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REPORT No. 32/15
CASE 11.100
REPORT ON ADMISSIBILITY

AYURE QUINTERO FAMILY
COLOMBIA

Approved by the Commission at its session No. 2035 held on July 22, 2015
155th Regular Period of Session.

Cite as: IACHR, Report No. 32/15, Case 11,100. Admissibility. Ayure Quintero Family.
Colombia. July 22, 2015.

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I. SUMMARY

1. On January 5, 1993, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by the Comisión Colombiana de Juristas and the Corporación Colectivo de Abogados “José Alvear Restrepo” (hereinafter the “petitioners”) as representatives of Martha Cecilia Ayure Quintero, Sandra Milena Ayure Quintero, and Matilde Quintero (hereinafter also the “alleged victims”), alleging violation by the Republic of Colombia (hereinafter “the State” or “Colombia”) of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), 21 (right to property), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), in connection with the obligations arising under Article 1.1 of that treaty.

2. The petitioners maintain that on May 13, 1992 members of Mobile Brigade No. 1 of the National Army of the Republic of Colombia broke into the home of the Ayure Quintero family in Santander Alto, a jurisdiction of the municipality of La Uribe (Meta), and proceeded to fire indiscriminately on all who were there, killing the minor child Martha Cecilia Ayure Quintero, and seriously wounding the girl, Sandra Milena Ayure Quintero, and her mother Matilde Quintero.

3. The State maintains that the facts covered in the petition were heard by the competent authorities and adjudicated in accordance with due process guarantees. In this regard, the State maintains that the IACHR cannot act as a higher court and, in light of the principle of subsidiarity, it could not hear judicial decisions based on law simply because they did not prove favorable to the alleged victims.

4. Without prejudging the merits of the matter, and after having analyzed the parties’ positions and verified compliance with the requirements set forth under Articles 46 and 47 of the American Convention, the Commission decides that the petition is admissible for purposes of examining the alleged violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 19 (rights of the child), 21 (right to property), and 25 (right to judicial protection) of the American Convention in connection with Articles 1.1 and 2 thereof. In addition, it declares the petition inadmissible with respect to Articles 11 (right to privacy), 17 (rights of the family), and 22 (freedom of movement and residence) of the Convention. The Commission further decides to notify the parties of the decision and to order its publication in the Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. On January 5, 1993, the Commission received the petition and recorded it under number 11.100. On January 21, 1993, the relevant portions of the petition were forwarded to the State for its observations. The State submitted its observations on March 2, 1994; August 10, 1994; June 27, 1995; January 23, 1996; October 10, 1996; November 20, 1996; January 29, 1997; June 18, 1997; September 14, 1998; and November 16, 2001. These communications were duly forwarded to the petitioners.

6. The petitioners submitted updated information and observations on March 17, 1993; July 5, 1994; February 9, 1995; September 14, 1995; April 15, 1996; October 8, 1996 during the hearing held on the same day (93rd period of session); November 12, 1996; March 3, 1997; August 13, 1997; October 7, 1997 during the hearing held on the same day (97th period of session); August 28, 2001; and March 21, 2002. These were duly forwarded to the State. In a communication dated January 12, 2007, the petitioners requested that

the IACHR grant a working meeting for the purpose of addressing matters related to the situation in the complaint.

7. On February 5, 2007, the Commission summoned the parties to a working meeting, which was held on March 5 of the same year, in the context of the 127th regular session. On April 23, 2007, the State provided additional information, on June 28, 2007 it reported that a “memorandum of understanding to establish an exploratory group in search of a friendly settlement” was signed between the parties on June 13 of the same year, and on August 20, 2007 it provided new observations, which were forwarded to the petitioners. In a communication dated April 6, 2009, the Commission asked the parties to submit information on the process seeking a friendly settlement. The State’s response was received on May 26, 2009 and was forwarded to the petitioners for their observations.

8. In a communication dated February 1, 2012, the petitioners asked to terminate the search for a friendly settlement and to continue processing of the procedure. On February 6, 2012, the Commission informed the parties that, in accordance with Article 40 of the Rules of Procedure, it was terminating its intervention in the friendly settlement procedure and would continue processing the petition, asking the petitioners for updated information on this matter. On January 22, 2013, the petitioners submitted their response, which was forwarded to the State for its observations. On February 21, 2014, the State sent its response, which was forwarded to the petitioners for their information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. As background, the petitioners indicate that the events in this case occurred within the context of a series of violations committed by members of the army against the inhabitants of the municipality of La Uribe (Meta) due to the region’s strong support for the Patriotic Union political organization. They allege that from the time the Patriotic Union was formed, its members were the victims of systematic persecution and extermination. They report that in this context the inhabitants of the municipality of La Uribe were repeatedly victimized by arbitrary arrests, forced disappearances, and mistreatment, as well as looting and threats committed by Mobile Brigade No. 1 of the National Army.

10. Regarding the events that occurred on May 13, 1992, the petitioners state that at 4:00 p.m. while 42-year-old Mrs. Matilde Quintero Ayure was inside her home with her daughters, Graciela, aged 13, Sandra Milena, aged 12, Martha Cecilia, aged 11, Yaneth, aged 9, Bellanid, aged 8, and her granddaughter Ismenia, aged 2, two alleged armed guerrillas came to her home asking for food, to which Matilde Quintero agreed, and the men entered her home. The petitioners state that after they ate, at about 5:15 p.m., a group of soldiers from the “*armazón*,” “*mulato*,” and “*roblé*” companies attached to Mobile Brigade No. 1¹ who were patrolling the sector stealthily surrounded the house and opened fire indiscriminately against those occupying the home.

11. They allege that the shots caused the death of the child Martha Cecilia Ayure Quintero, “who was clearly identified as a civilian, dressed in a blue blouse with small white flours and green shorts,” and the two alleged guerrillas, Marcos Bonilla Vasallo and Moisés García, and seriously wounded Matilde Quintero and her daughter Sandra Milena Ayure. In addition, the group of soldiers did material damage to the home, furniture, belongings, and animals owned by the Ayure Quintero family, including three cows, a breeding bull, 15 sheep, 70 hens, blankets, dishes, work tools, 50 loads of rice, and 60 loads of corn.

¹ The petitioners indicate as alleged perpetrators of the violation National Army Lieutenant William Arturo Arias Prada, a member of Counter-Guerrilla Battalion N. 22 of Mobile Brigade No. 1; National Army Second Lieutenant William de Jesús Núñez Parra, a member of Counter-Guerrilla Battalion N. 22 of Mobile Brigade No. 1, and Soldier Carlos Hernando Maldonado Rondón, a member of Counter-Guerrilla Battalion No. 8 Quimbayas of Mobile Bridge No. 1.

12. They state that at about 6:00 p.m., a National Army helicopter transported Mrs. Matilde Quintero and the child Sandra Milena Ayure to the Central Military Hospital in the city of Bogota, leaving the lifeless body of Martha Cecilia in the home. They state that the father of the minor children, Mr. Eusebio Ayure, was at a farm nearby and upon hearing the shots headed toward home but was prevented from doing so by members of Mobile Brigade No. 1, who interrogated him regarding his activities and assured him that his family was safe and sound in the capital city.

13. The petitioners state that Mr. Eusebio Ayure learned from the media about the death of his daughter Martha Cecilia and the wounds suffered by his wife and daughter, as they were being held incommunicado at the Central Hospital of Bogota. They allege that on the following days, Mr. Ayure tried without success to communicate with his family, but hospital staff told him they weren't admitted there. In response to this situation, on May 28, 1992, he filed a complaint with the Office of the Attorney General. That office conducted a visit on the same day, confirming that Matilde Quintero and Sandra Milena Ayure were in fact at that hospital center. With the intervention of the International Committee of the Red Cross, Mr. Ayure also filed a habeas corpus petition to find his relatives, with positive results.

14. The petitioners also state that the girls, Graciela, Janeth, and Ismenia were held at Battalion 21 Vargas for 13 days – without their mother's authorization – and it was not until May 26, 1992 that they were moved to the Rafael Uribe Children's Home in La Uribe, Meta department. They allege that on the day of the events, Eusebio Ayure asked to be reunited with his daughters and on June 16 he sent a nun so that, with her as an intermediary, they would give him his girls, but was not successful in this. On June 3, 1992, Mr. Ayure asked the regional director of the Colombian Institute of Family Welfare (ICBF) for help so that his girls could be reunited with the rest of the family in Bogota. They state that, finally, on June 10, 1992, some nuns brought the girls Graciela and Janeth to Bogota where they were handed over to their parents; Ismenia was handed over to her biological father, Mr. Emilio Orjuela Téllez.

15. The petitioners state that in addition to the death of Martha Cecilia Ayure Quintero, the shots from the soldiers' weapons wounded the minor, Sandra Milena Ayure Quintero, who as a result was left with a permanent disability given her inability to move her right leg, with the resulting 45% loss in her ability to work. Mrs. Matilde Quintero Valdés was left with a permanent disability due to wounds to her left hand, with the resulting 25% loss in her ability to work.

16. The petitioners also allege that the national army hid the body of the child Martha Cecilia Ayure Quintero for nearly five years. They state that her body was removed by members of the national army who participated in the raid and not by the Judicial Police as it should have been, and the place of burial was kept secret. They add that in July 1996, at the Granada cemetery a body was exhumed from the site where – according to information obtained by the prosecutor – the minor Martha Cecilia had been buried, but what was found were the skeletal remains of a one-year-old female child, which were not the bones of the minor Ayure child. They state that according to a commitment made by the National Director of Prosecutors' Offices before the IACHR during the hearing of October 8, 1996, new procedures were undertaken to find the child's skeletal remains. Finally, on December 16, 1996, accompanied by the International Red Cross, the Ayure Quintero family received "six bags" with the remains of their youngest daughter, Martha Cecilia. They state that the family felt that delivering the child's body in bags was an affront to their dignity.

17. The petitioners indicate that as a result of these events investigations were initiated in the military jurisdiction, in criminal, administrative, and disciplinary proceedings. With regard to the investigations conducted in the military criminal jurisdiction, the petitioners indicate that on May 13, 1992, Military Criminal Examining Court 119 of the city of Granada (Meta) began the preliminary investigation of the facts and only one month later, on June 11, 1992, declined to initiate a criminal investigation, arguing that the soldiers used their weapons in response to fire from the guerrillas and to defend their lives against wrongful aggression, and their attack was thus in proportion to the threat.

18. They state that a parallel process was initiated in the regular jurisdiction as a result of the complaint filed in May 1992 by soldiers of the National Army, alleging personal injuries from the crossfire between them and the guerrillas during the raid on the Ayure Quintero family's home. However, on December

20, 1996, the Eastern Regional Prosecutor's Office declined to open an investigation in that the alleged injuries suffered by the members of the army were due to a cutting weapon and not the result of armed confrontation. The Eastern Regional Prosecutor's Office referred the matters relating to the death of Marta Cecilia Ayure and the wounds suffered by Matilde Quintero and Sandra Milena Ayure to the military criminal jurisdiction.

19. The petitioners state that on October 1996, Military Criminal Examining Court 47 reopened the preliminary investigation and in December 1997 ordered the cessation of all proceedings. After proceedings had been conducted in various venues, in June 2003, ten years after the events occurred, Military Criminal Prosecutor's Office 28 again reviewed the merits of the indictment and ordered the cessation of the procedure in favor of the accused because the criminal statute of limitations had lapsed. They report that they filed an appeal challenging that decision, which was upheld by the Military Superior Court in September 2003. They indicate that Prosecutor's Office 16, Judicial Criminal II Division, acting as the prosecution in the criminal process, filed a motion for protection against that decision and on November 20, 2007, the criminal cassation chamber of the Supreme Court of Justice denied protection of the rights invoked. They indicate that in February 2008, the prosecutor submitted a request that the case be heard by the Constitutional Court. They stress that the Constitutional Court twice declared the entire proceeding null based on the failure to notify the members of the armed forces involved and finally in May 2009, the Criminal Cassation Chamber issued a new finding denying the protection invoked. They state that no appeal was filed against that ruling and it was not reviewed by the Constitutional Court.

20. With regard to the administrative action, the petitioners allege that on September 19, 2000 the Administrative Court of Meta found the Colombian State to be liable and thus ordered that it pay compensation of 1000 grams of gold to each of the parents, and 500 grams of gold to each brother and sister of Martha Cecilia Ayure Quintero. It also established the recognition of 300 grams of gold in favor of Matilde Quintero and Sandra Milena Ayure for the injuries they suffered. In addition, the Court ordered conviction in principle for the material damages caused and on November 22, 2005 it recognized emerging damages based on the damage done to the property of the Ayure Quintero family, for a total of \$45,299,404 (approximately US \$ 20,000 at that time). On April 25, 2007, the National Ministry of Defense proceeded to pay the damages ordered.

21. With respect to the disciplinary proceeding, the petitioners state that on May 28, 1992 the Office of the Delegate Prosecutor for the Military Forces began a preliminary inquiry, *inter alia*, for the personal injuries caused to Sandra Milena Ayure and Matilde Quintero and the illegal detention of the minors Graciela, Janeth, and Ismenia. On July 21, 1993, the Office of the Prosecutor declined to initiate an investigation, alleging the absence of evidence to justify its jurisdiction. On August 9, 1995, the Office of the Prosecutor reopened the investigation and without hearing additional evidence again archived the investigation on February 23, 1996.

22. The petitioners allege that, with regard to the requirement of prior exhaustion of domestic remedies established in Article 46.1 of the American Convention, the process followed before the military criminal jurisdiction does not constitute an effective remedy for conducting an investigation into human rights violations. In this regard, they believe that said investigation flouts the recommendations of the Inter-American Court, which has stipulated that the military criminal jurisdiction should only try soldiers for the commission of crimes or offenses that based on their very nature impinge on legal interests inherent to the military system. They also allege the military criminal investigation fostered impunity instead of establishing liability for crimes. The petitioners maintain that there was unwarranted delay, in that more than 20 years have passed since the events and no agent of the State has been convicted and no investigation has been conducted before the ordinary jurisdiction. They also state that it was impossible to declare lapse of the criminal statute of limitations regarding the execution of the child Martha Cecilia Ayure and the injuries caused to her sister and mother in that these constitute serious violations of human rights. In this sense, they allege that the exceptions to the exhaustion of domestic remedies apply due to the unsuitability of the military criminal jurisdiction, in accordance with paragraphs b) and c) of Article 46.2 of the American Convention.

B. Position of the State

23. The State maintains that the alleged events were diligently investigated at the domestic level in the military criminal, administrative, and disciplinary jurisdictions. It also asserts that it implemented a series of additional actions to achieve comprehensive reparations for the victims in the context of the process in search of a friendly settlement, adopting various judicial and other measures intended to provide adequate medical and psychosocial care.

24. It states that pursuant to the administrative actions filed by the petitioners, the Administrative Court of Meta declared the State liable because it found the allegations of misconduct in service to have been proven and recognized moral damages owed to the parents and siblings of the alleged victim, ordering the payment of material damages. It indicates that in compliance with that decision, on May 9, 2007, the National Treasury Directorate, through an electronic transfer, paid the amounts due for reparations.

25. With respect to the conduct of the ordinary criminal and military criminal processes, the State alleges that the facts in the case were already heard by the competent domestic authorities and it thus fulfilled its obligations to make available competent, independent, and impartial judges to carry out investigations and diligently rule on appeals filed in compliance with due process guarantees.

26. The State indicates that it actively participated in the process of seeking a friendly settlement, including putting some remedies in motion at its own initiative. In this regard, it refers to the preparation and filing by the Prosecutor's Office of the action for protection before Supreme Court of Justice, seeking to have the investigation into the facts conducted in the ordinary jurisdiction, along with the implementation of all the measures that were available to the State to achieve that end, exhausting all ordinary and extraordinary remedies available in the legal system. The State emphasizes that it sent various communications to the petitioners in November 2007 and April 2008 so they could assist by participating in the process, but these communications were ignored.

27. The State adds that it pushed for the initiation of the disciplinary proceeding against the judicial authorities who heard the case in the military criminal jurisdiction to establish whether there had been irregularities in the conduct of that proceeding and whether to that extent disciplinary responsibility existed. However, it states that after the authorities performed the respective analysis through the procedures established in domestic law, this process concluded with the decision on June 12, 2008 that there were no actions constituting disciplinary responsibility.

28. The State indicates that it also took various measures to enable the delivery of adequate medical care for Sandra Milena Ayure Quintero. It states that on May 14, 2008 the petitioners requested urgent medical care for her, given the health complications she was experiencing related to the injuries she had sustained. It indicates that thanks to the efforts of the Ministry of Social Protection, Sandra Milena was attended on May 27, 2008 at the Central Hospital of Granada and a medical board ordered some medical studies. However, it reports that contact was lost with Mrs. Ayure Quintero and it wasn't until one year later that the petitioners provided a new telephone number for Sandra Milena Ayure Quintero. It states that as requested by Mrs. Ayure Quintero, a new assessment will be performed by a specialist in the city of Bogota, for which purpose various actions were taken to cover costs for Mrs. Sandra Milena Ayure Quintero to travel to and stay in the city of Bogota.

29. Regarding the provision of psychosocial care for the victims, the State indicates that even though meetings of the exploratory group had ended, the State continued to take steps to have an independent entity conduct the examination requested by the petitioners. In this regard, it states that communications were sent to the petitioners on February 14 and April 14, 2008, but were never answered. It states that, finally, on July 7, 2009 a meeting was held with the participation of the State and the petitioners for the purpose of presenting the proposed psychosocial evaluation that would be performed by the Psychology Group at the University of the Andes, and for the purpose of establishing possible additional measures of reparation.

30. The State emphasizes that, despite its good intentions and all the actions it took in the context of the process seeking a friendly settlement, it repeatedly faced the petitioners' lack of interest in the implementation of agreements in the context of the Exploratory Group. This concern was expressed to the Commission on various occasions.

31. The State alleges that the existence of a ruling adverse to the interests of the alleged victims does not constitute a violation of rights contained in the American Convention; that the remedies initiated in the domestic jurisdiction were adequate, effective, and suitable; and that the judgments were duly supported and cannot be declared arbitrary. In view of the foregoing, the State asserts that the alleged facts have been the subject of domestic judgments in three different and autonomous jurisdictions, in accordance with due process, so that the Commission cannot act as a court of fourth instance.

IV LEGAL ANALYSIS

A. Competence

32. The petitioners are empowered, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition identifies as alleged victims individuals with respect to whom the Colombian State committed to respect and guarantee rights established in the American Convention. With respect to the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, the date when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that would have taken place within the territory of Colombia, a State Party to that treaty.

33. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date when the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces possible violations of human rights protected in the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

34. Article 46.1.a of the American Convention provides that in order for a complaint submitted to the Commission to be admissible in accordance with Article 44 of the Convention, the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear the alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body. For its part, Article 46.2 of the Convention establishes three situations in which the exhaustion of domestic remedies is not applicable: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right of rights that have allegedly been violated; b) 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) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These assumptions refer not only to the formal existence of such remedies but to their also being adequate and effective.

35. The Commission notes that since the current complaint involves the alleged responsibility of agents of the State for the alleged execution of a civilian, serious injuries, and the detention of other civilians, the suitable remedy for clarifying the facts is a criminal investment in the ordinary judicial system in order to

establish the criminal liability of the agents of the State involved.² The Commission also notes that the alleged events related to the death of Martha Cecilia Ayure are reflected in domestic law as criminal conduct prosecutable *ex officio*, the investigation and adjudication of which must be promoted by the State itself.

36. In the instant petition, the State does not allege a failure to exhaust domestic remedies and maintains that the facts alleged properly resulted in domestic proceedings within the military criminal, administrative, and disciplinary jurisdictions. For their part, the petitioners allege that the exceptions provided in Article 46.2. b) and c) of the American Convention are applicable, because the investigation of the facts was conducted within the military criminal jurisdiction, which does not constitute an effective remedy, and because there was an unwarranted delay.

37. As both parties informed the IACHR, the investigation regarding the facts in this case occurred in the military jurisdiction in two periods. The first was during the period from May 13 to June 11, 1992 when Military Criminal Court 119 declined to initiate an investigation and the second was during the period from May 22, 1996 to June 2003 when Military Criminal Prosecutor's Office 28 declared that the statute of limitations had lapsed. A constitutional appeal for protection was filed against this decision in November 2007 and in May 2009 the Criminal Cassation Chamber of the Supreme Court of Justice declared the appeal unfounded.

38. In this regard, the Commission has repeatedly ruled to the effect that special jurisdictions such as the military jurisdiction do not constitute an appropriate forum and thus do not provide an adequate remedy for investigating, trying, and punishing possible violations of the human rights established in the American Convention, such as the right to life, allegedly committed by members of the Armed Forces.³ The same reasoning has been systematically applied by other relevant international human rights bodies.⁴

39. The Commission notes that with more than twenty years having passed since their occurrence, the events covered in this petition and the respective responsibilities have still not been clarified with an investigation in the ordinary jurisdiction. In view of the above, the complaint falls under the exception to the exhaustion of domestic remedies provided in Article 46.2.b) of the American Convention that establishes that said exception applies 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." The Commission also notes an unwarranted delay according to the terms of Article 46.2.c); consequently, the exhaustion of domestic remedies is not required.

40. Regarding the preliminary disciplinary inquiry initiated by the Delegate Prosecutor for the Military Forces that concluded with a waiver of prosecution in 1993 and was definitively archived in 1996, it should be noted that the Commission has previously established that the disciplinary jurisdiction does not constitute a sufficient venue for adjudicating, punishing, and repairing the consequences of human rights violations.⁵

41. With regard to the administrative appeal exhausted before the Administrative Court of Meta whereby the State was declared responsible for misconduct in service, it should be pointed out that this constitutes a mechanism that sought supervision of the administrative activity of the State and only made it

² IACHR, Report No. 8/11, *Anibal Aguas Acosta*, March 22, 2011, para. 30.

³ IACHR, Report No. 64/01, Petition 11.712, *Leonel de Jesús Isaza Echeverry et al.*, Colombia, April 6, 2001, para. 22. See also, I/A Court of H.R., *Durand and Ugarte Case*. Judgment of August 16, 2000, Series C, No. 68, para. 117; *Cesti Hurtado Case*. Judgment of September 29, 1999, Series C, No. 65, para. 151. See also, IACHR, *Report on the Situation of Human Rights in Chile*, September 27, 1985, p. 199. 200. OEA/Ser.L/V/II.66 doc. 17; IACHR, 1996 Annual Report, March 14, 1997, p. 688. IACHR, *Report on the Situation of Human Rights in Ecuador*, April 24, 1997, p. 36. IACHR, *Report on the Situation of Human Rights in Brazil*, September 29, 1997, p. 50.

⁴ See U.N. Doc. E/CN.4/Sub.2/2000/44, *Administration of Justice by Military Courts and Other Exceptional Jurisdictions*, August 15, 2000, para. 30; and 1995 *Report, Special Rapporteur on Torture*. U.N. Doc. E/CN.4/1995/34, January 2, 1995, para. 76(g).

⁵ IACHR. Report No. 72/09 Herson Javier Caro (Javier Apache) and family, August 5, 2009, para. 28.

possible to obtain compensation for the damages and injuries caused.⁶ In this regard, the Commission has earlier maintained that decisions issued in disciplinary orders and administrative proceedings are not suitable remedies for purposes of the prior exhaustion of domestic remedies. In the instant case, the petitioners' claims relate to the investigation, prosecution, and criminal punishment of those responsible, questions that do not correspond to those jurisdictions. Consequently, in a case like this, these remedies are not suitable remedies for purposes of complying with the rule of prior exhaustion.⁷

42. Invocation of the exceptions to the rule of exhaustion of domestic remedies as provided in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights established therein, such as judicial guarantees and protections. However, Article 46.2, based on its nature and intent, is a rule with autonomous content *vis à vis* the substantive standards of the American Convention. As a result, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be made prior to and separate from analysis of the merits of the case, in that it depends on a standard of evaluation different from that used to determine the possible violation of Articles 8 and 25 of the American Convention. It should be clarified that the causes and effects that prevented the exhaustion of the domestic remedies will be analyzed in the report to be adopted by the Commission on the merits of the dispute, for the purpose of determining whether they constitute violations of the American Convention.

2. Deadline for submitting the petition

43. The American Convention establishes that in order for a petition to be admissible by the Convention it must be submitted within a period of six months of the date when the alleged injured party received notice of the final decision. In the complaint under analysis, the IACHR has established the application of exceptions to the exhaustion of the domestic remedies in accordance with [Article] 46.2.c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in cases in which exceptions to the prior exhaustion of the domestic remedies are applicable, the petition must be presented within a reasonable period of time, as determined by the Commission. To that end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances in each case.

44. In the instant case, the petition was received on January 5, 1993, the alleged facts covered in the complaint began on May 13, 1992, and their effects in terms of the alleged failure in the administration of justice would extend to the present. Therefore, in view of the context and characteristics of this case, the Commission deems that the petition was submitted within a reasonable period of time and that the admissibility requirement referring to the deadline for submission should be considered to have been met.

3. Duplication of proceedings and international *res judicata*

45. The file does not indicate that the subject of the petition is pending another international proceeding, or that it reproduces a petition already examined by this or another international body. Therefore, the requirements established in Articles 46.1.c) and 47.d) of the Convention should be considered to have been met.

4. Characterization of the alleged facts

46. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as provided in Article 47.b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order" in accordance with paragraph c) of that article.

⁶ IACHR. Report No. 72/09 Herson Javier Caro (Javier Apache) and family, August 5, 2009, para. 28.

⁷ IACHR. Report No. 74/07 José Antonio Romero Cruz, Rolando Ordoñez Álvarez, and Norberto Hernández, October 15, 2007, para. 34 and Report No. 72/09 Herson Javier Caro (Javier Apache) and family, August 5, 2009, para. 28.

47. In addition, neither the American Convention nor the IACHR Rules of Procedure require petitioners to identify specific rights that are alleged to have been violated by the State in a matter submitted to the Commission, although they may do so. It is up to the Commission, based on the system's jurisprudence, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whether the violation thereof could be established if the facts alleged are proven on the basis of sufficient evidence.

48. In view of the factual and legal elements presented by the parties and the nature of the matter submitted for its review, the IACHR believes that the petitioners' complaints regarding the alleged involvement of agents of the State in the death of Martha Cecilia could tend to establish possible violations of the right to life, as well as the right to special protection as a child, as established in Articles 4 and 19 consistent with Article 1.1 of the American Convention, to the detriment of Martha Cecilia Ayure Quintero.

49. In addition, violation of the right to humane treatment as established in Article 5 of the Convention to the detriment of Matilde Quintero could be established, as could violation of Articles 5 and 19 in connection with Article 1.1 of the same instrument to the detriment of Sandra Milena Ayure. In addition, should the claims relating to the failure of due diligence in locating and turning over the remains of Martha Cecilia and in the investigation, punishment, and adjudication of those allegedly responsible, and regarding the hearing of the case by the military jurisdiction be proven, they could constitute violations of Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof, to the detriment of the petitioners.

50. In addition, the allegations related to the arbitrary removal of the family's three female children and their being held in a military installation could tend to establish possible violations of Articles 5 and 19 consistent with Article 1.1 of the American Convention to the detriment of Yaneth, Ismenia Ayure, and Graciela Ayure; and of Article 5 of the Convention in connection with Article 1.1 thereof to the detriment of the family members who were ignorant of their whereabouts. In addition, the Commission notes that the allegations expressed could characterize violations of the right to personal liberty. Therefore, it will also consider in the merits phase the alleged violation of Article 7 of the Convention, in connection with Article 1.1.

51. In addition, the IACHR believes that the effects that family members have suffered due to the death of the child Martha Cecilia Ayure; the alleged concealment of her corpse for nearly five years; the fact that Matilde Quintero and Sandra Milena Ayure suffered permanent physical disability; and the alleged denial of justice could characterize a possible violation of Articles 5, 8, and 25 of the American Convention, in connection with Article 1.1 thereof. The allegations could also characterize the possible violation of Article 21 of the Convention, in connection with Article 1.1 thereof, to the detriment of the relatives of the alleged victims, whose belongings were destroyed.

52. In addition, the IACHR notes that with respect to the alleged violations of Articles 11, 17, and 22 the petitioner has not submitted sufficient evidence that could characterize a possible violation of these articles.

V. CONCLUSIONS

53. Based on the factual and legal considerations presented, and without prejudging the merits of the case, the Inter-American Commission concludes that this case meets the admissibility requirements indicated in Articles 46 and 47 of the American Convention and as a result,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible with respect to Articles 4, 5, 7, 8, 19, 21, and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument.
2. To declare this petition inadmissible with respect to possible violations of Articles 11, 17, and 22 of the American Convention.
3. To notify the State and the petitioners of this decision.
4. To initiate processing on the merits of the case.
5. To publish this decision and include it in its Annual Report, to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 22st day of the month of July, 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, Tracy Robinson and Paulo Vannuchi, Commissioners.