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REPORT No. 19/16
PETITION 3546-02
REPORT ON ADMISSIBILITY

GALO ROBERTO MATUTE ROBLES AND FAMILY
ECUADOR

Approved by the Commission at its session No. 2065 held on April 15, 2016.
157th Regular Period of Sessions.

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ADMISSIBILITY

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I. SUMMARY

1. On August 16, 2002, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Enry Salin Alcívar Zambrano (hereinafter, “the petitioner”) against the Republic of Ecuador (hereinafter, “Ecuador” or “the State”), in representation of Galo Roberto Matute Robles (hereinafter, “the alleged victim” or “Mr. Matute Robles”). The petitioner alleges the international responsibility of the State on the basis that on February 28, 1990 the alleged victim was left paralyzed from the waist down after being hit by two bullets reportedly shot by a police officer during a social demonstration. The petitioner further claims that the competent authorities failed to conduct an *ex officio* investigation of the incident and did not provide redress to Mr. Matute Robles.

2. The petitioner alleges violation by the State of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) in connection with the harm reportedly suffered by the alleged victim and with the fact that these incidents reportedly went unpunished. The State, for its part, claims that the petition does not contain facts that constitute violations of the rights set forth in the American Convention; that the petitioners are endeavoring to have the IACHR acting as a “fourth instance;” and that the petition was not submitted within the six-month deadline established in the Convention. In sum, the State believes the petition fails to meet the requirements of Articles 46 and 47 of the American Convention and is asking the Commission to declare it inadmissible.

3. Without prejudging the merits of the petition, after examining the parties’ positions in light of the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible for purposes of examining the alleged violation of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights in connection with Article 1(1) thereof. The Commission further decided to notify the decision to the parties, make it public, and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The Commission received the petition on August 16, 2002 and forwarded the relevant parts to the State on April 24, 2003, giving the State two months to submit its observations, in accordance with Article 30(3) of the IACHR Rules of Procedures in force at the time. The State’s response was received on June 17, 2003.

5. The petitioner submitted additional observations on September 8, 2005 and April 3, 2006; these were duly forwarded to the State. On November 29, 2010, the IACHR requested up-to-date information from the petitioner. On January 19, 2011, the petitioner sent a communication indicating that all the information he had been able to compile with respect to the facts being alleged had been sent with the original petition.

6. For its part, the State provided additional observations on January 24, 2006 and April 8, 2015 (on September 4, 2009 and September 12, 2014, the IACHR sent the State further requests for information). These communications were duly forwarded to the petitioner.

7. In its April 15, 2015 communication, the State asked to have the petition archived because, in its view, the petitioner had not submitted information since April 2006. In this respect, the Commission observes that while the current Rules of Procedure provide that procedural inactivity on the part of a petitioner that indicates a lack of interest in the process can be cause to archive a petition, in the instant case, the petitioner has submitted several communications in which he has confirmed his interest in the process.

8. As has already been noted, the IACHR sent the petitioner a request for up-to-date information on November 29, 2010, and he responded on January 19, 2011 saying that there had been no relevant changes in the facts already submitted and requesting a speedy resolution of the case by the IACHR. The abovementioned precepts were thus fulfilled. The Commission likewise recalls that when it comes to processing individual cases, the concept of expiry of a case due to the mere passage of time does not exist *ipso jure*.¹

III. POSITION OF THE PARTIES

A. Position of the petitioner

9. The petitioner reports that on February 28, 1990, in the context of a general strike in the city of Jipijapa, there was a social demonstration in which Mr. Galo Roberto Matute Robles took part. During such event, a crowd of individuals, among them, Mr. Matute Robles, found themselves face to face with a group of police officers, who, after an attempt at dialogue, reportedly began to shoot and fire tear gas at the demonstrators. Mr. Matute Robles states that as he was running to find shelter, he was hit by two bullets and fell to the ground, unable to get up again while simultaneously being suffocated by tear gas. At that time he received help and was taken to a local medical center by other individuals who had been at the scene.

10. Mr. Matute Robles was subsequently transferred to Luis Vernaza Hospital in the city of Guayaquil, where he was reportedly released after being diagnosed with “paralysis in the lower extremities, with permanent disability” as a result of the two shots that allegedly hit him during the incident. Mr. Matute Robles claims that this caused him grave harm at both a personal and family level because his parents suffered severe emotional damage due the fact that he had become disabled; they also suffered significant financial harm because they had to bear all the costs associated with his hospitalization and rehabilitation; and, in addition, his upcoming marriage was thwarted because of his new condition. At the time of the protest, Mr. Matute Robles was 31 years old and was beginning his professional life as a mechanical engineer; since becoming paralyzed, he has had to live under his parents’ care.

11. At the same time, he indicates that this situation was exacerbated inasmuch as, despite this being an offense prosecutable *ex officio*, the State took no actions aimed at identifying and punishing the perpetrators. The petitioner alleges that a police report on this incident —drafted by the local police— disappeared from the police files and from the police station at the Jipijapa canton, without the appropriate criminal proceeding ever having been initiated. Based on these facts, the petitioner points out that Mr. Matute Robles’ rights to due process were violated, particularly the right to have the case investigated and prosecuted within a reasonable period of time; in the petitioner’s opinion, this constitutes denial of justice.

12. The petitioner believes the Ecuadorian State had the duty to start an *ex officio* criminal investigation of the facts and conclude it in the 60-day time period, pursuant to Article 231 of the Criminal Code; and that once the alleged perpetrators, accomplices, and abettors had been identified, he should have been given the opportunity to appear as a party to the proceeding via the corresponding specific accusation. The petitioner notes that it was a publicly known that Mr. Matute Robles had been the victim most gravely affected by police repression during the demonstrations, and that this was reported in the media—for example, on March 1, 1990, “*El Diario de Manabita*” made the case of Mr. Matute Robles front page news. He further provides a number of press clippings with accounts of the events of that day and of the injuries suffered by the alleged victim and other demonstrators.

¹ IACHR, Report No. 33/98, Petition 10.545. Admissibility. *Clemente Ayala Torres Et. Al.* Mexico. May 15, 1998, paragraph 22.

13. Subsequently, on October 25, 2000 Mr. Matute Robles filed an action in connection with the incidents of which he had been victim with the Fifth Criminal Court of Manabí, in Jipijapa. Via a decision handed down on January 16, 2001, this court ruled that the statute of limitations had elapsed in the case of the crime being reported in the complaint, pursuant to Article 348 of the Code of Criminal Procedure in effect at the time. This judgment was appealed to the Fourth Chamber of the High Court of Justice of Portoviejo. By means of a ruling issued on April 5, 2001, the Fourth Chamber rejected the appeal, considering that the appellant “[was] not party to this proceeding,” and concluded that the first instance judge should have never admitted the appeal.

14. The petitioner notes that the alleged victim subsequently filed a constitutional *amparo* action with the Portoviejo District Court for Administrative Disputes, which was rejected. The Court ruled that the appropriate appeal was not an *amparo* action, but rather an appeal for judicial review and/or an appeal to the Supreme Court of Justice, given that there was no administrative action to challenge constitutionally. The Court further noted that pursuant to laws in effect when the appeal was filed, judicial decisions adopted in a proceeding were not subject to *amparo* appeals.

15. The foregoing decision was appealed to the First Chamber of the Constitutional Court, which rejected the appeal, considering that “no substantive formality has been omitted that might have an impact on settlement of the case;” and that “the appellant did not file his appeal on time,” but rather did so 10 years after the events occurred, which, according to Article 348 of the Code of Criminal Procedure, meant that the statute of limitations had run out for a criminal case. At the same time, the Constitutional Court also indicated that although a criminal proceeding could have been launched *ex officio*, one way to initiate a case, pursuant to Article 15 of the Code of Criminal Procedure, is by means of a complaint filed by the victim.

16. According to the petitioner, the lack of action on the part of investigative bodies demonstrates that the incidents of February 28, 1990 were not investigated, to the detriment of the alleged victim, and thus the exception set forth in Article 46(2)(c) of the Convention applies. The petitioner also believes, however, that the decision that served to exhaust domestic remedies is the one handed down by the Constitutional Court on March 1, 2002.

17. In light of these considerations, the petitioner alleges that the State violated the rights set forth in Articles 4, 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof and asks that Mr. Matute Robles and his parents be afforded reparations for both material and non-material damages.

B. Position of the State

18. Ecuador claims that a proceeding did exist, in keeping with the law, that satisfied the right to due process and that such case was decided in a lower court (the Fifth Criminal Court of Manabí) on December 11, 2000; and that ruling was later appealed and upheld by the High Court of Justice of Portoviejo on April 5, 2001. The State holds that a judgment rendered against a petitioner, when such judgment was the result of a fair proceeding, does not amount to a violation of the rights enshrined in the American Convention. It adds that the Commission should declare petitions inadmissible when they do not contain facts that would constitute violations of the rights guaranteed by the American Convention.

19. The State notes that, given the subsidiary nature of the Inter-American System, and by virtue of the “fourth instance” formula, the Commission may not review decisions of national courts that have acted within their jurisdiction, ensuring a fair trial, unless there has been a violation of the rights enshrined in the American Convention. The State further indicates, citing the IACHR’s own precedent, that the Commission is not called upon to determine whether a State followed its own laws, namely, domestic legislation, but rather whether the State adhered to the standards of international law, namely, its obligations in the framework of the American Convention.

20. In this regard, the State alleges that the court order on the statute of limitations in the case brought by Mr. Matute Robles was issued in accordance with the law, provisions of Article 101 of the Criminal Code, the statute of limitations for crimes punishable with prison time is 10 years. The State holds that the

events occurred on February 28, 1990, and the alleged victims filed their criminal complaint on October 25, 2000. It states that in the absence of a complaint or grounds, the State is impeded from meeting its obligation to prevent, investigate, and punish the perpetrators of alleged violations.

21. The State further considers that the petition was filed past the six-month deadline set forth in Article 46(1)(b) of the American Convention, since the definitive judicial ruling, which in its opinion exhausted domestic remedies, was issued on April 5, 2001 by the Fourth Chamber of the High Court of Justice of Portoviejo, while the State was notified on April 24, 2003 of the petition filed with the Inter-American Commission. According to the State, the constitutional *amparo* action filed with the Portoviejo District Court for Administrative Disputes was rejected on October 25, 2001, and the corresponding appeal to the Constitutional Court was rejected on March 1, 2002, because the case lacked legal grounds given that the constitutional provisions in place at the time established that judicial decisions adopted in proceedings were not subject to *amparo* actions.

22. Regarding the alleged violation of due process and judicial protection, Ecuador indicates that the petitioner had at his disposal all remedies provided for under the law; that he had unfettered access to the legal apparatus; and that at no time was he prevented from exercising his right to equal protection by the competent bodies. With respect to the reported violation of his right to be heard within a reasonable timeframe, the State notes that the time periods established for domestic proceedings fall within the reasonableness limits set forth by the Inter-American system.

23. In conclusion, the State maintains that the petition should be deemed inadmissible inasmuch as it does not put forth facts that would constitute a violation of the rights guaranteed under the American Convention; it is a “fourth instance” request; and it exceeds the statutory period for submission of petitions after domestic remedies have been exhausted. And thus, pursuant to Articles 46 and 47 of the American Convention on Human Rights, the State requests that the IACHR declare the petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

24. The petitioner is entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victim an individual on whose behalf the State of Ecuador undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Ecuador has been party to the American Convention since December 28, 1977, when it deposited the respective instrument of ratification. The Commission, therefore, has *ratione personae* to examine the petition. The Commission likewise has *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected under the American Convention that are said to have taken place within the territory of Ecuador, a state party to said treaty.

25. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in force for the State when the facts alleged in the petition are said to have occurred. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

26. The foregoing, notwithstanding the possibility that during the merits stage of the processing of this petition, the IACHR may consider, where relevant, other instruments in the *corpus juris* on the rights of persons with disabilities.

B. Admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention states that for a petition alleging a violation of the American Convention to be admitted, the remedies offered by domestic jurisdiction must have been

pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to learn of the alleged violation of a protected right and, where appropriate, to resolve it before it is taken up by an international body.

28. Article 46(2) of the American Convention, for its part, recognizes three circumstances in which the rule of prior exhaustion of domestic remedies does not apply: (i) When the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

29. In the instant case, the State maintains that there was undue exhaustion of remedies in that the complaint before the Fifth Criminal Court of Manabí was filed after the statute of limitations for the crime in question had run out. It adds that one avenue for initiating a criminal proceeding was by means of a complaint, and that the relatives of the alleged victim refrained from reporting the facts being alleged to the legal authorities, which prevented the State from meeting its obligation to investigate and punish the perpetrators of the alleged violation.

30. For his part, the petitioner indicated that the State had the duty to initiate an *ex officio* legal investigation and thereafter, once the perpetrators of the incidents had been identified, he should have been afforded the opportunity to appear as a party to the proceeding via the corresponding specific accusation. He noted that it was a public and well-known fact that Mr. Matute Robles had been the victim most gravely affected by the police repression that occurred during the aforementioned demonstrations and that this had been made public, among other ways, by the media. Based hereon, the petitioner holds that the exception provided for in Article 46(2)(c) of the American Convention applies given that when the petition was filed—with expiration of the statute of limitations already having been declared by Ecuadorian courts—no *ex officio* process had yet been initiated by the State.

31. In view of the facts put forward by the parties, the Commission observes that whenever there is an alleged crime prosecutable by operation of the law, the State has the duty to initiate and advance criminal proceedings, and that in these cases, this the appropriate channel for establishing the facts and, where appropriate, prosecuting those responsible, and establishing the relevant criminal punishments.² As a general rule, a criminal investigation must be done promptly in order to protect the interests of the victims, preserve the evidence, and even safeguard the rights of all individuals considered to be suspects in the context of the investigation.³ In this regard, and taking into account that the facts alleged by the petitioners constitute crimes that are prosecutable *ex officio*, the domestic remedy that needed to be exhausted in the instant case is the official criminal investigation, which should have been conducted and advanced by the State.

32. Regarding the argument about the alleged procedural inactivity of the petitioner in failing to file a complaint and thereby prompt the launch of a criminal proceeding, the IACHR reiterates what it has previously set forth in other cases in this regard; namely that, in those procedural systems in which the victims or their family may have standing to bring an action as part of the criminal proceedings, the exercise thereof is not mandatory, rather optional, and in no way is a substitute for State actions. In other words, failure to have used these legal actions that are supplementary or auxiliary to criminal proceedings the State is responsible for handling does not affect the analysis of whether the requirement for prior exhaustion of domestic remedies has been met.⁴

² IACHR, Report No. 34/15, Petition 191-07 *et. al.* Admissibility. *Álvaro Enrique Rodríguez and Others*. Colombia. July 22, 2015, paragraph 244.

³ IACHR, Report No. 51/10, Petition 1166-05. Admissibility. *Tibú Massacres*. Colombia. March 18, 2010, paragraph 110.

⁴ IACHR, Report No. 31/15, Petition 10.522. Admissibility. *Juan Fernando Porras Martínez*. Colombia. July 22, 2015, paragraph 36.

33. In addition, regarding the State's argument that because no complaint was filed, the authorities were not obligated to undertake an investigation and criminal proceeding, the Commission is taking into account, for purposes of determining admissibility, the petitioner's arguments that: The police were present at the scene; the alleged victim was transferred to Luis Vernaza Hospital, which is a public hospital; that the demonstration and its consequences in the case of Mr. Matute Robles and other individuals were covered by several media outlets; and a police report the incident was allegedly drafted and then reportedly "disappeared" from the Jipijapa, Manabí police station. These elements show that the State had, from the very beginning, information about the facts being alleged.

34. The Commission thus concludes that since an *ex officio* investigation was never begun by the State into the events during which the alleged victim was reportedly shot twice by the police, events that were apparently public knowledge, the exception to prior exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention applies.

35. Article 46(2) of the American Convention, given its nature and purpose, is a rule whose content stands alone vis-à-vis the substantive rules of the Convention. Therefore, the determination of whether exceptions to the rule on prior exhaustion of domestic remedies set forth therein are applicable to the case at hand should be made prior to and separate from an analysis of the merits of the case because it relies on a standard of evidence different from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that hindered exhaustion of domestic remedies in the instant case shall be analyzed, where relevant, in the report the Commission adopts on the merits of the case, to verify whether there have in fact been violations of the Convention.⁵

2. Timeliness of the petition

36. Article 46(1)(b) of the Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the case at hand, the IACHR has established that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention applies. In this respect, Article 32(2) of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

37. In the case at hand, the IACHR has determined that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention applies. In this respect, the petition to the IACHR was received on August 16, 2002, and the facts alleged therein occurred on February 28, 1990, and the repercussions thereof—with respect to the harm allegedly suffered and the denial of justice—continue to date. Thus, in view of the context and characteristics of the instant case, the Commission believes the petition was submitted within a reasonable time period and therefore meets the admissibility requirement having to do with the timeframe for lodging petitions.

3. International duplication of proceedings and *res judicata*

38. The case file does not suggest that the petition is pending in any other international settlement proceeding or is substantially the same as another petition already examined by this Commission or any other international body. Hence, the causes for inadmissibility established in Articles 46(1)(c) and 47(d) of the Convention do not apply.

⁵ IACHR, Report No. 48/15, Petition 79-06. Admissibility. *Yaqui People*. Mexico. July 28, 2015, paragraph 56.

4. Characterization of the alleged facts

39. For purposes of admissibility, the Commission must decide whether the alleged facts might constitute a violation of rights pursuant to the provisions of Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c). The criteria for evaluating those requirements differ from the ones used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right guaranteed by the Convention. Such determination constitutes a preliminary analysis, but does not prejudice the merits of the case.

40. In addition, neither the American Convention nor the IACHR’s Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. Rather, it falls to the Commission, based on the system’s jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation in the facts are proven sufficiently.

41. The petitioner holds that in the context of a demonstration in the city of Jipijapa, members of the police shot at a group of people, causing in Mr. Matute Robles a physical condition that was diagnosed as “paralysis in the lower extremities, with permanent disability,” which in his opinion led to both non-material and financial harm to the alleged victim and his parents. He further claims that the State did not undertake the corresponding *ex officio* investigation.

42. With respect to the “fourth instance” allegation made by the State, the Commission underscores that in the instant case, the petitioner is alleging that as a result of a firearm injury inflicted by Ecuadorian police agents, Mr. Matute Robles was left paralyzed and no that no *ex officio* investigation of these facts was ever conducted by the State. Such claims could characterize *prima facie* violations of the rights protected under the Convention and thus the IACHR would not be acting as a “fourth instance.”

43. The Commission has also held that instances in which an individual’s life has been put in danger⁶ could characterize violations of the right to life and thus the Commission shall examine, during the merits stage of the instant case, the potential application of Article 4 of the American Convention.

44. In view of the considerations of fact and law presented by the parties, and the nature of matter at hand, the IACHR believes that, if proven, the facts being alleged could constitute potential violations of the rights protected under Articles 4, 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Galo Roberto Matute Robles. The IACHR further considers that the facts alleged could also constitute a possible violation of Article 5 of the Convention in connection with the suffering and impact reportedly experienced by the parents of the alleged victim, Olivio Matute Hidalgo and Julia Adelaida Robles Pin, as a result of the injuries suffered by their son as well as the consequences that are said to remain to this day.

⁶ IACHR, Report No. 49/14, Petition 1196-07. Admissibility. *Juan Carlos Martínez Gil*. Colombia, July 22, 2014, paragraph 40.

V. CONCLUSIONS

45. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to Articles 4, 5, 8, and 25 of the American Convention, in conjunction with the duties established in Article 1(1) thereof;
2. To notify the parties of this decision;
3. To continue with its analysis of the merits of the complaint; and
4. To publish this decision and include it in its Annual Report to the OAS General Assem

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.