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REPORT No. 159/17

PETITION 712-08

REPORT ON ADMISSIBILITY

SEBASTIÁN LARROZA VELÁZQUEZ AND FAMILY
PARAGUAY

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

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PETITION P-712-08
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 SEBASTIÁN LARROZA VELÁZQUEZ AND FAMILY
 PARAGUAY
 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	CEJIL, Coordinadora de Derechos Humanos de Paraguay (CODEHUPY)
Alleged victim:	Sebastián Larroza Velázquez and family
State denounced:	Paraguay
Rights invoked:	Articles 4 (life), 5 (personal integrity), 25 (judicial protection), 8 (judicial guarantees) and 15 (right of assembly) of the American Convention on Human Rights in connection with Articles 1.1 and 2

II. PROCEDURE BEFORE THE IACHR¹

Date on which the petition was received:	June 17, 2008
Date on which the petition was transmitted to the State:	April 17, 2014
Date of the State's first response:	December 2, 2014
Additional observations from the petitioning party:	June 19, 2015

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 (deposit of instrument made on August 24, 1989)

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 4 (life), 5 (personal integrity), 8 (judicial guarantees), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association) and 25 (judicial protection) of the Convention in connection with Articles 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.c of the Convention applicable
Timeliness of the petition:	Yes, in the terms of Section VI

¹ The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. As a background history, the petitioners indicate that there are huge inequalities in the distribution of rural land in Paraguay; and that in this context the demand for an integral agrarian reform has been the main claim of rural workers' organizations during the years after the dictatorship. They indicate that the peasant movement has suffered harsh repression at the hands of state security agencies. They claim that between 1989 and 2005 there were 77 extrajudicial executions of leaders and members of rural workers' organizations. They indicate that this social and political context was part of the general strike that took place on May 2, 1994, the first since the fall of the military dictatorship, where approximately one thousand peasants from different organizations met to protest at the Tacuara crossing, a junction of the road to Yby Ya'u with a detour to the city of San Estanislao.

2. They state that Sebastián Larroza Velázquez (hereinafter also "the alleged victim"), was 18 years old at the time of the events and was an active militant of the Peasant Association for Integrated Development. They allege that he participated on behalf of this organization in the strike of May 2, 1994; during the police repression of this demonstration the alleged victim was extrajudicially executed by an agent of the National Police.

3. In particular, they indicate that when the march was already coming to an end, the Superintendent in charge of the police operation gave the totally unjustified order to advance towards the demonstrators. They say that the police began to attack the peasants beating them and with tear gas, which led to a confrontation. They allege that in these circumstances, a police officer drew his gun and fired at point-blank range without any warning, aiming at the alleged victim's head who was approximately 3 meters away, crouched and with his back to the police line, trying to get up from the ground. After that first shot, other police officers began firing indiscriminately in all directions. They indicate that during all this the journalist of the ABC Color newspaper approached to help the alleged victim but was also struck by a bullet in the back. Both bodies lay on the ground and approximately 4 minutes passed until a group of peasants came to help both the injured, taking them to Santani Sanatorium. Minutes after arriving, Sebastián Larroza Velázquez died.

4. They state that following these events the Chief of No. 8 Police Station of San Estanislao filed a formal complaint for "violation of constitutional guarantees, contempt of judicial authority and confrontation between police forces and peasants" pointing out the possible responsibility of peasant leaders. As a result of this complaint, on May 4, 1994, a judicial investigation was initiated before the Criminal Investigation Court of San Estanislao.

5. They allege that this investigation suffered from several deficiencies and that the authorities did not carry out the necessary basic procedures in order to clarify the facts. They cite as an example the delayed completion of the autopsy on the alleged victim's body undertaken on May 10, almost a week after the events and without the necessary professional expertise. It was performed at night, next to the grave, the bullet being extracted with a saw without examination of other useful evidence on the body, such as the distance of the shot and angle of the projectile, in contravention of elementary medical forensic protocol. The relatives of the alleged victim were not notified either. They point out that moments after the exhumation, the forensic pathologist and the judge were interrupted in the cemetery by peasants and various media, who documented the events. After this incident, the investigating judge of San Estanislao refused to continue hearing of the case, citing reasons of decorum and delicacy. The case was then sent to the Criminal Court of First Instance, Second in Line, of Coronel Oviedo and to the Office of the Prosecutor Third in line of said jurisdiction.

6. They point out that on May 16, 1994, the alleged victim's father filed a formal criminal complaint against a non-commissioned officer for the crime of first degree murder. On May 18, the court admitted the complaint and ordered the preventive detention of the second lieutenant and imprisonment at the barracks of the Specialized Group of the National Police. The petitioners point out that during the trial numerous pieces of evidence were ordered ex officio by the court and produced by defendant's counsel. These pieces of evidence were admitted with defects preventing a real clarification of the events. In

particular, they allege that there is no evidence that some of the evidence examined was actually found at the scene and indicate that the weapons on which forensic tests were carried out do not match those described as being found at the scene under investigation within the police report in the complaint of May 4, 1994.

7. They indicate that on September 6, 1994, the judge decided that the second lieutenant already detained be formally subject to preventive detention. However, on August 29, 1995, the Criminal Appellate Court of Caaguazú allowed the appeal filed by the accused and annulled the order of preventive detention, arranging his release on bail. The petitioners add that in mid-1995, the financial situation of the parents of the alleged victim was such that they could no longer afford to continue paying the fees of the attorney who was acting in the criminal complaint filed. They point out that from that moment the case was stalled, with no compliance with the pending procedural steps and without the Public Ministry performing its functions of promoting and prosecuting the public criminal action ex officio. On August 28, 1998, after 3 years of procedural inactivity, at the request of the defense and the Public Ministry, the judge declared the criminal complaint abandoned. In the same way, the Judge decided to declare a provisional acquittal of the defendant on March 24, 2000. Subsequently, on April 16, 2001, at the request of the defense and the prosecutor, the criminal proceedings were declared to be extinguished in the case and a permanent acquittal was issued in favor of the defendant. The petitioners maintain that they were never notified of resolutions that granted the provisional and definitive acquittals.

8. They allege that on December 5, 2006, the alleged victim's parents appeared before the Criminal Court of Settlement and Sentence of Coronel Oviedo to find out the status of the proceedings. On that same date, they were personally notified in the Court Secretariat about the termination of the action and proceeded to appeal the decision. On December 12, 2007, the Appeals Court of the First District Court of San Pedro y Caaguazú decided to declare the appeal inadmissible, despite the arguments presented and the favorable opinion of the Public Prosecutor's Office. The Court considered that the victim's next of kin lacked the right to file an appeal because they had participated as complainants throughout the criminal proceedings, and that the rule is established in favor of those who have not previously intervened in the proceedings.

9. The petitioners state that the repression suffered by the group of peasants during the demonstration on the day of the events was unjustified and excessive. They also point out that Paraguayan Law No. 1066/97, known as the "marchódromo" law, created with the purpose of regulating the restrictions imposed on the right of assembly and demonstration, is contrary to Inter-American standards on the subject because it contains excessive and unreasonable restrictions.

10. On the other hand, in relation to the irregularities that occurred during the judicial investigation, on May 12, 1994, the Judges for the Prosecution of Magistrates initiated ex officio the trial of the Criminal Investigation Judge of San Estanislao. On October 13, 1994, the Judicial Indictment Board decided to acquit the Judge of the charges against him. The Board admitted that the exhumation of the body and the extraction of the projectile had been carried out in an inappropriate place, at an inconvenient time and without the proper tools, and also described as "objectionable" the lack of communication to the victim's relatives; however, it opined that these circumstances "did not constitute sufficient grounds to warrant removal of the judge".

11. The State, for its part, confirms the existence of the demonstration and points out that the death of the alleged victim occurred after a confrontation between police and peasants during the last minutes of the peasant's gathering. It indicates that immediately after the events, the Police Authority ordered the opening of an Administrative Investigation in order to apportion responsibilities. On June 30, 1994, the Director of Police Justice resolved to exonerate the administrative responsibility of the 1st Sub officer and other members of the police force who were on duty at the time and place of the events.

12. It adds that, within the framework of the criminal case, the court appointed in the matter decided to rule in favor of the provisional acquittal as requested by the accused, and secondly for the final acquittal. It indicates additionally a number of steps taken within the National Strategy of Citizen Security in order to align police procedures with the corresponding international standards, including the issuance of a

number of manuals and the graduation of the first female anti-riot brigade, used during social demonstrations with the participation of vulnerable groups.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. According to the petitioners, the alleged victims' next of kin filed a criminal complaint for the alleged extrajudicial execution of their son on May 16, 1994. On March 24, 2000, the Criminal Court of Settlement and Sentencing, First in Line, of Colonel Oviedo declared the provisional acquittal and on April 16, 2001 the final acquittal, and the corresponding termination of the criminal proceedings. When they were notified on December 5, 2006, the next of kin filed an appeal, which was dismissed on December 12, 2007, by the Criminal, Civil, Commercial and Labor Court of Appeal, First Chamber of the Judicial District of Caaguazú and San Pedro. For its part, the State does not present allegations related to the exhaustion of domestic remedies.

14. In this regard, the IACHR has previously indicated that, in cases such as the present one, which involve possible violations of human rights, that is, prosecutable *ex officio*, and even more so when agents of the State may be implicated in the alleged facts, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them.² From the information available, the Commission observes that, more than twenty years after its occurrence, the facts that led to the death of the alleged victim and the corresponding responsibilities have not yet been clarified and the criminal investigation was closed.

15. Therefore, the Commission concludes that the exception provided for in Article 46.2.c of the American Convention is applicable. In view of the fact that the petition was received on June 17, 2008, that the facts connected with the petition took place on May 2, 1994, and that the effects of the alleged denial of justice are still current, the Commission considers that the petition was presented within a reasonable period of time, and considers the requirement of Article 32.2 of the IACHR Rules of Procedure satisfied.

VII. COLORABLE CLAIM

16. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that if the alleged extrajudicial execution of the alleged victim by state agents during a demonstration is proven, the alleged violations of due process, as well as the alleged lack of investigation into the facts, could characterize possible violations of Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association) and 25 (judicial protection) of the Convention in connection with its Articles 1.1 and 2

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 13, 15, 16, and 25 in conjunction with Articles 1.1 and 2 of the American Convention;
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.

² IACHR, Report No. 68/08, Petition 231-98, Admissibility, *Ernesto Travesi*, Argentina, October 16, 2008, para. 32.

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 Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.