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REPORT No. 161/17
PETITION 29-07
REPORT ON ADMISSIBILITY

ANDY WILLIAMS GARCÉS SUÁREZ
PERU

Approved by the Commission at its session No. 2110 held on November 30, 2017.
166th Special Period of Sessions.

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Perú. November 30, 2017.



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 PERU
 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Rosa Margarita Suárez Rodríguez
Alleged victim:	Andy Williams Garcés Suárez
State denounced:	Peru
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 17 (Family) and 25 (Judicial Protection) of the American Convention on Human Rights, ² in relation to its Articles 1.1 and 2; and Article I of the Inter-American Convention on Forced Disappearance of Persons ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	January 11, 2007
Additional information received at the initial study stage:	January 23, 2007
Date on which the petition was transmitted to the State:	August 10, 2011
Date of the State's first response:	January 5, 2012
Additional observations from the petitioning party:	August 26, 2012; March 28, 2013; January 13, 2014
Additional observations from the State:	October 15, 2012; October 7, 2013; September 23, 2014
Date on which the petitioner was notified of the possible archiving of the petition:	August 29, 2017
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	September 11, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes; American Convention (ratification instrument deposit on July 28, 1978) and IACFDP (ratification instrument deposit on February 13, 2002)
Competence <i>Ratione materiae</i>:	Yes

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguirguren Praeli, a Peruvian national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ Hereinafter "IACFDP."

⁴ 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 3 (Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection to its Article 1.1; and Article I of the IACFDP
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on July 11, 2006
Timeliness of the petition:	Yes, on January 9, 2007

V. ALLEGED FACTS

1. The petitioner submits, as background information, that on March 31, 2002, her son Andy Williams Garcés Suárez (hereinafter “the alleged victim”), aged 21 years, took part in a fight after which a youth was injured; that as a result, her family was threatened by the family of the injured youth—whose father worked at the Superior Court of Justice of Piura—and that these said, “the Police already knows what to do [with your son].” She asserts that on April 18, 2002, in the afternoon, National Police officers, along with the injured youth’s mother, were seen patrolling the alleged victim’s house, and that around 9:00 pm the group known as “*Serpico* Group” came to the area, with at least 17 police officers specialized in antisubversion. She indicates that the officers caught the alleged victim near Junín Avenue and Moquegua, and that he ran up to the Piura River because the police officers chased him. She submits that according to the account of one of the witnesses, the alleged victim was killed near the Piura River and his body was then disappeared by the police officers; that, therefore, his whereabouts are still unknown to this date.

2. She asserts that the police officers’ initial accounts indicate that the alleged victim jumped into the Piura River, where he allegedly drowned. She claims that his body was not found despite search efforts, though the body of another youth, who drowned on the following day, was found after 24 hours. She considers that the same thing should have happened in regard to the alleged victim’s body. Later, she submits that the accounts given by some police officers participating in the detention and by two witnesses (guards at the Bolognesi bridge, over the Piura River) indicate that the alleged victim came out of the river and ran away, and that he was seen in different cities.

3. She claims that only five days following the date of the facts did the Provincial Prosecutor’s Office of Castilla order to undertake an investigation, but she affirms that the officers did not come to the place of the facts or properly collect the existing evidence (prints, cartridge cases, blood stains, among others). Due to said irregularities, on April 26, 2002, she filed a complaint before the Provincial Prosecutor’s Office of Castilla. However, on June 5, 2002, the Prosecutor ruled to temporarily archive the complaint, on the basis that “for the time being, there are no grounds to arraign the suspects for the alleged commission of a crime of against humanity—forced disappearance—to the detriment of Andy Williams Garcés Suárez.”

4. She submits that on November 4, 2002 she lodged again a criminal complaint against some police officers for the crimes of aggravated murder and forced disappearance, based on a statement of a witness who declared having seen police officers shoot the alleged victim. She alleges that an investigation was conducted, but it was full of irregularities; and that in view of the lack of impartiality on the part of the Prosecutor leading the investigation, on April 1 and 11, 2003, she lodged complaints before the National Attorney General’s Office and the Body for Internal Audit of the Prosecutor’s Office of Piura. As a result of these complaints, the Prosecutor’s Office of Piura undertook an investigation through which it was found that “the Prosecutor’s initial omissions have hindered and obstructed the investigation into the facts.” Therefore, a new Prosecutor was appointed for the case and eventually, on July 24, 2003—15 months after the facts took place—the new Prosecutor arraigned the 11 police officers for crime against humanity—forced

disappearance. On July 7, 2005, the Second Criminal Chamber of the Superior Court of Justice of Piura acquitted the accused police officers because, after analyzing the facts and the proof submitted in the proceedings, it did not find enough grounds to prove their responsibility. The Prosecutor's Office and the petitioner filed a petition for annulment, and on May 25, 2006, the First Temporary Criminal Chamber of the Supreme Court of Justice rejected it. This ruling was notified on July 11, 2006.

5. The petitioner claims that the judicial authority was negligent in their performance of duties and failed to duly investigate, and that it was impossible to clarify the facts because of such deficient investigation. She asserts that significant evidence key to prove the defendants' guilt was dismissed and hidden; that serious contradictions among the police officers' accounts of facts were avoided; and that some supporting evidence was unduly examined. She also asserts that during the proceedings she was verbally threatened by a police colonel, and that she applied for special protection to the Ministry of the Interior, but said institution considered that her request was unfounded, as there was no proof that her life or her physical integrity were at risk, concluding that it was a normal confrontation between the parties to the hearing.

6. Finally, the petitioner alleges that to this date the alleged victim remains missing, that the facts have not been clarified and that the persons responsible have not been identified either, thus she alleges violation of the family's right to protection and truth as a result of their grief over the alleged victim's unknown whereabouts, and their lack of his remains for a proper burial. She adds that by the time of his disappearance, his girlfriend was pregnant; therefore, she alleges that the child has been deprived of meeting his father.

7. For its part, the State alleges that the petition is inadmissible because the facts denounced here do not establish a violation of the rights enshrined in the Convention. It indicates that the facts matter of this petition were already heard by the State through the domestic proceedings and that these were substantiated pursuant to the safeguards of due process; that therefore their review by the Commission would constitute an application of the fourth-instance doctrine. It submits that judicial proceedings were undertaken for the crime of forced disappearance and that the petitioners had the opportunity to lodge remedies and appeals against the judgment by which the defendants were acquitted, in accordance with the rules established in the national legal framework. It also submits that the fact that no conviction has been issued does not entail the violation of legal safeguards and judicial protection.

8. It asserts that the defendants were acquitted on July 7, 2015 because it was proved that the circumstances of forced disappearance did not occur. It indicates that, according to the witness statements received, on April 18, 2002, the police staff of the Special Operations Group known as "Serpico Group" was on patrol as part of its routine tasks; therefore, it denies the account according to which an exclusive operation was conducted to catch the alleged victim at the request of third parties. During the patrol operation that day, the officers identified an allegedly suspicious group of people, among who the alleged victim was. According to the statements, the police officers asked them their IDs and the people, including the alleged victim, began to disperse. It alleges that in the proceedings it was demonstrated that the alleged victim was never arrested—an arrest being a necessary condition to establish forced disappearance—, for the alleged victim escaped by going into the Piura River, and although two officers entered the river searching for him, they could not find him. Furthermore, two witnesses affirmed seeing him swimming in the river; and then, the guard of Bolognesi bridge (over the Piura River) affirmed seeing the alleged victim coming out 100 meters downriver, thus the police officers concluded that the alleged victim had run away.

9. The State moreover asserts that the judiciary, in its decisions, stresses and reiterates that the only purported eyewitness of the facts, who asserted seeing the police officers arrest the alleged victim, "has provided different accounts in the course of the proceedings, and since they are not uniform or coherent, one can conclude that he is not telling the truth." In regard to this, the State alleges that the Judge and the Provincial Prosecutor could verify the inconsistencies during the reconstruction of the facts, as they proved, for instance, that it was impossible to see the events from the place where the eyewitness said he was. It also indicates that on May 25, 2006, the Temporary Criminal Chamber of the Supreme Court of Justice confirmed that the alleged victim was not deprived of his liberty; that therefore the facts do not coincide with the charges and there is nothing to indicate that it was a case of forced disappearance.

10. The State submits that if the petitioner considered that judicial officers were not impartial in their performance of duties, she could have filed the remedies available in the domestic legal framework, such as an objection to the judges. Likewise, it indicates that if the petitioner believed that there were acts that infringed her rights, she could have reported such purported acts by filing an appeal or a writ of habeas corpus, depending on the nature of the violated right. The State claims that these were the appropriate measures for the State to remedy the situation presented by the petitioner, because those are the available domestic remedies.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. Based on the available information, the Commission notes that on April 23, 2002 an investigation was lodged for the facts occurred on April 18, 2002, but it was archived on June 5 of the same year. Due to a new complaint, a second investigation for forced disappearance was filed and on July 7, 2005, the Second Criminal Chamber of the Superior Court of Justice of Piura acquitted all the defendants, a decision that was confirmed on May 25, 2006 by the First Temporary Criminal Chamber of the Supreme Court of Justice, and notified on July 11, 2006. During the second investigation, the petitioner filed two complaints (on April 1 and 11, 2003) against the Prosecutor, before the National Attorney General's Office and the Body for Internal Audit of the Prosecutor's Office of Piura, as a result of which a new Prosecutor was appointed. For its part, the State alleges that not all the domestic remedies were exhausted, because the petitioner did not file an appeal or a writ of habeas corpus or an objection to the judges.

12. In regard to special remedies, the Commission has previously established that although in some cases these remedies may be appropriate to dealing with human rights violations, as a general rule, the only remedies necessary to be exhausted are those which, within the legal system, are suitable for providing the protection needed to remedy the infringement of a specific legal right. In principle, these remedies are regular, not special.⁵ The Commission believes that, in situations like the one presented here—purported forced disappearance—, the domestic remedies to be considered for the purpose of admissibility are those concerning the investigation and the punishment of those responsible for said crime, which in the domestic legislation constitutes a crime liable to *ex officio* prosecution. In the instant case, the IACHR notes that the petitioner denounced the facts, and that the proceedings brought for an act forced disappearance concluded with a resolution by the Supreme Court of Justice. In view of the foregoing, the Commission concludes that in this case the domestic remedies have been pursued and exhausted pursuant to Article 46.1.a of the American Convention.

13. As to the presentation requirement, the petition was filed on January 9, 2007 and the remedies were exhausted on July 11, 2006, through the notification of the judgment rejecting the petition for annulment. Consequently, the Commission concludes that the complaint was lodged within the six-month period established by Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

14. In light of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR believes that, if proved, the alleged State's responsibility in regard to the purported disappearance of Andy Williams Garcés Suárez as well as the alleged lack of due diligence in the investigation, prosecution and punishment of those responsible all could establish possible violations of the rights protected through Articles 3 (Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to its Article 1.1; and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the alleged victim.

15. In addition, as to the purported violation of Article 17 (Family) of the Convention, the IACHR notes that the petitioner does not submit arguments or proof sufficient to *prima facie* determine a possible violation of said right.

⁵ IACHR, Report No. 22/09, Petition 908-04, Admissibility, Igmair Alexander Landaeta Mejías, Venezuela, March 20, 2009, par. 45.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 the American Convention, in relation to its Article 1.1; and Article I of the Inter-American Convention on Forced Disappearance of Persons;

2. To find the instant petition inadmissible in relation to Article 17 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

5. 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 30th day of the month of November, 2017.
(Signed): Margarete May Macaulay, First Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice-President; José de Jesus Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.