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REPORT No. 56/15
PETITION 584-03
ADMISSIBILITY REPORT

JOSÉ RAÚL JIMÉNEZ JIMÉNEZ AND OTHERS
ECUADOR

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ADMISSIBILITY

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OCTOBER 17, 2015

I. SUMMARY

1. On June 8, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or "IACHR") received a petition filed by the brothers Líder Efrén, José Raúl, Miguel Ángel, Manuel Antonio, and Anter Óliver Jiménez Jiménez (hereinafter the "petitioners" or the "Jiménez brothers") alleging Ecuador's international responsibility (hereinafter the "State" or "Ecuador") for alleged violations of the rights protected by Articles 1, 5, 7, 8, 11, and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), for the alleged arbitrary detention and torture of the alleged victims by members of the State's security forces and by the absence, as a whole, of any investigation and remediation of these incidents.

2. The petitioners alleged that military troops without any warrant from a judicial authority broke down the doors of their homes and entered violently, mistreated them and their next of kin, and then arrested the five brothers and transferred them to a military base where they were subjected to various forms of torture. They also alleged that the reports they filed with various government authorities were not investigated nor were the perpetrators ever identified or punished, nor were the alleged victims compensated for their suffering.

3. As for the State, it did not forward any information about the present petition to the IACHR although it benefited from opportunities in the proceedings to do so.

4. After examining the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the IACHR decided to declare the petition admissible for the purposes of examining the allegations made in connection with the alleged violation of the rights set forth in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 11 (right to privacy), and Article 25 (judicial protection) of the American Convention, pursuant to its Article 1.1, to the detriment of the alleged victims and their next of kin, as well as in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to its overall duty to investigate and punish alleged incidents of torture. It also decided to notify the parties about the report and to order its publication in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS WITH THE COMMISSION

5. On June 8, 2003, the IACHR received the petition, which was assigned number 584-03. On September 3, 2003, the relevant parts of the petition were forwarded to the State, requesting that it send its response within two months, pursuant to Article 30.3 of IACHR's Rules of Procedure in force at the time. At the request of the State, on October 15, a 30-day extension of the deadline was granted so that the State could submit its observations on the petition. After the extension expired, no response whatsoever was received. Subsequently, on October 29, 2010, the IACHR received up-to-date information from the petitions, which was forwarded to the State.

6. On four occasions the IACHR reiterated its request to the State: August 22, 2005, November 11, 2010, September 5, 2013, and May 2, 2014; nevertheless, to date no response has been received.

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. The petitioners allege that, on October 12, 1998, members of Ecuador's Armed Forces belonging to "24 Rayo" Special Group and Jungle Battalion No. 56 Tungurahua surrounded the housing cooperative Pre-Cooperativa de Vivienda "Voluntad de Dios" located in the canton of Cascales in the province of Sucumbíos and broke into various homes without any search warrant issued by an authority having jurisdiction.

8. They indicated that at about noon, the above-mentioned security forces broke into the home of four the alleged victims, who after being thrown to the ground and intimidated with gunshots, were transferred by helicopter to the above-mentioned Battalion, located in the vicinity of the city of Nueva Loja. According to the petitioners, there they were blindfolded, hooded, and handcuffed, they were kicked in the stomach to make them vomit, they were electrocuted (by fastening electric terminals to their toes and fingers), and bags containing tear gas were placed over their faces, while they were insulted and accused of having perpetrated various crimes. In addition, Miguel Ángel Jiménez Jiménez was taken to a water tank and had his head plunged into the water several times until he could no longer breathe. Then they took him with his brother José Raúl, telling both that their wives were being tortured just like them. These alleged incidents of torture lasted until, two hours later, two of the brothers said that they admitted the charges brought against them because of which they were no longer mistreated. As reported, throughout the time of the detention, they had been refused food and drink. The following day they were released at about 4:00 P.M.

9. Another one of the homes that were similarly searched, was that of their brother Anter Oliver Jiménez, who at about 5:30 P.M. had been arrested and taken to the same military base, where he was allegedly tortured the same way and then released at about 9:30 P.M. the following day.

10. At the end of October 1998, the alleged victims reported these incidents to the Office of the Human Rights Ombudsman of the Nation. On August 2, 1999, that institution issued a ruling indicating that *"after conducting the investigation and submitting documents on behalf of the parties involved, that is [the Jiménez brothers] (...), and the documentation it presented to the Minister of Defense, as well as those provided by Col. E.M.C. Carlos Vasco Cevallos, Commander of 19BS-Napo (...), it was proven on the basis of the documents that (...) Líder Efen, José Raúl, Miguel Ángel, and Manuel Antonio Jiménez Jiménez were arrested and taken (...) to kilometer 44 of the highway to Quito and put in a military vehicle and then onto a helicopter at kilometer 46 of the same highway, where the 4 citizens were immediately hooded, blindfolded, and handcuffed and taken to an apparently closed place to be interrogated at which time physical mistreatment occurred, as well as psychological mistreatment when they were each told separately and for about fifteen minutes that their wives were also being interrogated and that pain would be inflicted upon them during their interrogations... [they were then taken] to the dispensary and were told that they had to say that they had not been subjected to mistreatment of any kind..."* The document continues indicating that *"in the present document, there is evidence that the right to personal freedom, the right of (...) every person (...) to have their physical, psychological and moral integrity respected and they must not be subjected to torture or cruel and degrading treatment has been violated..."* On the basis of said observations, the Office of the Human Rights Ombudsman of Ecuador recommended that the State release a public statement censuring the military actions that had breached the fundamental rights of the Jiménez Jiménez brothers. Among the documents on the basis of which the Office of the Human Rights Ombudsman of Ecuador issued the above-mentioned ruling, there were medical affidavits dated October 15, 1998, in which the physicians of the Francisco Palao y Quer Health Subcenters of the locality of Lago Agrio in the province of Sucumbíos provided an account of the various physical sufferings sustained by the Jiménez brothers. There was also a report from a psychologist of the Human Rights Office of the Church of San Miguel de Sucumbíos, who provided a medical certificate of the Jiménez brothers *"characterized by depressive, anxiety, psychosomatic [and] emotional disorders."*

11. The alleged victims alleged that, although they filed their complaint with various local, regional, and national authorities (Mayor of Cascales, Governor of the Province of Sucumbíos, Commissioner of the Office of the Human Rights Ombudsman of the Province of Sucumbíos, the Minister of National Defense of Ecuador, the Minister of the Interior, the Office of the National Human Rights Ombudsman, and the

Commander of Jungle Battalion No. 56 Tungurahua, among others), and filed formal criminal charges on June 30, 2000 with the District Attorney of Sucumbíos, not only have the corresponding criminal responsibilities not been established, investigations for this purpose have not even been carried out.

B. Position of the State

12. The IACHR has not received any response from the State of Ecuador about this case.

IV. REVIEW OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

13. The petitioners were entitled, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition points to individual persons as the alleged victims regarding whom the Ecuadorian State pledged to respect and guarantee the rights enshrined in the American Convention. Ecuador is a State Party to the American Convention since December 28, 1977, on which date it deposited its instrument of ratification. It also observes that Ecuador deposited the instrument of ratification of the Inter-American Convention to Prevent and Punish Torture on November 9, 1999. Therefore, the Commission has jurisdiction *ratione personae* to hear the petition. The Commission also has jurisdiction *ratione loci* to hear the petition because it alleges violations of rights protected in the American Convention that had occurred in the territory of the Republic of Ecuador, a State Party to said treaty.

14. The Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention and the Inter-American Convention to Prevent and Punish Torture was already in force for the State at the time that the incidents alleged in the petition occurred. Finally, the Commission has jurisdiction *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture.

B. Admissibility requirements

1. Exhaustion of remedies under domestic law

15. Article 46.1.a of the American Convention provides that, for a petition filed with IACHR to be admissible pursuant to Article 44 of said Convention, remedies under domestic law must have been pursued and exhausted in keeping with generally recognized principles of international law. This requirement is aimed at allowing national authorities to hear a case of an alleged violation of a protected right and, if appropriate, to settle it before it is heard by an international body. As for Article 46.2 of the American Convention, it provides for three cases where the rule of exhaustion of remedies under domestic law shall not be applicable: a) when 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; b) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and c) when there has been unwarranted delay in rendering final judgment under the aforementioned remedies. These cases do not refer solely to the formal existence of said remedies, but also to their adequacy and effectiveness.

16. As indicated in the documentation provided by the petitioners, the alleged acts of torture had been filed with various government authorities. First, on October 20, 1998, a complaint was filed with Jungle Battalion No. 56 Tungurahua; then on November 18, 1998, a meeting was held between the Commander of Jungle Brigade No. 19 Napo and two of the alleged victims. On the basis of said meeting, the Commander had pledged to launch an investigation considering that it would be his responsibility to clarify the facts.

17. At the end of October 1998, the complaint was filed with the Office of the Governor of the Province of Sucumbíos; the Chair of the Human Rights Committee of Ecuador's National Congress; and with

the Office of the Human Rights Ombudsman of the Nation. This latter complaint was the one that led to the ruling of August 2, 1999 excerpted above.

18. The petitioners also reported that they had filed criminal proceedings with the District Attorney of Sucumbíos and up to when the petition was filed with IACHR, no criminal proceedings had been started to investigate the incidents and establish the corresponding criminal responsibilities.

19. On March 2, 2001, the petitioners filed their complaint to the Office of the President of the Republic of Ecuador, which forwarded it via the General Secretary of the Office of the President to the National Human Rights Department of the Ministry of the Interior. On August 2, 2001, the latter recommended that the executive bodies start mediation proceedings with the parties involved, establish why the arrested persons had not been ordered to appear before the authorities having jurisdiction, and request the Commander General of the Armed Forces to identify those responsible for the incident and impose the applicable sanctions. In this submittal to the Office of the President of the Republic, the petitioners described the alleged violations and requested various reparation measures.

20. On May 18, 2001, the petitioners filed a complaint with the Quito District Court for Administrative Disputes, indicating the incidents that they had suffered and claiming compensatory damages. On May 3, June 6 and 14, and September 2, 2002, the petitioners once again appealed to the Court to process their complaint. Nevertheless, as reported by the petitioners in a note received by IACHR on October 29, 2010, this request for compensation has still not been ruled on by the court, and this establishes a situation of unwarranted delay in accordance with the terms of Article 46.2.c. of the American Convention.

21. The Commission underscores that, in cases such as the present one, where illegal detention and torture are alleged, *“the adequate remedy to clarify the facts is a criminal investigation in the ordinary courts, in order to establish the criminal responsibility of the State agents involved and to open the door to possible reparations for the damages incurred.”*¹ On the basis of the information received, it does not appear that, over the more than 15 years that have elapsed since the alleged incidents described in the petition were reported to the authorities, the latter have undertaken any investigation to bring the perpetrators to justice or award damages to the alleged victims.

22. As a result, the IACHR concludes that the exception to the rule of exhausting remedies under domestic law is applicable as set forth in Article 46.2.c. of the American Convention.

2. Time-limits for filing the petition

23. Article 46.1.b of the Convention establishes that, for a petition to be declared admissible, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted remedies under domestic law. This rule is not applicable when the Commission finds that one of the exceptions to the rule of exhausting remedies under domestic law as enshrined in Article 46.2 of the Convention has been established. In these cases, the Commission must determine if the petition was submitted in a reasonable period of time in accordance with Article 32 of its Rules of Procedure, which indicates that the Commission must take into consideration the date on which the alleged violation of the rights occurred and the circumstances of each case.

24. Therefore, since the petition was filed on June 8, 2003, and since, as claimed, the criminal complaint has not been processed and the administrative dispute proceedings are still pending, the IACHR believes that the petition was submitted within a reasonable period of time, and therefore the admissibility requirement about the deadline for filing has been met.

¹ Admissibility Report No. 8/11, Petition 302/03 - Aníbal Alonso Aguas Actos and Family (Ecuador), March 22, 2011; Report No. 22/05 (Admissibility), Petition 12.270, Johan Alexis Ortiz Hernández, Venezuela, February 25, 2005, par. 34; Report No. 14/06 (Admissibility - Petition 617, Raquel Natalia Lagunas and Sergio Antonio Sorbellini v. Argentina); March 2, 2006, par. 44.

3. Duplication of proceedings and international *res judicata*

25. For the petition to be declared admissible, Article 46.1.c of the American Convention requires that the subject of the petition not be pending in another international proceeding for settlement, and Article 47.d requires that it not be substantially the same as one previously studied by the Commission or by another international organization. In the present case, the IACHR observes that the parties have not alleged that any of these reasons for inadmissibility are applicable, nor is it possible to infer these reasons from the case's file. Therefore, IACHR deems that the requirements set forth in Articles 46.1 and 47.d of the American Convention have been met.

4. Characterization of the alleged incidents

26. For the purposes of admissibility, the IACHR must decide if the facts alleged tend to establish a violation of rights, as set forth in Article 47.b of the American Convention, or if the petition is "manifestly groundless" or "obviously out of order," in accordance with subparagraph c) of the same Article. The criterion for evaluating these requirements differs from the one used to declare on the merits of the petition; the IACHR must conduct a *prima facie* evaluation to decide if the petition tends to establish the grounds for the violation, whether possible or potential, of a right guaranteed by the American Convention, but not to establish whether or not there was any violation of rights. This decision constitutes a primary review, which does not entail any pre-judgment on the merits of the case.

27. Neither the American Convention nor the Rules of Procedure of IACHR require the petitioners to identify the specific rights that were allegedly violated by the state in the case filed with the IACHR, although the petitioners may do so. It pertains to the IACHR, however, to decide in its admissibility reports, on the basis of the system's case law, what provision of the relevant Inter-American instruments is applicable and would tend to conclude that it had been violated if the alleged incidents are proven on the basis sufficient evidence and legal arguments.

28. On the basis of the considerations above, the IACHR concludes that the facts alleged regarding the alleged acts of torture, arrest, and arbitrary search, as well as the absence of investigation and reparations for these incidents, if proven to be true, would tend to establish possible violations of the rights guaranteed in Articles 5, 7, 8, 11, and 25 of the American Convention, in connection with Article 1.1 of the same treaty, as well as violations of the obligations pledged by the state on the basis of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the present victims and next of kin identified in the merits stage of the present petition.

V. CONCLUSIONS

29. The IACHR concludes that it has the jurisdiction to hear the petitions filed by the petitioner and the alleged violation of Articles 5, 7, 8, 11, and 25 of the American Convention (in connection with Article 1.1 of said instrument) and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and that said petitions are admissible in accordance with the requirements set forth in Articles 46 and 47 of the Convention.

30. On the basis of the arguments of fact and law indicated above, and without detriment to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petitions admissible in connection with Articles 5, 7, 8, 11, and 25 in connection with Article 1.1 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To notify the Ecuadorian State and the petitioner about this decision;
3. To continue to examine the merits of the case; and
4. To publish the present decision and include it in its Annual Report to the General Assembly of the OAS.

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.