mojica Flórez, 3) Daniel Quirós Espinosa, 4) Ramón Mojica, 5) Ariosto González, 6) Candelario Torres Sánchez, 7) Manuel Alberto Díaz Adames, 8) Leopoldo Rafael Allen Serracín, 9) Walter Sandiñas Iguini, 10) Gerardo Olivares Velázquez, 11) Hipólito Quintero Delgado, 12) Belisario Gantes Batista, 13) Félix González Santizo, 14) Elías González Santizo, 15) Narciso Cubas Pérez, 16) Genaro César Sarmiento Vega, 17) Waldemaro Osorio, 18) Diómedes González Santamaría, 19) Tomás Rojas Hinestroza, 20) Macario Blanquicet Valencia, 21) Delia Perry Rose, 22) Alcibiades Vázquez Ojo, 23) José del Carmen Tuñón Bethancourt, 24) Ernesto Castillo Cubilla, 25) Alfredo Serracín Garzón, 26) Heriberto Antonio Manzzo Quintero, 27) Dora Ceferina Moreno Jaén, 28) Cesáreo Eligio Tejada Núñez, 29) Floyd Wendell Britton Morrison, 30) Rubén Oscar Miró Guardia, 31) Jorge Tulio Medrano Caballero, 32) Jorge Antonio Camacho Castro, 33) Demóstenes Rodríguez Álvarez, 34) Román Rivera Montenegro, 35) Jaime Alberto Fredericks Muñoz, 36) Cecilio Hazlewood Mitchell, 37) Daniel Simoné Hernández, 38) Betsy Marlena Mendizábal, 39) José de la Rosa Chávez Peralta, 40) Nicolás Moreno Nieto, 41) Primitivo Gonzáles Martínez, 42) Félix Antonio Serrano Rodríguez, 43) José Ángel Gutiérrez Vega, 44) José de la Concepción Rojas Coloma, 45) Silverio Alfonso Brown Turton, 46) Hugo Spadafora Franco, 47) Yito Barrante Méndez, 48) Eduardo Enrique Carrera Sierra, 49) Armando Morán Núñez, 50) Valentín Poveda Agriél, 51) Carlos Efraín Guzmán Baúles, 52) Diego Villareal Serrano, 53) César Augusto Cajar Batista, 54) Luis Antonio González Santamaría, 55) Nicolás Johannes Van Kleef Filcz, 56) Manuel Alexis Guerra Morales, 57) Félix Augusto Vásquez Medina, 58) Juan José Arza Aguilera, 59) Jorge Bonilla Arboleda, 60) Francisco Concepción Espinoza, 61) Deoclides Julio, 62) Feliciano Muñoz Vega, 63) Eric Alberto Murillo Echevers, 64) Ismael Vicente Ortega Caballeros, 65) Edgardo Estanislao Sandoval Alba, 66) León Tejada González, 67) Nicasio Lorenzo Tuñón, 68) Moises Girolodi Vega, 69) Jerónimo Díaz Lopez; and 70) a minor child, Marisol del Carmen Aguilar Cortés, aged 16.

15. With respect to the exhaustion of domestic remedies, the petitioners state that in 103 of the 109 cases,<sup>4</sup> the facts were presented to the pertinent authorities between 1970 and 2003. They say that most of the cases remain at the preliminary investigation stage, some for more than 36 years at the time the petition was presented, or else the accused have been acquitted.

<sup>4</sup> According to the petition, no judicial proceedings were held in the cases of the following alleged victims: Javier Sánchez, disappeared in 1969; Carlos Milar González Caballero, disappeared in 1969; Marta Morán Jiménez, disappeared in 1989; Leopoldo Rafael Allen Serracín, executed in 1969; Walter Sandiñas Iguini, executed in 1970; and Tomás Rojas Hinestroza, executed in 1979.

16. They state that of all the above mentioned proceedings, only six judgments have been handed down—although they encompassed 14 of the cases presented by the petitioners, since one judgment sentenced those responsible for the extrajudicial execution of nine alleged victims identified by the petitioners.<sup>5</sup> Of the remaining five sentences, two were judgments in default.<sup>6</sup>

17. With regard to the remaining 89 cases, the petitioners report that 33 were at the pre-trial investigation stage, and that appeals had been filed in eleven of them, but not yet decided. Eight cases had been closed, and three had been barred by the statute of limitations. The court authorities had decided for the dismissal in 26 cases. Five acquittals had been decided; in one case, those allegedly responsible had been pardoned, and in two cases, the files could not be found.

18. They say that there had been an unwarranted delay in the adoption of judicial decisions, and that in the cases mentioned, no significant outcomes have been obtained, no major progress has been made in the investigations, and no court judgments have been issued to identify and sentence those responsible. Evidence of this are the observations by the Panamanian State referring to only 80<sup>7</sup> of the cases contained in the complaint, without saying why they do not refer to the other 29. They also say that in 10 of these 80 cases, the Office of the Attorney General [*Ministerio Público*] had appealed the Truth Commission's request to reopen the proceedings, after having ordered that no criminal action be brought on the grounds that the statute of limitations had expired.

19. The petitioners add that even though the Truth Commission of Panama presented its final report in April 2002 and it was delivered to the Attorney General, no steps have been taken to conduct investigations into these cases, which ought to be investigated *ex officio*. They say that only thanks to the formal presentation by the Truth Commission of applications to open or reopen the cases individually has some progress been made in some of the cases.

20. They contend that, despite the fact that court judgments were issued in some of the cases, a structural situation of impunity exists in Panama vis-a-vis the crimes committed during the military dictatorship; this situation, in the petitioners' view, is the result of the manipulation of the justice system by those responsible for the terrorism by the State. In this regard, they say that this alleged impunity was consolidated by using procedural mechanisms such as invoking expiration of the statute of limitations on criminal proceedings, and denial of justice, which became quite clear in the proceedings brought by the families of the victims. They say that this case brings together denial of justice, impossibility of access to and exhaustion of domestic remedies, and unwarranted delay in the administration of justice, and that it warrants application of the exceptions to domestic remedies set forth in Article 31(2) of the IACHR Rules of Procedure.

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

21. The Panamanian State alleges that the petition is inadmissible, inasmuch as domestic remedies have not been exhausted as required by Article 46(1)(a) of the Convention and 31(1) of the Rules of

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<sup>5</sup> The petitioners indicate that nine alleged victims were executed after an attempt coup to overthrow General Noriega on October 3, 1989, in what was called the Albrook Massacre, for which Manuel Antonio Noriega and other senior military officers were sentenced to twenty years in prison, in a judgment of October 4, 1994. The names of the alleged victims are: Moises Giroldi Vera (Major), León Tejada Gonzalez (Captain), Juan José Arza Aguilera (Captain), Edgardo Estanislao Sandoval Alba (Captain), Eric Alberto Murillo Echevers (Captain), Jorge Bonilla Arboleda (Lieutenant), Ismael Vicente Ortega Caballeros (Second Lieutenant), Francisco Concepción Espinoza (Second Lieutenant) and Deocledes Julio (First Sergeant).

<sup>6</sup> The petitioners indicate that the five remaining cases in which sentences were issued were: the execution of Father Nicolás Johannes Van Kleef Filcz: a judgment in 1992 sentenced the accused, Olmedo Espinoza Espinoza, to 16 years in prison, which was upheld by the Supreme Court of Justice; the forced disappearance of Father Jesús Héctor Gallego Herrera in 1993: a jury of conscious sentenced three military officers to 15 years in prison; the execution of Daniel Simoné Hernández: a sentence was handed down in absentia in 1995; the execution of Hugo Spadafora Franco: a sentence handed down by the Superior Court of the Third Judicial District, Chiriquí; the execution of Yito Barrante Méndez: a sentence given in absentia.

<sup>7</sup> The report by the State gives a list of 82 victims. Since two names are repeated, the total number of cases is 80.

Procedure. It also contends that application to the instant case of exceptions to the rule on prior exhaustion of domestic remedies (Article 31(2) of the Commission's Rules of Procedure) is out of order.

22. It states that there are eighty cases proceeding in the domestic courts, in which questions related to the persons identified as alleged victims have been aired. It further contends that it may be inferred from an analysis of the information provided that the petitioners had access to domestic remedies, and that the fact that some of them are still at the summary investigation stage does not signify unwarranted delay but rather is evidence of the State's intention of doing justice in each of the cases.

23. With respect to domestic judicial proceedings on the remaining forced disappearances and extrajudicial executions, the State maintains that it has carried out the pertinent investigations to determine their existence and status. It further states that thanks to the enquiries made by the Office of the Attorney General, it has learned that in none of the investigative agencies of Panama are there records of proceedings in which matters related to the alleged victims have been aired. The State notes that this situation is due to reasons such as the acts denounced to the Commission were not the subject of domestic judicial proceedings or else they were not human rights violations committed in the territory of Panama.

24. It adds that the files on the cases included in the present petition are located in different investigative offices, and that the investigations are obviously complex given the length of time that has passed since the events occurred. It indicates that for this reason, the Office of the Attorney General (*Ministerio Público*) created the Special Investigating Agent in March 2005 in order to provide better follow-up on the investigations of cases of forced disappearance committed by or with the intervention of agents of the State.

25. It also states that in those cases in which domestic remedies were properly exhausted, the State wishes to arrive at an individual domestic rapprochement with the families of the victims involved.

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

##### **A. Competence**

26. The petitioners are entitled, in principle, under Article 44 of the American Convention to present petitions to the IACHR. The petition identifies 109 natural persons as alleged victims, regarding whom the Panamanian State had pledged to respect and guarantee the rights enshrined in the American Convention. As for the State, the Commission notes that Panama deposited its instrument of ratification of the American Convention on June 22, 1978. In turn, Panama deposited its instrument of ratification of the Convention on Forced Disappearance of Persons on February 28, 1996, which therefore entered into force on March 28, 1996. The Commission is therefore competent *ratione personae* to examine the petition.

27. With regard to its competence *ratione loci* in relation to the alleged forced disappearance of Juan Lekas, the petitioners indicate that it was allegedly perpetrated in the territory of the Bolivarian Republic of Venezuela and, according to information provided, agents of the Panamanian G-2 military intelligence apparatus intervened in committing the act with the help of members of the Intelligence and Prevention Sectoral Bureau, the Venezuelan police force.

28. The Inter-American Commission has determined on other occasions that it is competent *ratione loci* with respect to a State for acts that took place in the territory of another State, when the alleged victims have been submitted to the authority and control of its agents.<sup>8</sup> Thus, the following is essential for the Commission in determining jurisdiction: the exercise of authority over persons by agents of a State even if not acting within their territory, without necessarily requiring the existence of a formal or structured legal

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<sup>8</sup> IACHR. Report No. 109/99, Case 10.951, *Coard et al.* (United States). September 29, 1999, para. 37; IACHR. Report No. 14/94, Petition 10.951, *Callistus Bernard et al.* (United States). February 7, 1994, paras. 6 and 8; IACHR. Report No. 31/93, Case 10.573, *Salas* (United States), October 14, 1993, para. 6; IACHR. Report 17/12, Petition 900-08, *Djamel Ameziane* (United States). March 20, 2012, para. 30.

relation over time to raise the responsibility of a State for acts committed by its agents abroad. When examining the reach of the jurisdiction of the American Convention, it is necessary to determine whether there is a causal nexus between the extraterritorial conduct of a State and the alleged violation of the rights and freedoms of an individual.<sup>9</sup>

29. While it is not appropriate at this stage to take as proven the allegations by the petitioning party, the Commission considers that the indications about the supposed participation of elements of Panamanian military intelligence in the forced disappearance of Juan Lekas are sufficient to require an analysis at the merits stage of whether the State of Panama exercised extraterritorial jurisdiction. Therefore, the Commission finds that the petition filed against the State of Panama in this case is admissible.

30. Further, the petition indicates that the alleged extrajudicial executions of Walter Sardiñas and Ernesto Castillo Cubilla were committed in the State of Costa Rica. In the first case, respectively, the petitioners indicate that the alleged victim was killed in San Jose, by the Costa Rican Civil Guard, in an attempt to capture him; in the second case the alleged victim was killed by a private individual apparently without the intervention of agents of the Panamanian State. Therefore, the acts complained about do not appear to have links to the State of Panama; for that reason, the Commission considers the petition with respect to Walter Sardiñas and Ernesto Castillo Cubilla to be inadmissible, as it is not competent *ratione loci* to consider these two cases.

31. Therefore, the Commission is competent *ratione loci* to hear 107 of the 109 cases alleged in the petition, inasmuch as they refer to violations of rights protected in the American Convention that took place in the territory of Panama, a State Party to that treaty.

32. With regard to its competence *ratione temporis* to hear the forced disappearances alleged, the Commission finds that these are alleged violations that have been ongoing for, in some cases, up to 36 years. Therefore, bearing in mind that a forced disappearance is a crime of an ongoing nature that persists until the whereabouts or fate of the victim are established,<sup>10</sup> the Inter-American Commission is competent to hear violations of human rights raised by petitioners in connection with the American Convention and the Convention on Forced Disappearance of Persons.

33. With regard to the alleged extrajudicial executions, the IACHR notes that, of the total of 70 alleged cases, 30 occurred before Panama ratified the American Convention. Nonetheless, the Commission is competent *ratione temporis* to hear violations of human rights set out in the American Declaration of the Rights and Duties of Man.<sup>11</sup> Indeed, pursuant to the provisions of Articles 23 and 50 of the Rules of Procedure of the Commission, the IACHR is competent to hear and rule on alleged violations of the American Declaration by the Panamanian State with respect to events that occurred before the American Convention on Human Rights entered into force and also in accordance with the American Convention as regards alleged violations subsequent to that date.

34. Finally, the Commission is competent *ratione materiae*, since the petition alleges possible violations of human rights protected by the American Declaration, the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

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<sup>9</sup> IACHR. Report No. 112/10, Inter-State Petition Pi-02, *Franklin Guillermo Aisalla Molina* (Ecuador – Colombia). October 21, 2010, para. 98.

<sup>10</sup> See IACHR, Report No. 65/09, Petition 616-06, Admissibility, *Juan Carlos Flores Bedregal*, Bolivia, August 4, 2009, para. 45; and Report No. 34/06, Petition 875-03, *Rita Irene Wald Jaramillo et al.*, Panama, March 14, 2006, para. 22.

<sup>11</sup> At the time of the events, Panama was Party to the OAS Charter and as a result, had the obligation of respecting the rights enshrined in the American Declaration.

## B. Admissibility requirements

### 1. Exhaustion of domestic remedies

35. Article 46(1)(a) of the American Convention requires prior exhaustion of the remedies available under domestic law in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims of alleged violations of the American Convention. The purpose of this requirement is to allow the national authorities to learn of the supposed violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international body. In turn, Article 46(2) of the Convention states that prior exhaustion of domestic remedies shall not be required 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.

36. In the instant case, the petitioners contend that even in a democratic system, legal due process had broken down because of the inefficacy of the domestic remedies and the violation of the principle of a reasonable time period for the administration of justice in most of the cases in the present complaint, resulting in the impunity that persists to this day. They allege unwarranted delay in the administration of justice, given that more than 36 years have passed since the initial investigations began, and neither have those responsible been identified and punished nor have the victims been given fair and equitable redress. The State in turn maintains that domestic remedies have not been exhausted because many cases are still at the summary investigation stage, and it is therefore necessary to wait until the investigations can be completed.

37. The Commission's case law establishes that whenever a crime is committed that is subject to prosecution *ex officio*, the State has the obligation to promote and initiate criminal proceedings<sup>12</sup> and that in such cases, the criminal court is the most appropriate way of clarifying the facts, judging those responsible and fixing the corresponding criminal penalties. Also, the Commission notes that as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and indeed safeguard the rights of all those who may in the context of the investigation be considered a suspect.<sup>13</sup>

38. The information provided by the parties and the documentation attached to the file shows that complaints were filed with the Panamanian judicial authorities about acts of violence committed against at least 103 of the alleged victims, and that investigations were begun on that basis. Of these, 44 are still pending, 40 resulted in acquittals, filing, exonerations or pardons; in three cases, the crimes were ruled barred by the statute of limitations and in two cases, the files are missing. Six sentences were handed down in favor of 14 of the alleged victims. In 6 cases the petitioners have not specified the existence of a process.

39. The Commission considers it appropriate to analyze separately the exhaustion of domestic remedies, distinguishing between cases of alleged forced disappearance and alleged extrajudicial executions. Regarding the alleged forced disappearance of 39 people, the Commission notes that the disappearance of the alleged victims occurred, in some cases, more than 36 years ago and that an ongoing situation persists to date. Also, in most cases there has been no final judicial ruling regarding those guilty for the incidents or the whereabouts of the remains of the alleged victims. Consequently, the Commission believes that, *prima facie*, there has been an unwarranted delay in discharging the criminal investigations of the incidents. Therefore, the exception to the requirement of the prior exhaustion of domestic remedies applies, as described in Article 46(2)(c) of the Convention.

<sup>12</sup> IACHR, Report 56/14, P. 886-04, *Ronal Jared Martínez and Family and Marlón Fabricio Hernández Fúnez*, Honduras, July 21, 2014, para. 20; IACHR, Report No. 51/10, P. 1166-05, Admissibility, *Masacres del Tibú*, Colombia, March 18, 2010, para. 110; IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas* (Nicaragua), paras. 96 and 97; Report No. 62/00, Case 11.727, *Hernando Osorio Correa*, para. 24.

<sup>13</sup> IACHR, Report No. 51/10, P. 1166-05, Admissibility, *Masacres del Tibú*, Colombia, March 18, 2010, para. 110.



40. With regard to the archiving of some judicial proceedings in which forced disappearances were being heard, or the ruling that the statute of limitations had expired,<sup>14</sup> it should be recalled that the Inter-American Court has ruled that whenever forced disappearances are alleged, the obligation to investigate subsists until such time as the whereabouts of the victim or of his remains become known.<sup>15</sup> Thus, the exception provided for in Article 46(2)(b) of the Convention is applicable to this situation.

41. Now, concerning the alleged 70 cases of extrajudicial execution, the record shows that, for at least 62 cases, the facts were reported between 1970 and 1991. The Commission notes that, despite the time elapsed since the submission of the respective complaints, 27 of these cases are still at the investigation stage and 16 have resulted in acquittals or files between 1970 and 1995, during the time of the military dictatorship or in the years immediately following, in a context –as alleged by the petitioners– of structural impunity and lack of judicial independence. Of the remaining cases, 13 resulted in the conviction of some of those responsible and 6 in acquittals or pardons. Finally, the Truth Commission requested the opening of 4 cases in which the family did not file complaints because they felt it would be futile; in each case the Prosecutor requested that the limitation period should apply to the criminal action and, in 2004, the cases were filed.<sup>16</sup>

42. In relation to the sentences, the files show that two were passed in the absence of the accused, who were fugitives. Regarding the proceeding that involved nine of the alleged victims, of the initial 20 accused, four were sentenced, one of whom was a fugitive from justice.

43. The IACHR notes that the Truth Commission documented all the cases described in the present petition in its final report published in 2002.<sup>17</sup> It notes that in spite of the different efforts made by the victims' families and the conclusions and recommendations of the Truth Commission, under the standard of the *prima facie* admissibility analysis, the Panamanian justice system has not taken the steps necessary to clarify the facts, determine the whereabouts of the persons allegedly disappeared, or identify and punish those responsible. The IACHR therefore finds that the exception provided for in Article 46(2)(c) of the Convention is applicable.

44. The same exception applies to the six alleged victims in this petition with respect to whom the petitioners indicated that no legal proceedings had been brought: Javier Sánchez, Carlos Milar González Caballero, Marta Morán Jiménez (alleged disappeared victims); and Leopoldo Rafael Allen Serracín, Walter Sandiñas Iguini and Tomás Rojas Hinestroza (alleged victims executed),<sup>18</sup> considering that the alleged victims were named individually in the report of the Truth Commission and bearing in mind that the alleged acts in the present case translate into alleged crimes that are subject to being prosecuted *ex officio* and therefore it is the criminal proceedings brought by the State itself that ought to be considered for the purposes of determining the admissibility of the claim. Also, noting the context of impunity in which the alleged violations took place.

45. Based on the foregoing considerations and bearing in mind the characteristics of the many acts denounced, the Commission concludes that the exceptions provided for in subparagraphs b) and c) of Article 46(2) of the Convention are applicable to the instant case.

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<sup>14</sup> In respect of alleged victims Cecilio Sarracín Fuente, Alcibiades Betancourt Aparicio and Reinaldo Sanchez Tenas.

<sup>15</sup> I/A Court H.R. *Case of Velásquez Rodríguez v Honduras*. Judgment of July 29, 1988. Series C No. 4., para. 181.

<sup>16</sup> In addition, there are 3 cases where the parties indicate that there has been no judicial activity, and a case in which the court file is missing.

<sup>17</sup> The Truth Commission of Panama was established by Executive Decree No. 2 of January 18, 2001, with the mandate of establishing an overview of the violations of the right to life, including disappearances committed during the military regime from 1968 up to 1989. The Truth Commission brought together sufficient information to allow more than a hundred victims, both killed and disappeared, to be individually named.

<sup>18</sup> See para. 15 of the present report.

46. The invocation of exceptions to the rule of prior exhaustion of domestic remedies as provided for in Article 46(2) of the Convention bears an intimate relation to the determination of possible violations of certain rights protected therein, such as its guarantees of access to justice. However, by its very nature and purpose, Article 46(2) is a provision with autonomous content vis-à-vis the Convention's substantive precepts. Therefore, the decision as to whether the exceptions to the rule of exhaustion of domestic remedies provided for in that article are applicable to the case at hand must be taken before the merits of the case are examined and separately from that examination, since it depends on a criterion different from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated.

## **2. Timeliness of the petition**

47. Article 46(1)(b) of the American Convention provides that for the Commission to admit a petition, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. In the claim under analysis, the IACHR has admitted the application of the exception to the exhaustion of domestic remedies under Article 46(2)(b) and c of the American Convention. In this regard, Article 32(2) of the Commission's Rules of Procedure states that in cases in which exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within what the Commission considers to be a reasonable period of time. For that purpose, the Commission must consider the date on which the alleged violation occurred and the circumstances of each case.

48. In the instant case, the IACHR has admitted the application of the exception to the exhaustion of domestic remedies under Article 46(2)(b) and c of the American Convention. The petition to the IACHR was received on October 23, 2003 and the alleged acts that are the subject of the claim took place between 1968 and 1989 under the *de facto* regimes of Generals Omar Torrijos (1969-1981) and Manuel Antonio Noriega (1983-1989) and their alleged effects continue to the present day. Therefore, in light of the context and characteristics of the present case, as well as the fact that investigations and judicial proceedings are still pending, the Commission considers that the petition was lodged within a reasonable time period, and that the admissibility requirement regarding the timeliness of presentation of the petition must be deemed met.

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

49. In order for a petition to be ruled admissible, Article 46(1)(c) of the Convention requires that the subject of the petition not be pending in another international proceeding for settlement, and Article 47(d), requires that the petition or communication not be substantially the same as one previously studied by the Commission or by another international organization. In the case under examination, the Commission notes that the parties have not asserted the existence any of these grounds for inadmissibility. It also notes that with respect to 108 of the 109 alleged victims, it cannot be deduced from the file that any impediment of this kind existed. However, the Commission observes that it has already issued a ruling on the alleged extrajudicial execution of Hugo Spadafora Franco (Resolution 25/87, Case 9726 of September 23, 1987),<sup>19</sup> by virtue of which the requirement of Article 47(d) of the Convention is not met in this particular case.

50. Therefore, the IACHR concludes that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been satisfied, with the exception of the complaint filed concerning the rights violations committed to the prejudice of Hugo Spadafora Franco.

## **4. Colorable claim**

51. For the purposes of admissibility, the Commission must decide whether the alleged facts may tend to establish a violation of rights as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order" as stated in subparagraph c) of that Article. The criterion for examining admissibility differs from that used in the analysis of the merits of the

<sup>19</sup> Published in the annual report of the IACHR, 1987-88, pp. 179-245.

petition, in that the Commission simply conducts a *prima facie* analysis to determine whether the petitioners have established an apparent or possible violation of a right guaranteed under the American Convention. It is a question of a summary analysis that does not imply prejudging or issuing a preliminary opinion about the merits of the matter.

52. Neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify in the matter submitted to the Commission the specific rights that it is alleged have been violated by the State, although the petitioners may do so. It is up to the Commission to determine in its admissibility reports, on the basis of the System's case law, which provision of the pertinent inter-American instruments is applicable and violation of which could be established if the alleged facts are sufficiently proven.

53. The petitioners allege a series of violent acts—extrajudicial executions and forced disappearances—allegedly committed by agents of the State in the context of a State policy of repression of opponents of the military government between October 11, 1968 and December 20, 1989. They contend that those responsible for these crimes have not been identified or punished by the country's bodies responsible for the administration of justice. For its part, the State contends that it has conducted every measure needed to conduct an effective investigation.

54. The historical context in which the alleged forced disappearance or extrajudicial execution of the victims in the present petition, and the alleged lack of due diligence in investigating the facts were described by the Inter-American Commission in its Report on the Human Rights Situation in Panama (1978).<sup>20</sup> The context was also described in the report of the Truth Commission of Panama, published in 2002 by the Panamanian Ombudsman. In addition, in the case of *Heliodoro Portugal*, the IACHR noted that "[t]he victims of the military repression mostly disappeared or were executed in conditions of defenselessness and clear disadvantage vis-à-vis the perpetrators." It further stated that the final report of the Truth Commission "is of particular importance in that it assisted the clarification of the serious human rights violations that took place in Panama under the military dictatorships that ruled the country from 1968 to 1989. The method used to investigate incidents, determine patterns of human rights violations, quantify and identify the victims, prepare a map of the violence, and other tasks meant gathering data and evidence, and this will enable the victims and Panamanian society in general to understand what happened, recuperate historical memory, and establish the truth."<sup>21</sup>

55. In light of the elements of fact and of law set forth by the parties and the nature of the matter placed before it, the IACHR finds that in the present case, it must be established whether the petitioners' allegations concerning the failure of the courts to clarify the facts surrounding the forced disappearance and extrajudicial execution of 106 persons, allegedly by agents of the State, and the State's alleged lack of due diligence in the investigation and punishment of those responsible could constitute possible violations of the following articles: i) 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to the obligations set forth in Articles 1(1) and 2 of that instrument, to the prejudice of the 39 alleged disappeared victims; ii) I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, to the prejudice of the 39 alleged victims who allegedly disappeared; iii) 19 of the American Convention to the prejudice of the two minor children who have allegedly disappeared; iv) I, XXV and XXVI of the American Declaration, to the prejudice of the 28 alleged victims allegedly executed prior to June 1978; v) 4, 5, 7, 8 and 25 of the Convention to the prejudice of the 39 alleged victims allegedly executed after June 1978; and vi) 19 of the American Convention to the prejudice of the minor child, Marisol del Carmen Aguilar Cortes, allegedly executed extrajudicially.

56. With regard to the alleged ineffectiveness of the domestic remedies pursued, the alleged failure to investigate the facts denounced, and the failure to identify and punish those responsible, the Commission concludes that they tend to establish a violation of the rights set out in Articles 5, 8 and 25 of the

<sup>20</sup> IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, doc. 38, rev. 1, June 22, 1978.

<sup>21</sup> IACHR, Report No. 103/05 (Merits), Case 12.408, *Heliodoro Portugal*, Panama, October 27, 2005, paras. 58 and 68.

American Convention in relation to the obligations established in Articles 1(1) and 2 of that instrument and Article XVIII of the American Declaration, to the prejudice of the families of all of the alleged victims.

## **V. CONCLUSIONS**

57. Based on the foregoing considerations of fact and of law, the Inter-American Commission concludes that the present petition satisfies the admissibility requirements set out in Articles 46 and 47 of the American Convention 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 Articles: i) 3, 4, 5, 7, 8 and 25 of the American Convention in relation to the obligations established in Articles 1(1) and 2 of that instrument, to the prejudice of the 39 alleged victims who allegedly disappeared; ii) I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, to the prejudice of the 39 alleged victims who allegedly disappeared; iii) 19 of the American Convention to the prejudice of the two minor children who allegedly disappeared; iv) I, XXV and XXVI of the American Declaration, to the prejudice of the 28 alleged victims allegedly executed prior to June 1978; v) 4, 5, 7, 8 and 25 of the Convention to the prejudice of the 39 alleged victims allegedly executed after June 1978; vi) 19 of the American Convention to the prejudice of the minor child allegedly executed extrajudicially; vii) 5, 8 and 25 of the American Convention in relation to the obligations established in Articles 1(1) and 2 of that instrument, and viii) XVIII of the American Declaration, to the prejudice of the families of all of the 106 alleged victims.

2. To declare the present petition inadmissible in respect of Walter Sandiñas Iguini, Ernesto Castillo Cubilla and Hugo Spadafora Franco;

3. To notify the parties of the present decision;

4. To continue to examine the matter on its merits, and

5. To publish this decision and include it in the Commission's annual report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 27<sup>th</sup> day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.