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REPORT No. 5/18
PETITION 1520-08
REPORT ON ADMISSIBILITY

CARLOS QUISPE QUISPE AND FAMILY
BOLIVIA

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 5/18, Petition 1520-08. Admissibility. Carlos Quispe Quispe and family. Bolivia. February 24, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Inter-American Press Association |
| Alleged victim: | Carlos Quispe Quispe and family |
| State denounced: | Bolivia |
| Rights invoked: | Articles 4 (right to life), 8 (right to a Fair Trial), 13 (freedom of thought and expression), and 25 (right to Judicial Protection) of the American Convention on Human Rights ¹ |

II. PROCEDURE BEFORE THE IACHR²

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| Date on which the petition was received: | December 19, 2008 |
| Additional information received at the stage of initial review: | March 4, 2009 |
| Date on which the petition was transmitted to the State: | May 7, 2013 |
| Date of the State's first response: | August 19, 2013 |
| Additional observations from the petitioning party: | May 20, 2016 |
| Additional observations from the State: | October 11, 2016 |

III. COMPETENCE

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| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes, American Convention on Human Rights (deposit of instrument made on July 19, 1979) |
| Competence <i>Ratione materiae</i>: | Yes, American Convention |

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

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 4 (right to life), 5 (Right to Humane Treatment), 8 (right to a Fair Trial), 13 (freedom of thought and expression), and 25 (right to Judicial Protection) in relation to 1.1 (obligation to respect rights) of the American Convention |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, exception of article 46.2.c of the ACHR applies |
| Timeliness of the petition: | Yes, under the terms of section VI |

V. ALLEGED FACTS

1. According to the petitioner, Carlos Quispe Quispe, was a student of communication sciences and a practitioner at the Municipal Radio of Pucarani, *FM 90.7*. The petitioner indicates that on March 27,

¹ Hereinafter "Convention" or "American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

2008 around 300 people protesting the Mayor, mobilized by the Vigilance Committee³ (social control body), entered the Municipality of Pucarani where the Municipal Radio operated, destroying in its path the station's equipment, and beating the alleged victim, until the police intervened.

2. The petitioner indicates that Quispe Quispe identified the president of the Vigilance Committee of that municipality as the material author of the act. Upon seeing him, the mentioned president had identified him as "This is the talking mouth!". The petitioner reported that the alleged victim left the radio station on his own means and went to the local health center afterwards. In the absence of an official vehicle to move, he would have taken the bus to El Alto. The petitioner reports that the next day, a doctor from the Prosecutor's Office evaluated the journalist and warned of wounds, bruises and lacerations on his body. According to the petitioner, Quispe Quispe died of cranial brain trauma two days later.

3. The petitioner indicates that the beginning of the criminal investigation into the murder of the alleged victim was delayed due to problems of jurisdiction, since the journalist was attacked in Pucarani and died in another place. In August 2008, the jurisdiction of the case was assigned to the judges and prosecutors of the municipality of Achacachi. The petitioner points out that the process is still open and the journalist's family would fear that the homicide would go unpunished for political reasons. According to the petitioner, the alleged victim's next of kin were not able to follow up on the investigation and criminal proceedings due to lack of financial resources, nor did they have the opportunity to file other appeals. The petitioner affirms that since the murder of the journalist "the case remains unpunished."

4. For its part, the Bolivian State maintains that the Inter-American Commission must declare this petition inadmissible, since domestic judicial remedies have not been exhausted. According to the State, the preliminary investigation was initiated ex officio on March 31, 2008. It indicated that on April 29, 2009, a Formal Accusation Resolution was issued against a person for the commission of the crime of injury followed by death to the detriment of Quispe Quispe. The next day he would have been granted conditional freedom. The State explains that on November 6, 2009, a formal accusation was filed against this defendant, but it does not indicate progress or results of the trial. The State informs that on November 6, 2013, three other persons were formally charged with committing the crime of injury followed by death to the detriment of the journalist, and that the Prosecutor assigned to the case requested the preventive detention of the defendants. The State indicates that the process has not continued due to the "absence of those involved, which is why, to date, they could not be notified personally (...) with the Formal Imputation, this being ready for notification by edict[s]."

5. In addition, the State alleges that the facts described do not tend to characterize violations of rights protected by provisions of the American Convention. It affirms that the alleged facts were committed by a multitude of unidentified people, who came from different communities in the vicinity and not by the action of agents of the State. It also indicates that the public security agents were not aware that the victim was at a certain, determinable, real and immediate risk, since the facts developed spontaneously. Therefore, it states that it would not be directly or indirectly responsible for the violation of the right to life and freedom of thought and expression of the journalist. Additionally, the State alleges that within the preliminary investigation carried out as a result of the death of the alleged victim, neither the victim nor others in his name, activated internal judicial protection, so there would be no violation of the right to judicial protection enshrined in Article 25 of the ACHR and, consequently, it would not have had the opportunity to repair eventual violations of Article 8 of the ACHR.

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

6. The petitioner states that persists an unjustified delay of justice in this case. The petitioner states that the process on the death of the alleged victim would have been delayed due to alleged "problems

³ The Vigilance Committees would be organizational instances of the civil society that were born with the Law of Popular Participation, in force at the time of the events http://www.oas.org/juridico/spanish/blv_res16.pdf

of jurisdiction" and that the judicial remedies would not have been finalized. It also states that "eight years after the assassination [of Quispe Quispe] there has been no evidence of progress in the search for justice in the investigation proceedings, therefore the case remains unpunished." For its part, the State indicates that "[t]he victim did not activate the ordinary or extraordinary judicial protection provided for in the domestic legal system and in the Constitution."

7. The Commission observes that, in situations such as the one presented which includes the accusation of violations of the right to life, the domestic remedies that must be taken into account for the purposes of admissibility of the petition are those related to the investigation and criminal sanction of those responsible, which translates into domestic legislation into crimes prosecuted *ex officio*. In the present case, after almost 10 years of the alleged facts, there would be no signs of progress in the investigative process, and the case would remain in impunity. Given the above, the IACHR concludes that in the present case the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies, under the condition that the causes and effects that have prevented the exhaustion of domestic remedies in the present case will be analyzed, as pertinent, in the report adopted by the Commission on the merits of the controversy, in order to verify whether they actually constitute violations of the ACHR. On the other hand, the IACHR considers that the petition was filed within a reasonable period of time, and that the admissibility requirement regarding the deadline for submission was satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

8. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the petitioner's allegations could characterize violations of due process guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention, to the detriment of the next of kin of the alleged victim. Likewise, the nature of the facts reported in the petition shows that these could constitute violations of Article 5 of the American Convention to the detriment of the next of kin of the alleged victim. The Commission will analyze the possible violation of these provisions in light of the general obligations enshrined in Article 1.1 of the Convention.

9. In addition, the Commission will analyze the possible applicability of articles 4, 5 and 13 of the ACHR at the merits stage of the present case with respect to the alleged victim. As the IACHR has expressed, when it comes to violence against journalists and media workers, the failure to comply with the obligation to protect journalists at special risk, as well as the investigation and criminal punishment of those responsible for the events also imply a breach of the obligation to guarantee the victim's right to life and freedom of expression.⁴

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 13 and 25 in accordance with Article 1.1 of the American Convention;

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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁴ IACHR. Report No. 21/15. Case No. 12.462 Nelson Carvajal Carvajal and family (Colombia). March 26, 2015. Para. 120; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11,740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58)