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REPORT No. 142/17
PETITION 144-08
REPORT ON ADMISSIBILITY

ESPERANZA GUADALUPE LLORI ABARCA
ECUADOR

Approved by the Commission at its session No. 2104 held on October 26, 2017.
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 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Consorcio Jurídico Sarango-Bermeo
Alleged victim:	Esperanza Guadalupe Llori Abarca
State denounced:	Ecuador
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ¹ in connection with Articles 1.1 and 2 thereof; and another international instrument. ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	February 9, 2008
Additional information received at the initial study stage:	April 3, May 12, July 28, and August 6, 2008, and September 6, 2011
Date on which the petition was transmitted to the State:	February 15, 2013
Date of the State's first response:	December 2, 2014
Additional observations from the petitioning party:	December 2, 2016
Additional observations from the State:	September 29, 2009 and August 10, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on December 28, 1977)

¹ Hereinafter "the American Convention" or "the Convention."

² Articles 5, 7, 9 and 11 of the Universal Declaration of Human Rights.

³ The observations presented by each party were duly transmitted to the opposing party.

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i> :	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participate in government) and 25 (judicial protection) of the American Convention and Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under provisions of Section VI
Timeliness of the petition:	Yes, under provisions of Section VI

V. ALLEGED FACTS

1. The petitioner notes, by way of context, that Dayuma is a rural community in the province of Orellana, in the Ecuadorian Amazon region, which has been seriously affected by environmental pollution produced by extraction of hydrocarbons. Mrs. Esperanza Guadalupe Llori Abarca (hereinafter “Mrs. Llori Abarca” or the “alleged victim”) was elected Governor of the Province of Orellana on October 17, 2004 as the candidate of the opposition party Movimiento de Unidad Plurinacional Pachakutik–Nuevo País. In 2006, she spearheaded a campaign to defend and protect the natural resources and territories of peasant and indigenous communities of this province.

2. From November 26, 2006 to December 2, 2007, social protests were held in the Amazonian province of Orellana, disrupting operations at the local airport and bringing oil production to a halt. In response to these incidents, the government declared a state of emergency on December 13, 2007 in the province, describing the situation as “serious internal unrest,” even though according to the petitioner, the protests only took place in the community of Dayuma. Accordingly, under this state of emergency, the government suspended the right to freedom of opinion and expression; the inviolability of the home; the inviolability and secrecy of correspondence; the right to freely circulate; and freedom of association and assembly for peaceful purposes, as provided for in the Constitution. Over those days, the army reportedly carried out violent arrests of twenty-five residents of the community of Dayuma, who were criminally prosecuted for allegedly firing weapons at the authorities during the protests.

3. In this context, the petitioner alleges that on December 7, 2007, Mrs. Llori Abarca was violently taken from her residence by members of the police and army, who beat her elderly father and niece, and exhibited an arrest warrant for the crimes of sabotage and terrorism. According to her allegations, she was held in solitary confinement and her whereabouts were unknown until 8:00AM the next day, when she was confined to the women’s prison of Quito, located 500 kilometers away from her place of residence. The petitioner contends that the transfer of the alleged victim from a warm climate to a cold location, such as Quito, caused health problems for her and was a violation of applicable law, because a person may not be incarcerated away from his or her place of residence or home.

4. In terms of the court proceedings against her for sabotage and terrorism, the petitioner notes that the Superior Court of Sucumbíos overturned the pretrial detention warrant and ordered Mrs. Llori Abarca to be released on December 26, 2007, holding that the alleged victim’s participation in the protests was never ascertained. Nonetheless, despite this ruling, Mrs. Llori Abarca reportedly continued to be deprived of her liberty on the grounds that some days earlier, on December 13, a citizen by the name of René Cordero reported her to the police for reputedly unlawful acts in public contracting, alleging that she had intervened in her capacity as Governor in this process. In this second case (file No. 07-2008), another pretrial detention order was issued against the alleged victim on that same day of December 26, 2007 and she remained in custody.

5. On February 1, 2008 the attorneys of the alleged victim filed for constitutional relief through an *amparo* petition and were able to get the pretrial detention order to be overturned. However, the women's prison warden reportedly refused to authorize her release, because on January 25, 2008, the Chief Prosecuting Attorney of Sucumbíos had opened another investigation into misappropriation of public funds (case file No. 07-2008), based on the same complaint brought by René Cordero, and issued another pretrial detention order on January 28, 2008. Then, on March 14, 2008, the National Constituent Assembly granted amnesty to anyone who was detained in the community of Dayuma during the state of emergency. Notwithstanding, the alleged victim remained deprived of her liberty because this third pretrial detention order was still in effect. The petitioner notes that on September 17, 2008, the Single Chamber for Criminal Matters of the Provincial Court of Nueva Loja dismissed with prejudice the two cases of misappropriation of public funds against Mrs. Llori Abarca.

6. The petitioner claims that on December 31, 2009, a lawsuit was filed on behalf of the alleged victim with the District Court for Administrative Claims of Quito for the damages caused to Mrs. Llori Abarca as a consequence of the first investigation into the reputed misappropriation of public funds (No. 06-2008). This court dismissed the lawsuit on March 1, 2010, on the grounds that "damages against the State are not provided for as attributions and competencies established under Article 6 of the Law of Administrative Jurisdiction."⁴ Additionally, on March 10, 2010, this same court dismissed a second lawsuit in relation to the second case for misappropriation of public funds (No. 07-2008) on that grounds that the fourth transitory provision set forth in the Organic Code of the Judicial Function established that "current district courts for Administrative and Tax Claims shall operate under the rules and competencies established prior to the entry into force of this Code." The petitioner contends that the court held that it was not competent to examine and adjudicate the claims before it, inasmuch as the claims were about subject matter that fell outside of its purview and jurisdiction, recusing itself from hearing the case. Both decisions were appealed by the alleged victim and upheld in 2011 and 2012 and, consequently, she did not receive any reparation.

7. In view of the foregoing events, the petitioner alleges that a campaign of political persecution was waged against Mrs. Llori Abarca, using as mechanisms of repression the burden of several criminal proceedings and arbitrary deprivation of her liberty. This fundamentally violates her right to humane treatment, personal liberty, a fair trial and judicial protection, as enshrined in the American Convention.

8. In response, the State contends that the detentions and criminal proceedings against the members of the community of Dayuma, who participated in the demonstrations, stemmed from the fact that they had thrown explosives and fired guns at members of the public security forces. It argues that on December 6, 2007, these investigations were expanded to include Mrs. Llori Abarca for the same crimes and for her acts of collaboration, organization and direct intervention in the different demonstrations and strikes. It argues that on December 13, the President of the Republic declared a state of emergency in the province of Orellana, because of the internal unrest that was unfolding in that sector as a result of violent protests of residents, who jeopardized the normal provision of public services and security of the citizens of the sector themselves. It maintains that the public security forces avoided any form of repression or disproportionate use of force on the Dayuma community. On March 14, 2008, for the declared objective of "*seeking peace, order and harmony in that sector*," the Constituent Assembly granted a general amnesty to all persons detained, charged or who are under investigation for the acts of social violence, which took place in this community.

9. The State claims that the alleged victim's due process guarantees and access to judicial remedies were respected in the criminal proceedings. It contends that in the case of terrorism and sabotage, the alleged victim filed an *amparo* suit for release, which was granted by the Single Chamber of the Superior

⁴ According to the information provided in the petition, Article 6 of the Law of Administrative Jurisdiction establishes that: Administrative courts do not have jurisdiction in: a) matters which, by nature of the acts from which they stem or the subject matter they are about, relate to the discretionary power of the administration; b) matters of a civil or criminal nature belonging to regular jurisdiction and which, due to their nature, are the competence of other jurisdictions; c) matters which arise with relation to the public acts of the government, such as those affecting the defense of national territory, international relations, internal security of the State and the organization of the Public Security Forces, without prejudice to any compensation that may be in order, the determination of which belongs to the administrative jurisdiction; d) decisions issued by electoral bodies; e) decisions that are issued in accordance with a law that expressly excludes them from administrative proceedings.

Court of Justice of Nueva Loja. Nonetheless, Mrs. Llori Abarca did not regain her freedom because another preventive detention measure was in effect for her in a case for the charges of misappropriation of public funds. The State further argues that the alleged victim filed a *habeas corpus* appeal, which was denied on the grounds that a court order was in effect justifying her deprivation of liberty.

10. After the amnesty granted by the Constituent Assembly on March 14, 2008, the Superior Court of Justice of Nueva Loja ordered the case investigation proceedings for the crime of terrorism to be dismissed and ordered the release of all defendants including Mrs. Llori Abarca. It notes that she was unable to regain her freedom because a pretrial detention order was in effect against her, which had been issued in an investigation for misappropriation of public funds. According to the State, on September 23, 2008, Mrs. Llori Abarca regained her freedom as a result of a *habeas corpus* appeal granted to her by the Mayor of Quito.

11. The State believes that domestic remedies have not been exhausted, because the petition was lodged when final disposition of the criminal proceedings against the alleged victim was still pending. In this regard, it also contends that Mrs. Llori Abarca should have exhausted civil actions for damages in order to receive redress and reparation; and that the suit for damages she filed with the administrative claims courts was still being heard at the time of the lodging of the petition before the IACHR. In view of these considerations, it moves for the petition to be found inadmissible as to the alleged violation of the rights of Mrs. Llori Abarca, on the grounds that it does not meet the requirements set forth under Article 46.1 of the American Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. After examining the information provided by both parties, the Commission notes that, in terms of the reputedly arbitrary detention of the alleged victim, her attorneys filed a *habeas corpus* petition, which was granted by the Office of Mayor of Orellana on December 1, 2007. Furthermore, they filed three amparo petitions for freedom, which were also granted by the Criminal Chamber of the Superior Court of Sucumbíos and Orellana, with the ruling and release orders issued on January 24 and 30, and February 1, 2008. Mrs. Llori Abarca regained her freedom on September 23, 2008, as a result of a *habeas corpus* petition granted by the Mayor of Quito. Additionally, the alleged victim filed two lawsuits for damages against the State with the administrative claims court, which were denied by the District Court for Administrative Claims of Quito on March 1 and 10, 2010. These judgments were appealed and upheld on 2011 and 2012. The State, in response, contends that these appeals proceedings had not been exhausted at the time of the lodging of the petition before the IACHR, and argues that the alleged victim should have resorted to the civil courts in order to bring a claim for damages.

13. Based on the foregoing considerations, the Commission finds that the basic claim of the petitioners involves the State's use of criminal law as an alleged tool of repression against the political and social endeavors of Mrs. Llori Abarca. In this regard, the alleged victim exhausted several petitions for *habeas corpus* and release through amparo to gain her freedom; these remedies, as the State itself recognizes, were appropriate for the alleged victim's situation of deprivation of liberty. Additionally, the first case was archived on September 17, 2008 and the Single Chamber for Criminal Matters of the Provincial Court of Nueva Loja dismissed with prejudice the two cases for misappropriation of public funds brought against Mrs. Llori Abarca. The Commission further notes that the alleged victim reportedly resorted to the administrative claims court to seek reparation for the alleged unlawful damages caused by the continual criminal proceedings to which she claimed she was arbitrarily subjected. These appeals were denied by two courts, without the State contesting exhaustion thereof.

14. On another note, the State argues that Mrs. Llori Abarca should have filed a civil action for damages. In this regard, given that the alleged victim sued the State as a legal entity before the administrative claims court, the Commission finds that resorting to the civil courts would only serve as a legal mechanism to establish pecuniary liability of the public officials responsible for the acts as private individuals. On this score, the Commission has established in earlier cases, including some related to Ecuador, that in principle, the obligation to redress human rights violations committed by agents of the State is directly incumbent upon the State and not upon the agents thereof. The IACHR has also held that States' international obligation to

compensate victims of human rights violations committed by their agents is one of their direct, main responsibilities and does not require victims to bring individual actions against those agents, regardless of the content of domestic provisions on the particular subject matter.

15. As to the State's contesting exhaustion of domestic remedies prior to the lodging of the petition, the IACHR reaffirms its consistent position that "what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the ruling on admissibility, because the time of presentation of the complaint differs from the time of the ruling on admissibility." Therefore, the Commission concludes that domestic remedies have been exhausted pursuant to Article 46.1.a of the Convention; and the petitioner has fulfilled the timeliness requirement as provided for under Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

16. In view of the considerations of fact and law presented by the petitioner, after examining the positions of both parties, the Commission finds that said proceedings may tend to establish potential violations of the rights enshrined in Articles 5 (human treatment), 7 (personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participate in government) and 25 (judicial protection) of the American Convention, in connection with Articles 1.1 and 2 of said instrument, to the detriment of Esperanza Guadalupe Llori Abarca. However, in terms of the Universal Declaration of Human Rights, the Commission is not competent to establish violations of provisions of that instrument, without prejudice to its ability to take these provisions into account in order to aid in interpreting the provisions of the American Convention at the merits stage of the instant case, as provided for in Article 29 of said instrument.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 13, 23 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Montevideo, Uruguay, on the 26th day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.