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REPORT No. 37/17
PETITION 854-07
REPORT ON ADMISSIBILITY

RICARDO ANTONIO ELÍAS PUENTE AND FAMILY
COLOMBIA

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REPORT ON ADMISSIBILITY
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I. SUMMARY

1. On June 29, 2007 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Soraya Adalgiza Elías Puente (hereinafter “the petitioner”) against Colombia (hereinafter “Colombia” or “the State”). The petition was filed on behalf of her brother, Ricardo Antonio Elías Puente (hereinafter “the alleged victim” or “Mr. Elías Puente”).

2. The petitioner argues that Mr. Elías Puente was killed by members of the National Liberation Army (ELN) when he was working as the head of a national park, that the State knew about the death threats against him, and that to this date his family has not received any reparations for his death. In turn, the State argues that the petitioner intends to have the Commission work as a “fourth instance,” that the facts described do not establish violations of the rights enshrined in the American Convention and that the petition was not timely.

3. Without prejudging the merits of the complaint, after analyzing the position of the parties and pursuant to the requirements established in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31 to 34 of the IACHR Rules of Procedure (hereinafter “the Rules”), the Commission decides to declare this petition admissible in order to assess the arguments concerning the purported violation of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Personal Integrity), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in light of the obligation established in Article 1.1 (Obligation to Respect Rights) of said instrument. The Commission moreover decides to notify the parties of this decision, to publish it and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on June 29, 2007, transmitted a copy of the relevant parts to the State on September 1, 2011 and granted it a two-month deadline to submit observations, under Article 30.3 of the Rules then in force. The Commission received the State’s reply on November 4, 2011 and transmitted it to the petitioner on November 17, 2011.

5. The petitioner filed additional observations on May 2, 2012. In turn, the State sent additional observations on August 3, 2012. The observations presented by each party were duly transmitted to the opposing party. After said communications, the petitioner sent several requests for information regarding the status of her petition, the last one of which was received on July 15, 2016.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner declares that Mr. Elías Puente, a biologist, singer and musician, was Head of the National Park El Cocuy in the department of Boyacá, under the authority of the National Institute of

¹ Pursuant to Article 17.2 (a) of the Commission’s Rules of Procedure, Commissioner Enrique Gil Botero, a Colombian national, did not take part in the discussion or voting on this petition.

Renewable Natural Resources and Environment (INDERENA). As a precedent and according to the information submitted, on February 16, 1988 the alleged victim had requested two weapons from the Head of the National Parks Division, to ensure safety and protect the cottages and properties located on the area of Lagunillas and Sácama in El Cocuy National Park.

7. The petitioner says that on November 13, 1988 the ELN seized the town of Cocuy, among others, and killed Mr. Elías Puente. She adds that before his death, the State knew of the threats against him and that his family members faced many obstacles to recover his body.

8. As to the criminal investigation, the information submitted indicates that on November 21, 1988 the petitioner requested the National Prosecutor for Human Rights to investigate Mr. Elías Puente's death. On May 15, 2007 the Prosecutor's Office told her that the investigation was furthered by the Fourteenth Special Prosecutor at the Court of Cocuy's Circuit. She also declares that in 1994 the files were burnt during a guerrilla attack and that consequently, files prior to that date were not available.

9. On November 28, 1990 the Full Court of the Administrative Court of Boyacá accepted the direct reparation filed by the petitioner and Ms. Adalgiza Puente and Ms. Sayde María Elías, the alleged victim's mother and his sister, against the National Defense Ministry (MDN) and the INDERENA for the non-economic and material damages resulting from Mr. Elías Puente's death. On May 7, 1997 the Full Court's decision benefitted the claimants and sentenced the accused to the payment of 1,000 grams of gold to Adalgiza Puente and of 500 grams of gold to the sisters of the alleged victim for moral damages, and ordered the payment of a compensation for lost earnings in favor of his mother.

10. The Full Court believed that "given the work relationship between Elías Puente and his superior, the INDERENA, the location where the work relationship took place [...] as well as the poor context where [...] he performed his duties as the Head of the National Park [...], the anxiety and the danger [that he was subjected to] along with the continuous seizures by the guerrilla in all the area –known to everyone– are circumstances that deserved an adequate safeguard by the State [...] as a measure of prevention."

11. On June 26, 1997 the National Defense Ministry lodged an appeal against such judgment. On December 11, 2003 the Third Chamber of the Administrative Law Court of the State Council decided "to revoke the appealed judgment that partially ordered the reparations sought by the claimant and, instead, reject them on the grounds that in this case there is a cause for exemption from responsibility that is an offense by a third party."

12. The petitioner argues that after that judgment she continued claiming for "a compensation and a solution" before several institutions. According to the information submitted, on April 5, 2005 the Head of the Presidential Program on Human Rights and International Humanitarian Law told her that once an appeal judgment has been issued by the State Council, it cannot be appealed, and that through the Agency for Social Action the government grants compensations in favor of the family members of the victims of the armed conflict and that applications must be presented no later than one year after the facts.

13. Furthermore, on July 11, 2006 the Fourth Special Prosecutor at the State Council told the petitioner that given that there is an adverse final judgment concerning her claim, it is impossible to file another remedy. In addition, on July 18, 2006 the National Unit for Justice and Peace of the National Public Prosecutor's Office said that the petition lodged with the National Commission of Reparation and Reconciliation was transmitted to the Regional Directorate of Prosecutor's Offices of Santa Rosa de Viterbo for its processing under Law 975 of 2005.

14. The petitioner holds that the State violated the rights to life, work, and equal protection of the law, and that the domestic legislation does not afford due process of law.

B. Position of the State

15. The State argues that the remedy of direct reparation enshrined in Article 87 of the Code of Administrative Law of Colombia (Decree No. 1 of 1984) and Article 140 of the Code of Administrative Law (Law 1437 of 2011) is designed to repair the injuries suffered as a result of an unlawful conduct caused by an action or an omission by any state authority. It declares that this remedy allows the victim to be compensated if the administrative-law judge believes that the entity or entities denounced are responsible for such unlawful conduct. It adds that the Constitutional Court establishes that that is the adequate legal remedy.

16. It argues that the Administrative Court of Boyacá settled this case and ruled in favor of the claimant and that when the Defense Ministry appealed the judgment, the State Council ruled against the demands of the claimants. It declares that there is no proof that the State Council's judgment contains flaws such that may render it unlawful or arbitrary; and that, therefore, the facts were already heard by the competent bodies in the domestic legal framework through the administrative law jurisdiction. It argues that the petitioner intends to have the Commission work as a "fourth instance." In this regard, it declares that the facts do not establish violations of the rights enshrined in the Convention, since it was an offense committed by a third party unforeseeable to the State, and that consequently, international responsibility cannot be attributed to the State.

17. Moreover, the State argues that the petition was lodged on June 29, 2007 and that it was untimely, since the State Council's judgment of December 11, 2003 that settled the case had been notified to the petitioner through an edict dated January 22, 2004.

18. Finally, it requests the Commission to consider only those facts in the petition that were duly proven in the proceedings at the domestic legal framework and to reject any allegations lacking sufficient evidence.

19. To conclude, the State declares that given that the Commission cannot work as a "fourth instance," that the facts described do not establish violations of rights enshrined in the Convention and that the petition was untimely, this petition is inadmissible; consequently, it requests the IACHR to so declare.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

20. The petitioner is entitled to lodge complaints with the Commission, under Article 44 of the American Convention and Article 23 of the Rules. In the petition, the alleged victim is an individual person whose rights are protected by the American Convention on Human Rights, which the State of Colombia is bound to abide by. Concerning the State, the Commission declares that Colombia is a State Party to the Convention since July 31, 1973, the date it deposited its ratification instrument. Therefore, the Commission is competent *ratione personae* to assess the petition. The Commission is also competent *ratione loci* to assess the petition inasmuch as the purported violations allegedly occurred within Colombia's territory.

21. The Commission is competent *ratione temporis*, since the obligation to respect and safeguard the rights protected by the Convention was already in force for the State by the time that the alleged facts occurred. Lastly, the Commission is competent *ratione materiae* regarding the alleged violations of human rights protected by the Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

22. Under Articles 46.1 (a) of the American Convention and 31.1 of the Rules, for a petition to be admissible, domestic remedies must have been previously exhausted in accordance with generally recognized

principles of international law. This requirement is aimed at enabling national authorities to hear the alleged violation of a protected right and, if applicable, remedy the situation before it is heard by an international body. In turn, Article 46.2 of the Convention and Article 31.2 of the Rules establish that the requirement of prior exhaustion of domestic remedies does not apply when: (a) 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; (b) the party alleging a violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The petitioner declares that the domestic legislation does not afford due process and that her brother's death remained unpunished and that no reparations have been granted. In turn, the State argues that the facts were heard by the competent bodies in the domestic legal framework through the administrative law court, which overruled the claims of the claimants.

24. The Commission recalls that whenever there is an offense subject to ex officio prosecution, the State is obliged to promote and further the criminal prosecution and that in such cases this is the adequate means to establish the facts, sentence the persons responsible and decide on the corresponding criminal measures, as well as to enable other means of monetary measures. Moreover, the requirement of prior exhaustion of domestic remedies should not be understood in way such that it causes a long-lasting or unwarranted obstacle to access the inter-American system.

25. In this regard, the Commission notes that on November 21, 1988 Ms. Adalgiza Puente requested the National Prosecutor to "investigate thoroughly and to its logical conclusions" the death of Mr. Elías Puente, that on May 15, 2007 the Prosecutor's Office told her that the investigation was furthered by the Fourteenth Special Prosecutor at the Court of Cocuy's Circuit, and that in 1994 the files were burnt during a guerrilla attack, and that consequently, files prior to that date were not available.

26. Based on the foregoing, the Commission notes that at least since November 21, 1988 the State knew of the alleged victim's death, and that to the date of this report's approval –almost 26 years later– the State has not prosecuted or punished the people responsible. Likewise, the Commission has not received more specific information about the progress of the investigation or the measures taken to investigate the death. As a result, the Commission concludes that there was an unwarranted delay and that the exception established in Article 46.2 (c) of the Convention and Article 31.2 (c) of the Rules applies concerning the criminal investigation

27. As to the administrative-law proceedings, the Commission deems it necessary to explain that for complaints admissibility purposes, direct reparation is not an adequate means nor is it necessary to exhaust it, inasmuch as it is unsuitable to determine the facts and attribute criminal responsibility and, therefore, provide justice and a full reparation.²

28. Lastly, the Commission highlights that Article 46.2 of the American Convention and Article 31.2 of the Rules are autonomous rules given their nature and object, as opposed to the substantive rules in the Convention. Therefore, the decision about the applicability of the exceptions to the requirement of prior exhaustion of domestic remedies concerning this case must be prior to, and irrespective of, the merits assessment of the matter, since it depends of assessment criteria different from that employed to determine the violation of Articles 8 and 25 of the Convention. It is worth noting that the causes and the effects that have hindered the exhaustion of domestic remedies in this case will be analyzed, as necessary, in the report that the Commission adopts on the merits of the case, in order to verify if these are actual violations of the Convention.

² IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016; par. 32.

2. Timeliness of the petition

29. Under Article 46.1 (b) of the American Convention and Article 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date that the final judgment was notified to the alleged victim. Regarding the present complaint, the IACHR establishes that the exception to the requirement of prior exhaustion of domestic remedies is applicable, under Article 46.2 (c) of the American Convention and Article 31.2 (c) of the Rules. In this regard, under Article 46.2 of the Convention and Article 32.2 of the Rules, in cases where exceptions to the requirement of prior exhaustion of domestic remedies apply, the petition shall be presented within a reasonable term, as determined by the Commission. Therefore, the Commission shall consider the date of the alleged violations of rights and the circumstances of each case.

30. The petition was received on June 29, 2007, the alleged facts matter of this complaint started on November 13, 1988 and their effects concerning the alleged denial of justice allegedly persist. The Commission notes that between the date that the alleged facts took place and the date that the petition was filed by Mr. Elías Puente's family, they pursued legal remedies, among others, to have the facts concerning his death established and to obtain reparation. Consequently, in view of the context and the characteristics of this case, the Commission believes that the petition was filed within a reasonable term and that the admissibility requirement of timeliness is met.

3. Duplication of procedures and international *res judicata*

31. According to the case file, the matter of the petition is not pending in other international proceedings for settlement nor does it duplicate a petition already examined by this or another international body. Therefore, inadmissibility requirements set forth in Articles 46.1 (c) and 47 (d) of the Convention and Articles 33.1 (a) and 33.1 (b) of the Rules do not apply.

4. Colorable claim

32. For the purpose of admissibility, the Commission must decide if the facts alleged tend to establish a violation of rights, under Articles 47 (b) of the American Convention and 34 (a) of the Rules, or if the petition is 'manifestly groundless' or 'obviously out of order,' under Article 47 (c) of the Convention and Article 34 (b) of the Rules. A petition's admissibility assessment criteria differs from its merits assessment criteria, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Convention. It is a general analysis without a prejudgment of, or a preliminary opinion on, the merits of the matter.

33. In addition, the corresponding legal instruments do not require petitioners to identify the specific rights allegedly violated by the State, in the matter filed to the Commission, although petitioners may do so. Under the system's jurisprudence, it is for the Commission to determine in its admissibility report which provisions of the relevant inter-American instruments apply and could be found to have been violated if the alleged facts are proven by sufficient elements.

34. The petitioner argues that Mr. Elías Puente was killed by members of the ELN while he was working as a state officer and that the State knew of the death threats against him but has not prosecuted the persons responsible yet, and that his family members have not received any reparation for his death. In turn, the State declares that the facts do not establish violations of the rights enshrined in the Convention, inasmuch as it was an offense perpetrated by a third party unforeseeable to the State, which exempts it from international responsibility. It also argues that the petitioner intends to have the Commission work as a "fourth instance."

35. In view of the elements of fact and law presented by each party and given the nature of the matter brought to its attention, the IACHR believes that the arguments referring to the alleged State's responsibility for the death of the alleged victim, along with the subsequent lack of investigation and

reparation must be analyzed in the merits stage in order to determine if these establish violations of Article 4 to the detriment of Mr. Elías Puente, and of Articles 5, 8 and 25 of the Convention to the detriment of his family, all of these in light of the obligation enshrined in Article 1.1 of said instrument.

36. As to the petitioner's complaint about the purported violation of the rights to work and to equal protection of the law, the Commission sees that the petitioner does not provide arguments or evidence about such alleged violation; therefore, said claim is declared inadmissible.

V. CONCLUSION

37. Based on the above elements 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 in Articles 31 to 34 of the Rules and, without prejudgment of the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the Convention, in light of Article 1.1 of said treaty;
2. To find the instant petition inadmissible in relation to Article 24 of the Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 27th day of the month of April, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.