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**REPORT No. 354/20  
PETITION 1582-13  
REPORT ON ADMISSIBILITY**

WARD CHURCHILL  
UNITED STATES OF AMERICA

Approved electronically by the Commission on November 24, 2020.

**Cite as:** IAC<sub>H</sub>R, Report No. 354/20, Petition 1582-13. Admissibility. Ward Churchill. United States of America. November 24, 2020.

## I. INFORMATION ABOUT THE PETITION

<b>Petitioner:</b>	Human Rights Research Fund
<b>Alleged victim:</b>	Ward Churchill
<b>Respondent State:</b>	United States of America <sup>1</sup>
<b>Rights invoked:</b>	Article I (life and personal security), Article II (equality), Article IV (freedom of expression), Article V (honor and reputation), Article XIII (culture), Article XIV (employment), Article XVII (basic civil rights), Article XVIII (judicial protection), Article XXIII (property), and Article XXVI (due process) of the American Declaration of the Rights and Duties of Man <sup>2</sup>

## II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>

<b>Filing of the petition:</b>	September 30, 2013
<b>Notification of the petition to the State:</b>	April 24, 2019
<b>State's first response:</b>	July 24, 2019
<b>Additional observations from the petitioner:</b>	November 4, 2019
<b>Notification of the possible archiving of the petition:</b>	November 1, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	November 2, 2018

## III. COMPETENCE

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles I (personal security), V (honor and reputation), IV (freedom of expression) XIV (employment), XII (education) XVIII (judicial protection), XXIII (property) and XXVI (due process)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VII
<b>Timeliness of the petition:</b>	Yes, in terms of Section VII

<sup>1</sup> Hereinafter “the United States”, “the U.S.” or “the State.”

<sup>2</sup> Hereinafter “Declaration” or “American Declaration.” Also, in support of their claims, the petitioners refer to other international instruments such as International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, and United Nations Declaration on the Rights of Indigenous Peoples.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. This petition centers on the dismissal of the alleged victim as a tenured professor from the University of Colorado at Boulder (hereafter “the UC”) in 2007, giving rise to alleged violations the right to freedom of expression, personal security, due process and other rights.

2. By way of background, the petition identifies the alleged victim as Professor Ward Churchill (hereafter “Professor Churchill” or “the alleged victim) who was a professor of Indian American Studies in the Department of Ethnic Studies (of the University of Colorado). According to the petitioners, The University of Colorado is run by the state of Colorado, which is a political subdivision of the United States.

3. According to the petitioners: (a) Professor Churchill was initially hired by the UC in 1991 as a tenured associate professor of American Indian Studies at UCB and was promoted to full professor in 1997; (b) from 1995 to 2001 he served as Associate Chair of the Ethnic Studies Department, and as its Chair from 2001-2005; (c) Professor Churchill is an indigenous human rights defender whose political activism, teaching, and extensive body of scholarship have been dedicated to the struggle for self-determination for all peoples, and in particular for indigenous peoples. The petitioners add that for more than 40 years Professor Churchill has been an outspoken critic of U.S. foreign and domestic policy; and that he is regarded as a leading authority on genocidal policies implemented by United States against indigenous peoples.

4. The petition states that on September 12, 2001, Professor Churchill posted an expression of editorial opinion, or an op-ed piece, about the September 11 attacks (his “9/11 op-ed”) in an obscure online journal. Professor Churchill’s opinion piece was provoked by his reaction to the media coverage surrounding the attacks, in which there was virtually no public discussion of why people might carry out armed attacks on the most visible symbols of U.S. military and economic power and, therefore, no discussion of how such attacks might be avoided in the future. Professor Churchill discussed, in deliberately provocative terms, instances of U.S. atrocities committed abroad that could have had a hand in motivating attacks on the United States. For several years, this online commentary received little attention. In 2003, Professor Churchill published an expanded version of the op-ed piece, with extensive documentation of U.S. acts of war and violations of international law, as a book entitled *On the Justice of Roosting Chickens: Reflections on the Consequences of U.S. Imperial Arrogance and Criminality*.

5. According to the petition, on January 26, a Syracuse, New York, newspaper criticized Professor Churchill’s 2001 commentary on the attacks of September 11 in an ultimately successful attempt to force the cancellation of a lecture scheduled at Hamilton College (in the State of New York). Subsequently, on January 27, 2005, the Interim Chancellor of UC, Philip DiStefano publicly denounced Professor Churchill’s 2001 statements as “abhorrent” and “repugnant”. According to the petitioners, this initial public denunciation ultimately led to a series of internal investigative or disciplinary proceedings by UC over a period of two years that culminated in the dismissal of the alleged victim in 2007. For the petitioners, these proceedings were largely irregular and unfair, and were aimed principally at dismissing the alleged victim – in violation of his right to freedom of expression and other rights. In this regard, the petitioners make a number of allegations set out in the following paragraphs.

6. Following the public statement of the Interim Chancellor, on February 3, 2005, the Regents of the University convened an emergency meeting and issued a blanket apology for Professor Churchill’s comments concerning 9/11. Several Regents had expressed their desire to fire Professor Churchill. On March 24, 2005, the Interim Chancellor reported to the Regents and the press— although not to Professor Churchill—that all of Professor Churchill’s writings and public speeches, including his op-ed piece concerning the September 11 attacks, were protected by the First Amendment to the U.S. Constitution, which guarantees freedom of expression. Simultaneously, the Interim Chancellor announced he was personally lodging a series of complaints against Professor Churchill for alleged research misconduct.

7. Following the announcement of the Interim Chancellor, the Regents formed an ad hoc committee consisting of Interim Chancellor DiStefano, Law Dean David Getches, and Todd Gleeson, Dean of Arts and Sciences, to investigate Professor Churchill’s speech in order to see if there was “cause for dismissal.” This

ad hoc committee investigated all of Professor Churchill's publications, including works published long before he had become a faculty member and those previously reviewed in the University's hiring, tenure, and promotion processes. Professor Churchill was never formally notified of the inquiry nor consulted by the ad hoc committee, whose investigation was conducted entirely outside the University's established committee structure and faculty disciplinary procedures. Ultimately, the ad hoc committee accused Professor Churchill of engaging in "plagiarism" which, under University rules, was defined as "the use of another's ideas or words without appropriate acknowledgment." In fact, Professor Churchill was not accused of plagiarism, but of (1) improper citations in an essay that Professor Churchill did not author, published in a book he did not edit, and (2) allowing essays he had written to be published under other authors' names, a practice commonly referred to as "ghostwriting. The ad hoc committee also accused Professor Churchill of "ethnic fraud" and demanded that he "prove" his American Indian identity, although his identity should have no bearing on the substance of his scholarly analyses. This report was published by the ad hoc committee.

8. The allegations/findings of the ad hoc committee were then referred to the University's Standing Committee on Research Misconduct ("SCRM") by the Interim Chancellor. The SCRM is responsible for submitting its findings to the Chancellor, who recommends disciplinary action. Thus, Interim Chancellor DiStefano functioned as both the complainant and the person who would determine whether sanctions should be recommended to the University President.

9. Professor Churchill spent the next year defending his work before a SCRM Investigative Committee composed of three UC faculty members and two outside academics. Initially, two American Indian Studies scholars had been appointed to the subcommittee, but they immediately came under intense scrutiny and attack by the local media. The University made no effort to defend their integrity and, within 48 hours, both had resigned in the face of what one described as a "toxic" atmosphere. They were replaced by scholars with no competence in American Indian Studies who were demonstrably hostile to Professor Churchill. The Investigative Committee held hearings in which Professor Churchill was expected to present a defense without knowing clearly which allegations were at issue, and during the course of the investigation, the committee expanded the scope of certain allegations without providing him notice or an adequate opportunity to respond. Further, Professor Churchill, an interdisciplinary scholar, was required to defend his work without so much as being informed of which of several possible sets of articulated scholarly standards the committee intended to apply.

10. In May 2006, the SCRM Investigative Committee issued—and the University promptly made public—a 124-page report that charged Professor Churchill with seven violations of vaguely defined academic standards (including fabrication, falsification, and plagiarism). Prof. Churchill rejected findings of the SCRM. So too did nine professors, seven of them from the University of Colorado, who called for the UC to rescind the report<sup>4</sup>. On May 10, 2007, this group, which now consisted of eleven professors, formally filed research misconduct charges against the Investigative Committee. On May 28, 2007 five professors and two attorneys filed additional allegations of research misconduct against the Investigative Committee. Neither of these formal complaints were investigated by the University, which claimed that the Investigative Report was not a "scholarly" work, despite its reliance upon it to discredit Professor Churchill's scholarship. Professor Churchill himself filed three formal complaints against members of the Investigative Committee for misrepresentation of sources, falsification and fabrication of evidence, and plagiarism contained in their Report. These were similarly disregarded by the University.

11. Ultimately, one member of the SCRM Investigative Committee recommended dismissal and the remaining four members recommended suspension. The full SCRM—composed entirely of University faculty members—overrode the Investigative Committee's recommendation and, based on the same Report,

<sup>4</sup> They stated that after "a process of careful investigation guided by two experts in the field of American Indian Studies who did not know Churchill before 2006—Professor Eric Cheyfitz, Ernest I. White Professor of American Studies and Human Letters at Cornell University, and Professor Michael Yellow Bird, Associate Professor, Center for Indigenous Nations Studies at Kansas University—we have found the Report to contain violations of standard scholarly practice that are so serious that we are now considering the additional step of filing charges of research misconduct against the authors of the Report."

recommended dismissal. This finding went to Interim Chancellor DiStefano, who then recommended to University President Hank Brown that Professor Churchill be fired.

12. Professor Churchill then exercised his administrative option to request a review by the University's Privilege and Tenure ("P&T Committee"). The P&T Committee conducted another round of evidentiary hearings. It acknowledged that the SCRM Investigative Committee had exceeded its charge. This review body dismissed some of the SCRM's findings for lack of sufficient evidence, and upheld others. A majority of the P&T Committee recommended sanctions less severe than termination. These recommendations were sent to the University President. The University President refused Professor Ward Churchill's request that he recuse himself based on his status as a founding member of the American Council of Trustees and Alumni (ACTA), and his continuing affiliation with this organization which had consistently and publicly denounced Professor Churchill. Instead, the University President who had not participated in any evidentiary hearings, unilaterally reinstated charges dismissed by the P&T Committee, overrode its recommendations, and urged the Regents of the University to fire Professor Churchill.

13. The Regents held a closed door meeting on July 24, 2007, at which Professor Churchill, his attorney, and university counsel were permitted to make short presentations, but could not present witnesses. At no point did the Regents independently hear evidence concerning the allegations of research misconduct. At this meeting the Regents—most of whom had called for Professor Churchill's firing in early 2005, voted 8-to-1 to terminate his employment. The following day Professor Churchill's attorney filed a lawsuit alleging that Professor Churchill had been fired in retaliation for his exercise of speech protected by the First Amendment to the U.S. Constitution. Further, petitioners assert, that the efforts to push Professor Churchill out of the university and to discredit his work can only be understood in the context of ongoing efforts by both private and state actors to eliminate Ethnic Studies programs and purge the academy of critical scholars

14. According to the petitioners, during the period of the investigative and disciplinary proceedings, Professor Churchill, his family, and the faculty, staff and students of the Ethnic Studies Department were subjected to a constant barrage of hate mail and phone calls, as well as threats of violence. In this regard the petitioners also allege that Professor Churchill's home and vehicle were vandalized, and he received a numerous death threats; and that at one point Professor Churchill had a backlog of more than 8,000 emails, most of them derogatory and many of them either posing direct threats or making comments such as "we should have killed all of you [Indians]. Further, the petitioners contend that the American Indian Movement of Colorado (Colorado AIM), provided almost constant security for Professor Churchill in the first few months, and he was obliged to make special arrangements for security at virtually all of his public engagements for the next five years. The petitioners allege that University officials were well aware of these threats and did nothing in response. In contrast to their immediate condemnation of Professor Churchill's speech, they issued no statements condemning the virulent racism being encountered by students of color and the faculty, staff or students of the Ethnic Studies Department; and that they provided no extra security for those being threatened. Instead, they continued to publicize their attacks on Ward Churchill's scholarship, personal integrity, and even his identity, thereby encouraging anyone who was unstable or felt threatened by people of color to take action.

15. According to the petitioners, immediately following his termination, the alleged victim, through his attorney, filed a lawsuit in the state court for the City and County of Denver, Colorado. This suit was brought under a federal statute, 42 U.S.C. § 1983, alleging retaliatory termination in violation of his right to freedom of expression, as articulated in the First Amendment to the Constitution of the United States. The case proceeded to trial and in April 2009 a jury found, unanimously, that the University of Colorado had violated the U.S. Constitution by firing Professor Churchill in retaliation for speech protected by the First Amendment, and that it would not have fired him but for that speech. Because Professor Churchill had emphasized that he wished to be reinstated, an equitable remedy that only the trial judge could award, the jury awarded nominal damages and Professor Churchill filed a motion for reinstatement.

16. In July 2009, the trial judge denied Professor Churchill's motion for reinstatement and, further, vacated the jury verdict on the ground that the University and its Regents were retroactively protected from suit by virtue of absolute, quasi-judicial immunity. On appeal, the Colorado Court of Appeals upheld the trial court's actions in a ruling issued in November, 2009. In September 2012 the Colorado Supreme Court

granted Professor Churchill's petition for review and affirmed the decision of the appellate court. On April 1, 2013 the United States Supreme Court denied Professor Churchill's petition for a writ of certiorari. Thus, the petitioners contend that Professor Churchill has exhausted all available domestic remedies and the petition was filed within six months of the date of exhaustion (September 30, 2013). Additionally, the petitioners claim that while domestic remedies have been exhausted, that these remedies have proved to be inadequate and ineffective. In this regard, the petitioners assert that in Professor Churchill's case, the State has clearly established that when a professor at a Colorado state university is fired in violation of his constitutional rights, there is no adequate remedy because the University Regents are immune from suit.

17. The petitioners broadly contend that the investigation by the UC into Professor Churchill's academic work (that culminated in his termination), together with his unsuccessful litigation, constitute a violation of his right to freedom of expression and more particularly his right to academic freedom of expression. The petitioners emphasize that the investigative process was largely conducted in violation of the right to due process. For the petitioners the violation of the right to freedom of expression led to violations of other rights, such as: (a) the right to work; (b) the right to benefits of indigenous culture by impeding Professor Churchill from educating indigenous peoples about their own histories; (c) the right to equality; (d) the right to privacy and protection of honor and dignity.

18. For the petitioners, Professor Churchill's work, including his 9/11 op-ed piece, qualified as political speech concerning human rights and should, therefore, have been entitled to special protection. Rather than providing such protection, the State did exactly the opposite, undertaking to punish Professor Churchill for his controversial speech. By engaging in retaliatory investigations and termination and allowing public officials to attempt to shame Professor Churchill in the media, the United States violated Professor Churchill's rights under the American Declaration.

19. The petitioners take issue with the State's contention that Professor Churchill failed to exhaust domestic remedies. With respect to the State's claim that Professor Churchill failed to initiate proceedings under state rule of civil procedure, C.R.C.P. 106(a)(4), the petitioners argue firstly that C.R.C.P. 106(a)(4) only provides a cause of action against judicial or quasi-judicial bodies. Prior to the district court's new application of quasi-judicial immunity to Regents when sued in their governmental capacity, Petitioner had no reason to believe that the Regents had quasi-judicial immunity and, therefore, no reason to bring suit under C.R.C.P. 106(a)(4). Secondly, complaints under Rule 106(b), complaints under the Rule must be filed within 28 days of the final decision of the body or official whose decision is being contested. Professor Churchill was fired by the Regents on July 24, 2007, so a Rule 106(a)(4) complaint could only have been filed prior to late August 2007. By the time the Regents had been deemed a quasi-judicial body—even in the first instance, by the district court—this option was no longer available. Thirdly, Rule 106 grants only limited procedural rights and no substantive avenue to challenge claims of immunity or to seek damages. Finally, Rule 106(a) only provides a cause of action when no other remedy is available. Professor Churchill should have had a remedy available to him under 42 U.S.C. § 1983—the statute by which Congress provided a right of action against state actors who violate constitutionally protected rights. Thus, had Professor Churchill brought a suit under Rule 106(a)(4), it would likely have been dismissed.

20. The petitioners reject the State's contention that Professor Churchill's litigation did not include and, therefore, could not have exhausted, claims raised in this Petition with respect to "violations of his rights to life and personal integrity, equality, culture, employment, property, honor and reputation, basic civil rights, judicial protection, and due process. According to the petitioners, Professor Churchill raised all of these claims in the domestic courts. For the petitioners these claims included: attacks on his life and personal integrity, to equality under law, to preservation and promotion of his culture, to his employment and attendant property rights, to his honor and reputation, and violations of his basic civil rights, including due process, and his right to judicial protection. The petitioners contend that Professor Churchill was suing for restoration of his position as a tenured full professor and, therefore, was clearly requesting redress for violations of his rights to employment and property—professors being recognized as having property interests in their tenure status.

21. The State rejects the petition primarily on the following grounds: (a) failure to exhaust domestic remedies; (b) failure to state facts to establish prima facie violations of the American Declaration; (c)

claims of the petitioners are beyond the *ratione materiae* of competence of the Commission; and (d) adjudication of the petition would violate the Commission's fourth instance formula.

22. The State contends that proceedings that led to the termination of Professor Churchill were conducted fairly and in keeping with the imperative of due process; and that the termination was based on research misconduct and not on the essay written by Professor Churchill in 2003. Further, the State indicates that throughout the disciplinary and administrative proceedings Professor Churchill was represented by an attorney and was afforded an opportunity to present an opening statement, cross-examine adverse witnesses, present expert witnesses, and submit a written closing argument.

23. The State asserts that on August 19, 2005, the ad hoc panel unanimously ruled that seven of the allegations of academic misconduct had merit and should be further investigated. In response to the inquiry committee's recommendation, the Standing Committee formed a special investigative committee in January 2006. As part of the selection process, the alleged victim was consulted on the composition of the special investigative committee with a view to determining whether any of the potential members had biases or conflicts of interest. After six months of investigation, the special investigative committee unanimously agreed that Professor Churchill had engaged in academic misconduct, and submitted a report to this effect to the SCRM. The Standing Committee reviewed the report, as well as Professor Churchill's written response to it. On June 13, 2006, the Standing Committee issued its own report unanimously agreeing that Professor Churchill had committed "serious, repeated, and deliberate research misconduct". Following this, the Interim Chancellor issued a notice of intent to seek the dismissal of Professor Churchill. In response, the alleged victim appealed his proposed dismissal to Faculty Senate Committee on Privilege & Tenure ("P&T Committee").

24. After a hearing with the participation of Professor Churchill and evidences presented by his defense, on May 3, 2007, the P&T Committee unanimously concluded that the University had proven by clear and convincing evidence that Petitioner's conduct fell below the minimum standards of professional integrity. The University President agreed with the numerous recommendations of committee members who opined that Professor Churchill should be dismissed from the University. The University President then forwarded his recommendation that Petitioner's employment be terminated to the Board of Regents. Professor Churchill then requested a hearing before the Regents which was granted. Prior to this hearing, Professor Churchill submitted a written argument in his defense. At the hearing, the Regents considered Professor Churchill's written argument; the reports from the Investigating Committee, the Standing Committee, and the Senate Committee; and the recommendation of President Brown. Professor Churchill's counsel made arguments in defense to the Regents at that hearing. On July 24, 2007, by a vote of eight to one, the Regents terminated Professor Churchill's employment, describing his conduct as falling below the minimum standards of professional integrity and academic honesty.

25. The State argues that Professor Churchill failed to exhaust the remedies available to him. In this regard, the State argues that under Colorado Rule of Civil Procedure 106(a)(4), a party may seek review of a decision of a "governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions" in district court. Under Colorado Rule of Civil Procedure 106(a)(4), a district court is empowered to set aside any decision that is "clearly erroneous, without evidentiary support in the record, or contrary to law. The State argues that Professor Churchill chose not seek judicial review of the Regent's decision to terminate his employment in district court, as provided for in Colorado Rule of Civil Procedure 106(a)(4).

26. The State notes that, instead, Professor Churchill brought a civil suit in district court under a federal statute - 42 U.S.C. § 1983 against the Regents in their individual capacities alleging that they had violated his constitutionally protected free speech rights by initiating an investigation into his academic integrity and by terminating his tenured employment in retaliation for his publication of a controversial essay. The trial court found that "it is clear that the Board of Regents performed a quasi-judicial function and acted in a quasi-judicial capacity when it heard Professor Churchill's case and terminated his employment." As a result, the trial court dismissed Professor Churchill's claim on the grounds that the Regents' quasi-judicial actions were entitled to absolute immunity and dismissed Professor Churchill's claim for equitable remedies as such remedies are not available under Section 1983 for quasi-judicial officials. The Colorado Court of Appeals affirmed the opinion of the trial court. The Supreme Court of the State of Colorado affirmed the court of appeals'

opinion, on slightly different grounds, and the alleged victim's petition for writ of certiorari was denied by the United States Supreme Court.

27. The State also contends that Professor Churchill pursued only his First Amendment freedom of expression claim against the Regents under 42 U.S.C. § 1983. However, the State argues that his petition includes a broad array of claims, including allegations of violations of his rights to life and personal integrity, equality, culture, employment, property, honor and reputation, basic civil rights, judicial protection, and due process. The State argues that Professor Churchill did not pursue or exhaust remedies in the U.S. courts with respect to any of these claims. Therefore, even if the Commission were to construe Professor Churchill's Section 1983 suit to satisfy the Commission's exhaustion requirement—that suit would only be sufficient to satisfy the exhaustion requirement with respect to Professor Churchill's freedom of expression claim under Article IV of the American Declaration; and that it is plainly insufficient to constitute exhaustion of domestic remedies for the various other claims that Professor Churchill now brings before the Commission.

28. The State rejects all of the claims of the alleged victim as manifestly groundless. In relation to the claim relating to freedom of expression, the State contends that Professor Churchill was terminated because of academic misconduct, and not because of his controversial essay. The State similarly rejects the alleged violation of the right to equality, contending that there is no basis to support Professor Churchill's claim that he was subject to discriminatory treatment based on his scholarship on indigenous issues.

29. With regard to the alleged violation of the right to life/ personal security, the State argues that Professor Churchill was not deprived of his life or personal security and that the death threats, hate mail and vandalism referred to were carried out by private actors are not attributable to the State.

30. With respect to the alleged victim's claim regarding violation of his honor, personal reputation, and private and family life, the State contends that this claim is also groundless because there was no direct action of the State, or misuse of State power that resulted in the harming of the honor and reputation of the alleged victim. According to the State, the language of Article V of the American Declaration makes clear that it is intended to ensure that persons are not subject to direct action by the State.

31. With regard to Professor Churchill's claims regarding rights to employment, property and cultural integrity, the State argues the alleged victim has not been deprived of his right to work, under proper conditions, and to follow his vocation freely. With respect to the right to property, the State maintains that Professor Churchill has failed to articulate any facts to suggest that his right to own private property has been impaired by the State, and thus this claim is groundless.

32. The State argues that the petition seeks to ground its claims not only on the American Declaration but also on multiple international instruments. The State refers, for example to the ICCPR and the United Nations Declaration on the Rights of Indigenous People. For the State, a reference to, and reliance on rights under instruments are beyond the *ratione materiae* competence of the Commission; and that claims made in this regard are inadmissible.

33. The State argues that the petition constitutes an effort by to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts. The State contends that the petition seeks to re-litigate the merits of the academic misconduct investigation, which led to his termination. For the State, the Commission cannot be used as a substitute for appeal in the U.S. judicial system; and that, if the Commission were to accept a petition based on the same secondary arguments that Professor Churchill has litigated and lost in U.S. courts, it would be acting precisely as the type of fourth instance review mechanism it has consistently refused to embody.

## VI. ANALYSIS ON COMPETENCE

34. As a preliminary consideration, the Commission notes that State disputes the jurisdiction of the IACHR, *ratione materiae* to adjudicate the claims of the petitioners. Regarding the issue of *ratione materiae* issue, the record demonstrates that the petitioners have relied on other international instruments to buttress

their claims under American Declaration. It is clear from the record that the petitioners have grounded their claims in the American Declaration and not these other international instruments. The Commission has no jurisdiction to pronounce on these other instruments, but it may take them into account in interpreting the American Declaration. In the circumstances, the Commission considers that it does have jurisdiction *ratione materiae* regarding the claims of the petitioners made under the American Declaration.

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

35. The parties diverge on the issue of exhaustion of domestic remedies, with the petitioners contending that domestic remedies were exhausted with the April 1, 2013 ruling of the United States Supreme Court (dismissing an application for writ of certiorari), while the State argues that the petitioners failed to exhaust available remedies.

36. As a preliminary consideration, the Commission notes that during the investigative/disciplinary proceedings, Professor Churchill alleges that he was subjected to death threats, threats of violence, and hate mail; and further that his home and vehicle was vandalized. According to the record, Professor Churchill reported these incidents to the UC, (a State institution) but that no action was taken by the UC to investigate these incidents or to protect Professor Churchill.

37. The Commission has established that whenever a publicly actionable offense is allegedly committed or that there have possible violations of fundamental rights (such as the right to life and security), the State is obliged to institute and pursue criminal proceedings and that this is the suitable channel to clarify the facts, prosecute the responsible parties, establish appropriate criminal penalties, and make possible other means of financial reparation. In addition, as a general rule, the Commission has established that a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation. According to the information available, it does not appear that the authorities having knowledge of the allegations of abuse of the alleged victim undertook the corresponding investigations. Consequently, the IACR concludes that in accordance with the provisions of Article 31.2 (b) of its Rules of Procedure the exception to the exhaustion of domestic remedies applies with respect to this element of the petition.

38. Generally, the rule on the exhaustion of remedies provided by Article 31.1 of the Commission's Rules of Procedure establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.

39. According to the record in this matter, the alleged victim filed suit under a federal statute, 42 U.S.C. § 1983, alleging retaliatory termination in violation of his right to freedom of expression, as articulated in the First Amendment to the Constitution of the United States. There is no indication in the record of this matter that this suit also raised claims relating to other rights, such as the right to equality, and culture. Based on this information, the IACR concludes that the alleged victim exhausted domestic remedies only in respect of his claims regarding freedom expression; his termination, and the proceedings that led to this termination. Subject to the following paragraphs, the Commission considers that that domestic remedies concerning the alleged victim were exhausted by the dismissal of the application for writ of certiorari by the United States Supreme Court on April 1, 2013, and that the filing of the petition on September 30, 2013 was filed in a timely manner pursuant to Article 32.1 of the Commission's Rules of Procedure.

## VIII. ANALYSIS OF COLORABLE CLAIM

40. The Commission notes that this petition includes allegations relating primarily to the violation of the rights to freedom of expression, academic freedom, personal security, work, due process, and other corollary rights.

41. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that some of the claims of the petitioners are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of the American Declaration. More specifically, the Commission considers that the failure to investigate the complaints of death threats (and other criminal activities) directed at Professor Churchill could characterize violations of Articles I (personal security) and XXVI (due process of law) of the American Declaration. Further, the Commission considers that following a favorable verdict by a jury, the judicial ruling that conferred immunity on the Regents of the UC (and which thus neutralized the jury verdict) could characterize violations of Articles XVIII (judicial protection), XXVI (due process), IV (freedom of expression) in relation to Article V (honor and reputation), and XIV (employment) in relation to Article XXIII (property). Further, the Commission also considers that the judicial ruling may also characterize a violation of the right to education (Article XII), in conjunction with the right to freedom of expression and the derivative right to academic freedom.

42. With respect to the State's allegations regarding the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 34 (a) of the Commission's Rules of Procedure, or if the petition is "manifestly unfounded" pursuant to subsection (b) of said Article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Declaration. In other words, in light of the aforementioned conventional standards, in accordance with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violation of the American Declaration.<sup>5</sup>

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, IV, V, XIV, XII, XVIII, XXIII and XXVI of the American Declaration;

2. To find the instant petition inadmissible in relation to Articles II (equality), Article XIII (culture), and Article XVII (basic civil rights) of the American Declaration; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 24<sup>th</sup> day of the month of November, 2020. Joel Hernández, President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, and Julissa Mantilla Falcón, Commissioners.

<sup>5</sup> IACR, Report No. 26/17, Petition 1208- 08. Admissibility. William Olaya Moreno and Family. Colombia. March 18, 2017, párr. 9.