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REPORT No. 63/20
PETITION 600-10
REPORT ON ADMISSIBILITY

PASCUALA ROSADO CORNEJO AND FAMILY
PERU

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No.63/20, Petition 600-10. Admissibility. Pascuala Rosada Cornejo and family. Peru. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Flavio Froilán Olazábal Salinas
Alleged victim:	Pascuala Rosado Cornejo, Flavio Froilán Olazábal Salinas and children ¹
Respondent State:	Peru ²
Rights invoked:	Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 21, 2010
Additional information received at the stage of initial review:	August 8, 2016 and September 3, 2016
Notification of the petition to the State:	August 28, 2017
State's first response:	November 30, 2017
Additional observations from the petitioner:	March 8, 2018

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 (instrument of ratification deposited on July 28, 1978)

IV. 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 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	The exception of Article 46.2.c of the Convention is applicable
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. Mr. Flavio Froilán Olazábal comes before the IACHR on his own behalf and representing his seven children to request that the State of Peru be declared internationally responsible for the death of his wife Pascuala Rosado Cornejo, for the arbitrary denial of adequate administrative reparations (compensation) as a

¹ The petitioner identifies the following individuals as his and Mrs. Rosado's children, all of whom are adults as of the date of the drafting of the instant report: (1) Ingrid Karina Olazábal Rosado, (2) Rafael Martín Olazábal Rosado, (3) Auria Luz Olazábal Rosado, (4) Flavio Alexander Olazábal Rosado, (5) Oscar Oswaldo Olazábal Rosado, (6) Rocío Sandra Olazábal Rosado and (7) Grecia Lisbeth Olazábal Rosado.

² Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commission member Julissa Mantilla Falcón, a Peruvian national, did not take part in the discussion or the voting on the instant matter.

³ Hereinafter, "the American Convention" or "the Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

consequence of her death, for him and his children; and for disregarding his fair trial rights and his right to judicial protection as a consequence of the alleged impunity of the crime that is the subject-matter of the petition. Essentially, the petitioner is requiring that his rights to justice, truth and reparation be made effective, for him and his children, in their capacity as surviving family members of a victim of the internal armed conflict experienced in Peru from 1980 to 2000.

2. The petitioner claims that that Pascuala Rosado was an active social leader in the self-managed community of Huaycán, carrying out community projects and presiding over the self-defense body that was formed by said community to fight crime and terrorism. In this line, he holds that Pascuala Rosado's murder was the result of her public commitment to the government's struggle against terrorism, which entailed a high public exposure and a security risk from which she was not protected by the State. The petition informs that on March 6, 1996, Mrs. Rosado was the victim of an attack perpetrated by members of the Shining Path (*Sendero Luminoso*) guerrilla, who shot her dead on the street and then blew up her body with dynamite.

3. As supporting evidence of Mrs. Rosado's capacity as a community leader who headed the Huaycán self-defense committee, the petitioner cites the Final Report of the National Truth and Reconciliation Commission of Peru (CVR), which specifically refers to the murder of Pascuala Rosado in subparagraph 2.57, in the following terms:

Pascuala's work brought important benefits to the community. Thus, during her term as Secretary General of Huaycán, the Advanced Technological Institute and Maternity and Children's Hospital (*Instituto Superior Tecnológico* and the *Hospital Materno Infantil*) were built, public water and sewer works and electric infrastructure projects were carried out, and the self-defense body was implemented to fight crime. || Just as other leaders did, Pascuala openly confronted the violence of [the Communist Party of Peru – Shining Path faction (PCP-SL)]. Indeed, on May 7, 1991, only one day after her election, she made statements to the daily newspaper *La República* against that subversive group [...] The PCP-SL wasted no time in its response. [...] It began to threaten her. [...] The PCP-SL based its claims on the fact that Pascuala had coordinated with Peruvian Army General Luis Pérez Documet and Peruvian National Police General Ketín Vidal the establishment of the first Police Station in Huaycán, as well as the military base, in early 1992.

4. According to the Report of the Truth Commission, the homicide of Mrs. Rosado was acknowledged in a public communiqué by Shining Path as the work of its militants. The relevant conclusions reached in that report were, in pertinent part, the following:

The CVR confirms that leaders María Elena Moyano Delgado and Pascuala Rosado Cornejo were murdered by the subversive group PCP-SL which saw in her work and community leadership an obstacle to the development of their actions.

In both instances, they were women whose work had played an important role to the benefit of the community and who had taken a clear stand against the violence, openly confronting the PCP-SL and urging the population to defend itself and reject that subversive group's actions.

[...] The CVR urges the authorities to take the appropriate actions to eventually determine the identity of those directly responsible for these crimes, subject them to trial and punish them in accordance with the law, even holding Abimael Guzmán Reynoso and the members of the Central Committee of Shining Path responsible.

5. Mr. Olazábal claims in several points of his petition that Mrs. Rosado did not receive the State protection that she was entitled to, and that said lack of protection enabled the materialization of the attack that caused her death. He points out that prior to her murder, Mrs. Rosado had already been the victim of an armed attack at her family residence, on April 26, 1993, and that she had reported the incident to the authorities seeking their protection, unsuccessfully. This situation of risk prompted her to go into exile in Chile in June 1993, where she remained for nearly one year and a half, until she returned to Peru, and became the victim of the fatal attack a short time later. The petitioner claims that after traveling to Chile, Mrs. Rosado stated to the press *"that she had been threatened with death by seditious elements, on account of having reported their infiltration into the neighborhood organizations, and because the Army refused to give her protection from these threats, and she demanded support and protection from the local government for the neighborhood leaders."* He also claims that when Mrs. Rosado returned to Peru, *"her security detail was absent and the day of the fatal attack, as she was heading to her workplace at the factory Fábrica de Confecciones Textimax (at approximately*

7:40 a.m.), she was alone without any security protection.” In the petitioner’s view, these events would entail State responsibility for its omission in protecting the life of Pascuala Rosado from a risk that the State itself had contributed to create or heighten.

6. The petitioner moreover raises the issue of potential involvement of State agents in the death of his wife, claiming in this regard in his petition:

In my testimony No. 102143 of 16.12.2002 [...] I attest to two violent attacks and I state that instead of helping my family and reporting the attack, the Police began to disarm me and treat me as if I were the guilty one. In my testimony, I stated that the attack had been carried out by soldiers of the Army based on their physical appearance, their attire and hair cut; furthermore, one year before, my house had been guarded inside and outside by military troops and those that entered my residence moved about inside the house as if they were perfectly familiar with it. || This is the main reason why I was never able to open a criminal investigation, all the more so when you consider that the perpetrators of the crimes are members of the State, who ordered her killing, and not Shining Path as they would have us believe, placing obstacles on any type of information that was requested.

Mr. Olazábal demands to know the truth about what happened, and claims that the Peruvian authorities have not clarified the reality of the facts.

7. As a consequence of the death of Mrs. Rosado, proceedings were initiated before the military criminal justice system, resulting in a conviction at the appeals level adopted by the Permanent Court-Martial of the Second Judicial Zone of the Army on July 6, 1998, sentencing Glicerio Aguirre Pacheco, a member of Shining Path, as the intellectual and material perpetrator of the crime of Treason against the Nation, under which the murder of Mrs. Pascuala Rosado was subsumed. In this judgment, the family members of Mrs. Rosado were recognized as victims. Nonetheless, after a request to void and nullify the judgment was filed, the Supreme Council of Military Justice, in a decision of September 30, 1998, partially overturned it, on the grounds that only the State could be considered as a victim of the crime of treason against the nation. This decision also determined that the payment of civil reparation arising from the criminal conviction had to be made to the State, and not to the family members of the victim.

8. Notwithstanding the above, the National Chamber for Matters of Terrorism, under Legislative Decree 922-2003, overturned the conviction issued by the military criminal court against those allegedly responsible for the death of Pascuala Rosado, and ordered a new trial in the ordinary jurisdiction. (In its response, the State cites these proceedings). The petitioner contends he did not receive any information about the criminal proceedings that were conducted in the military or the ordinary jurisdictions. He claims that *“the Joint Command was in charge of carrying out, doing and undoing the investigation into the death of my wife, I was not summoned to provide my statement and I had no information or document to be able, at that time, to initiate a lawsuit.”*

9. On May 4, 1999, Mr. Olazábal requested, from the Judge of the Second Trial Court of the Second Judicial Zone of the Army, a certified copy of the decisions handed down by the Permanent Court-Martial of the Second Judicial Zone of the Army and of the Supreme Tribunal of Military Justice in the proceeding against Gliserio Aguirre Pacheco for the death of Mrs. Rosado. Mr. Olazábal, who provides a copy of said petition, alleges that he never received these documents.

10. As pointed out in the petition, the family members of Mrs. Rosado sought compensation under two different legal regimes:

(a) At first, they requested to be beneficiaries of the compensation provided for in Article 10 of Supreme Decree No. 077-92-DE (Regulations of the Organization and Functions of the Self-Defense Committees), which would benefit persons affected by death, injury or loss of property as a consequence of confrontations with terrorists. Thus, on July 22, 1998, Mr. Olazábal submitted a request for recognition as victim to the Third Trial Court of the Second Judicial Zone of the Army, providing a copy of his marriage certificate in order to access civil reparation. Nonetheless, in a decision of February 2, 1999, the Special Military Judge of this Judicial Zone of the Army denied the request based on the aforementioned decision of the Supreme

Council of Military Justice of September 30, 1998, declaring the State to be the sole victim of the crime of Treason against the Nation.

(b) Then on June 24, 1999, Mr. Olazábal submitted a new request for access to compensation under Supreme Decree No. 077-92-DE to the Chief General of the Joint Command of the Armed Forces, invoking the circumstances of his wife's murder. Nonetheless, in Resolution No. 025-CCFFAA-EMFFAA-D1/Pers. of the Joint Command of the Armed Forces of May 2, 2000, the requests of several relatives of the members of the Self-Defense Committees, who had sought benefits, including the next of kin of Mrs. Rosado, were denied. The legal grounds of this negative resolution was a Legal Report of the Commission of Legal Advisors of the Armed Forces, issued on January 14, 2000, which concluded that the Self-Defense Committee of Huaycán had never been formally established or activated, because it had not received recognition by the Military Commands of the Zone. On August 7 of that same year, the petitioner appealed this ruling before the Joint Command of the Armed Forces; nonetheless, the appeal was denied for being time-barred. After the petitioner insisted on appealing the aforementioned denial, in a memorandum of May 17, 2001, the Joint Chief of the Staff of the Armed Forces reiterated to him that his request did not fulfil the requirements to access compensation, because no military authority had issued a decision recognizing the corresponding self-defense committee. However, Mr. Olazábal in his petition to the IACHR insists that the Self-Defense Committee of Huaycán was indeed recognized.

11. Subsequently, after the passage of Law 28.592 of 2005, which created the Comprehensive Reparations Plan (*Plan Integral de Reparaciones* - PIR), the petitioner initiated the procedure to be recognized as a victim of the violence which unfolded between 1980 and 2000, and obtain reparations. Thus, as of the date of filing of the instant petition, both himself and Mrs. Pascuala Rosado had already been included in the Unified Victims Register (*Registro Unico de Víctimas*), according to certificates of proof of registration of September 8, 2008 and February 26, 2009, respectively.

12. In conclusion, the petitioner claims to have exhausted all domestic means to access the administrative reparation to which he and his children are allegedly entitled, which entailed a large economic and human effort for him, over the course of more than twelve years. Moreover, in his additional observations following the submission of the State's response, he claims that the compensation that they actually received from the State through the PIR have been insufficient in light of the damages endured by himself and his family.

13. In its response the State notes that, in its view, the object of the petition is restricted to the issue of the administrative reparations for the death of Mrs. Pascuala Rosado. As such, it requests that the petition be declared inadmissible inasmuch as it does not raise facts that could tend to establish violations of the rights protected by the American Convention. It contends that both the petitioner and his children have already received compensation under the PIR, and it points out that in ministerial resolution No. 157-2012-JUS, Mr. Olazábal was granted an indemnity of 5,000 Peruvian Soles (approximately USD \$1,666), and that in resolutions 204-2014-JUS and 205-2015-JUS, each of his seven children was granted the amount of 714 Soles (approximately USD \$238). These amounts were paid to the respective beneficiaries.

14. The State explains that the death of Mrs. Rosado triggered two different judicial proceedings. In the first proceedings, under case file number 199-2003-SPN, Fredy Martin Paja Aguilar was charged with committing the crimes, but the National Criminal Chamber acquitted him in a judgment of September 11, 2012, on the grounds of a reasonable doubt regarding his participation. This ruling was upheld under a Supreme Court Final Decision of November 11, 2013, of the Transitory Criminal Chamber of the Supreme Court of Justice. In the second criminal proceedings, under case file No. 569-2003-SPN, Glicerio Aguirre Pacheco was charged with the crimes, but the National Criminal Chamber acquitted him in a judgment of June 1, 2009, on the grounds that there was no compelling evidence of his responsibility. This ruling was upheld in a Final Decision of the Permanent Criminal Chamber of the Supreme Court of Justice of February 16, 2011. The State contends in this regard that the State's obligation to investigate the incidents is one of means, and not of results, and that, as such, it has diligently fulfilled the obligation.

15. The State further rejects that any members of the Army participated in the killing of Mrs. Rosado, and it contends that this type of assertion is not adequately backed by evidence. In this regard, it argues

that, on the contrary, according to the Final Report of the Truth and Reconciliation Commission, and to the records of the criminal proceedings in which the alleged members of Shining Path were tried, the murder of Mrs. Pascuala Rosado was allegedly carried out by members of this terrorist organization.

16. Lastly, the State denies that Mrs. Pascuala Rosado ever presided a Self-Defense Committee in Huaycán; it contends that according to reports of the Ministry of Defense and the military authorities, said committee never existed nor was it formally recognized or activated by the military authorities.

17. In conclusion, the State requests that the petition be declared inadmissible for lack of a colorable claim of violations of the American Convention.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

18. The object of the petition, as can be surmised from a full reading thereof, is to determine the responsibility of the Peruvian State for the death of Mrs. Pascuala Rosado, whether on account of breaching its duty to protect her from a security risk that the State itself contributed to create, or on account of the active involvement of its agents in the crime. Mr. Olazábal further contends that more than two decades have elapsed since the events took place and the courts have still not determined who is responsible for the crime in order to impose the statutory punishment, and he asserts that he has not been able to effectively take part in the criminal proceedings that were brought both in the military and the ordinary jurisdictions. In connection with the foregoing, Mr. Olazábal reports that neither he nor his children have been able to access the compensation provided for in Decree 077 of 1992, to which they understand they are entitled, and that as of the date of the filing of the petition, they had not received sufficient reparations under Law 28.592. The State, in turn, claims that Mr. Olazábal and his children have already been paid reparations under the aforementioned Law and, therefore -in its reading of the petition- there is no colorable claim of violations of the American Convention; it reports that it has fulfilled the duty to investigate the crime, identify and prosecute those responsible for it, although some of those who were investigated were judicially acquitted, inasmuch as it is an obligation of means; and it denies that Mrs. Rosado ever chaired a Self-Defense Committee, for which reason it understands that her family had no right to compensation under Decree 077 of 1992.

19. In this regard, the Commission's uniform legal precedents have established that whenever a crime against life is committed, the State is in the obligation to institute and pursue *ex officio* the corresponding criminal proceedings, and that in such cases, the pathway of criminal justice is the adequate remedy to clarify the facts, prosecute those responsible and establish the appropriate punishments, as well as to make other means of reparation possible, in accordance with the safeguards of the American Convention.⁵ As for the criminal investigation into the murder of Mrs. Pascuala Rosado, it has been established that a criminal investigation was first opened and led to a conviction being upheld at the appeals level by the military criminal jurisdiction. This conviction was partially overturned regarding the determination of the victims of the crime of treason against the nation, but was upheld regarding the conviction of Glicerio Aguirre Pacheco as the guilty individual, on September 30, 1998. Subsequently, under Legislative Decree 922-2003, the National Chamber for Matters of Terrorism overturned this conviction and ordered a new criminal trial for that crime in the ordinary jurisdiction. The two ordinary criminal proceedings -reported by the State- led to two judicial acquittals: the first one, acquitting Fredy Martín Paja Aguilar, which became final on November 11, 2013; and the second one acquitting Glicerio Aguirre Pacheco, which became final on February 16, 2011. There is no information about any other proceedings in the ordinary jurisdiction in connection with the case. In this regard, the IACHR notes that more than 24 years have elapsed since the murder of Pascuala Rosado and the Peruvian justice system has failed to identify, prosecute and punish those responsible for the crime and, therefore, the exception of unwarranted delay, as provided for in Article 46.2.(c) of the American Convention, concerning the duty of prior exhaustion of domestic remedies, is applicable.

⁵ IACHR, Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al, Peru, January 27, 2012, par. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al. Peru, September 7, 2017, pars. 3, 9-11; Report No. 72/18, Petition 1131-08, Admissibility, Moisés de Jesús Hernández Pinto and Family, Guatemala, June 20, 2018, par. 10; Report No. 70/14, Petition 1453-06, Admissibility, Maicon de Souza Silva, Renato da Silva Paixão et al. July 25, 2014, par. 18.

20. In view of the fact that the murder of Pascuala Rosado took place in March 1996, that the petition was lodged in April 2010, and that the effects of the impunity for her murder have continued until the present time, the Commission concludes that the petition was lodged within a reasonable time, in the terms of Article 32.2 of the IACHR's Rules of Procedure, in accordance with Article 46.1.(b) of the American Convention.

21. As for the request for compensation under Decree 077 of 1992, the petitioner submitted his request for recognition as a victim to the Third Trial Court of the Second Judicial Zone of the Army on July 22, 1998; nonetheless, this judge denied the request in a decision of February 2, 1999, on the grounds that the Self-Defense Committee of Huaycán did not formally exist. This decision was upheld in a Resolution of the Joint Command of the Armed Forces of May 2, 2000. Subsequently, and in further pursuit of his claim for compensation, the petitioner filed for reparation under Law 28.592 of 2005 (PIR), where he and his family members were registered as victims, resulting in the disbursement of certain amounts of money as reparation under the resolutions issued by the competent authorities between 2012 and 2015. This is according to information provided by the State, which was not disputed by the petitioner. In this regard, the parties agree that the different procedures of both a judicial and administrative nature have been exhausted with regard to these claims.

VII. ANALYSIS OF COLORABLE CLAIM

22. The Commission notes that the petition lays out substantial allegations pertaining to (i) the potential international responsibility of the Peruvian State for the death of Mrs. Pascuala Rosado, either for failure in its duty to guarantee and protect her security, or for the active involvement of its agents in the crime; (ii) the alleged impunity in which the murder of Mrs. Rosado remains, twenty-four years after the events took place; (iii) the violation of the procedural rights and the right to reparation of Mr. Olazábal, for the repeated refusal by military and criminal justice authorities to grant him access to the compensation to which he understood he had a legally consolidated right -on the grounds of factual circumstances that the State is disputing-; (iv) the uncertainty faced by the family members of the alleged victim as to the historic truth of the events surrounding her death; (v) the alleged inadequacy of the administrative reparation actually received under Law 28.592, in light of Inter-American standards on economic compensation at the national level. In view of these considerations, and after examining the legal and factual elements put forward by the parties, the Commission finds that the petitioner's allegations are not manifestly groundless and warrant an examination of the merits, inasmuch as the alleged facts, if proven, could tend to establish violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights), as laid out in the instant report, to the detriment of the late Mrs. Pascuala Rosado, of Mr. Flavio Froilán Olazábal, and of their seven children.

23. Lastly, the Commission recalls that the evaluation criteria for admissibility are different from those used for the assessment of the merits of a petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the legal grounds for a possible or potential violation of a right enshrined by the Convention, but not to establish the actual existence of a violation of rights. This determination constitutes a primary analysis that does not imply a pre-judgment of the merits of the matter.⁶ Likewise, the Commission establishes that it will take into consideration at the merits stage of the instant case, the fact, uncontested by the petitioners, that the State has allegedly made some payments already to the alleged victims in the framework of the PIR.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in relation to its Article 1.1; and

2. 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.

⁶ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, par. 48.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

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