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**REPORT No. 386/20**  
**PETITION 1775-10**  
REPORT ON ADMISSIBILITY

EDWARD FRANCISCO CONTRERAS BONIFACIO AND FAMILY  
EL SALVADOR

Approved by the Commission electronically on December 10, 2020.

**Cite as:** IACHR, Report No. 386/20, Petition 1775-10. Admissibility. Edward Francisco Contreras Bonifacio and family. El Salvador. December 10, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Ovidio Mauricio González and Alejandro Díaz Gómez <sup>1</sup>
<b>Alleged victim:</b>	Edward Francisco Contreras Bonifacio and family members <sup>2</sup>
<b>Respondent State:</b>	El Salvador
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty) and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	December 10, 2010
<b>Notification of the petition to the State:</b>	August 12, 2016
<b>State's first response:</b>	November 28, 2016
<b>Additional observations from the petitioner:</b>	March 13, 2020
<b>Notification of the possible archiving of the petition:</b>	October 18, 2018 and September 27, 2019
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	October 7, 2019

**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 Convention (instrument of ratification deposited on June 23, 1978)

**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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception set forth in Article 46.2.c of the American Convention is applicable
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

<sup>1</sup> Mr. Ovidio Mauricio González initially filed the petition as Director of the church-based organization *Tutela Legal del Arzobispado*; however, this organization was dissolved in September 2013, at which time Mr. González received an express power of attorney from Edward Francisco's father to continue to represent him before the IACHR, along with lawyer Alejandro Díaz, and since then both representatives have acted throughout the present proceeding alongside the organization *Tutela Legal "Dra. María Julia Hernández"* organization.

<sup>2</sup> Among the next-of-kin of Mr. Edward Francisco Contreras, the petitioners have thus far identified his father, Francisco Antonio Contreras.

<sup>3</sup> Hereinafter "the American Convention".

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner requests that El Salvador be declared internationally responsible for the forced disappearance of youth Edward Francisco Contreras Bonifacio, and the subsequent impunity of the crime.

2. The petition states that youth Edward Francisco Contreras, a 21-year-old student and resident of Lourdes, Colón, left his home heading toward an educational center the morning of February 7, 2007, after which he did not return nor has there been any notice of his whereabouts ever since. Young Edward Francisco was an active militant of the Popular Youth Block (*Bloque Popular Juvenil*) and Popular Social Block (*Bloque Popular Social*) movements, which at that time were political opposers of the government then in power. It is claimed that prior to his disappearance Edward Francisco had already been the victim of a kidnapping attempt in November 2005, by three people whom he had identified as police agents associated with a powerful private businessman and organized criminal groups. He managed to escape such kidnapping attempt, and as a result he received police protection for several months, for which reason, petitioner claims, police agents were already aware of his daily movements and routines. A criminal complaint was filed against the three alleged kidnappers, and proceedings were initiated in the course of which the defendants remained in liberty with the duty of periodically presenting themselves before the Tribunal.

3. When youth Edward Francisco did not return home on February 7, 2007, his relatives undertook an urgent search, during which his father was informed –by alleged witnesses of the fact– that Edward had been detained that day by police agents, after leaving the school he was attending and as he was heading home on a public bus. The youth’s father went to the Lourdes police station, where a sergeant confirmed that Edward had indeed been arrested by agents of the Homicide Investigation Division of the San Salvador Police; however, when the relatives went to the police station in Ateos, where that information had come from, they were told that there was no record of the arrest. Subsequently, the aforesaid sergeant retracted from his prior statement, as well as a Deputy Inspector, who told them that it had all been a confusion of information.

4. As part of his search, Edward’s father went to several private and public Salvadorian entities, including several offices and detention centers of the National Police, hospitals, forensic institutes, the Office of the State Attorney for the Protection of Human Rights and the organization *Tutela Legal del Arzobispado* in San Salvador. On February 14, 2007 he filed a criminal complaint before the General Prosecutor of the Republic – Santa Tecla Subregional Office, and the casefile was registered as 422-UDV-07. On February 19, 2007 he also filed a habeas corpus action before the Constitutional Chamber of the Supreme Court of Justice, which denied it two years and eight months later, in a judgment of October 2, 2009, where it held that insufficient evidence had been gathered to prove the occurrence of the disappearance or the detention, or to prove the alleged pattern of forced disappearances by public security forces agents that had been unfolding in the country, to which Edward Francisco’s disappearance was allegedly connected. In the opinion of Edward’s relatives and of the petitioners, members of the National Civil Police linked to criminal structures were allegedly implicated in the youth’s disappearance. The criminal investigation initiated by the Prosecutor’s office has allegedly not advanced, for which reason the fact remains unpunished to this day.

5. The State informs in its response that the General Prosecutor’s Office has carried out several investigative tasks in relation to this disappearance, in the framework of investigation 422-UDV-07, which is currently at an active inquiry stage, and in the course of which the prosecuted crime was set to be Deprivation of Liberty. The State explains that the Prosecutor’s Office has gathered several testimonial and documentary evidences; that the National Civil Police, as an auxiliary to the Prosecutor’s Office, has carried out all investigative tasks required by the latter; and that the Office of the State Attorney for the Protection of Human Rights has overseen the performance of the Prosecutor’s Office concerning this case. In spite of this, the State explains that to this date the Prosecutor’s Office does not have sufficient evidence to unequivocally identify those responsible for the crime, for which reason it shall continue to carry out all relevant actions in order to be able to determine who the perpetrators are, judge them and punish them in accordance with the law. In this line, the State requests the IACHR to “*consider the required response presented and admit it*”, and to “*positively regard the State’s willingness to provide ample information on the present case*”.

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

6. The Inter-American Commission has repeatedly held that in cases where the forced disappearance of persons is claimed, the suitable remedy to exhaust domestically is the filing of a criminal complaint of the facts so that authorities, in an ex officio and proactive manner, carry out the corresponding investigation, prosecute and punish those responsible, identify the whereabouts of the disappeared persons, and provide full reparation to the surviving victims.<sup>5</sup> This investigative charge is to be assumed by the State as a legal duty of its own, and not as a management of private interests or one that depends on their private initiative nor on their provision of evidence<sup>6</sup>.

7. In the present case, the State has not claimed lack of exhaustion of domestic remedies. It is proven that Mr. Francisco Antonio Contreras, Edward's father, filed a criminal complaint for his disappearance on February 14, 2007 before the General Prosecutor's Office, and that the investigation has shown no progress in the identification of those responsible. As pointed out by the State itself, the Prosecutor has ordered and gathered some witness and documentary evidences, yet these have been insufficient to clearly identify who committed the crime. Furthermore, the investigation is being conducted for the crime of deprivation of liberty, and not for forced disappearance. In additionally, Mr. Contreras unsuccessfully filed a habeas corpus petition before the Supreme Court of Justice, as well as a claim before the Office of the State Attorney for the Protection of Human Rights that has yielded no results either. Consequently, the IACHR concludes that the adequate domestic remedies have been initiated, but their resolution and exhaustion have taken an excessively long time, given that the disappearance of youth Edward Francisco took place over thirteen years ago, but to this date the criminal investigation has not advanced to the point of being able to identify the perpetrators. Therefore, the exception enshrined in article 46.2.c of the American Convention is applicable in the present case, since there has been an unjustified delay in the decision of the suitable remedies that were initiated.

8. In light of the above, considering that Edward Francisco Contreras was last seen in February 2007, that the criminal complaint for his disappearance was filed a few days later in the same month of February 2007, that the petition was received by the Inter-American Commission in December 2010, and that the effects of the impunity of the case extend to this date, the IACHR considers that the petition was presented within a reasonable period of time, in the terms of Article 32.2 of the Rules of Procedure.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. The petitioner has claimed that El Salvador is internationally responsible for the forced disappearance of Edward Francisco Contreras, presenting several indications that point toward a possible responsibility of National Police agents in the crime, indications which have not been clearly contested by the State in its response. The petitioner has also informed that the criminal investigation of the events has not advanced, in spite of the long time which has elapsed since 2007 – a fact confirmed by the State, which has informed that in the course of such investigation not enough evidence has been produced to establish the perpetrators of the disappearance; moreover, the State itself has reported that such investigative proceedings are being carried out for the crime of deprivation of liberty and not for the crime of forced disappearance.

10. In view of the above and upon examining the factual and legal elements set forth by the parties, the Commission considers that the claims presented by the petitioner are not manifestly unfounded, and that if the alleged facts are corroborated, they may characterize violations of the rights recognized in Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in the terms of the present report.

<sup>5</sup> IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, par. 31; Report No. 161/17. Admissibility. Andy Williams Garcés Suárez and Family. Peru. November 30, 2017, par. 12.

<sup>6</sup> IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and Family. Paraguay. November 30, 2017, par. 14.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection to its articles 1.1 and 2; 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.

Approved by the Inter-American Commission on Human Rights on the 10<sup>th</sup> day of the month of December, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.