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REPORT No. 277/21
PETITION 1555-11
REPORT ON ADMISSIBILITY

FÉLIX ANTONIO ULLOA
EL SALVADOR

Approved electronically by the Commission on September 5, of 2021.

Cite as: IACHR, Report No. 277/21, Petition 1555-11. Admissibility. Félix Antonio Ulloa. El Salvador. September 5, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner	Instituto de Derechos Humanos de la Universidad Centroamericana "José Simeón Cañas" (IDHUCA)
Alleged victim	Félix Antonio Ulloa
Respondent State	El Salvador
Rights invoked	Articles 4 (right to life), 5 (right to humane treatment), 8 (judicial guarantees), 25 (judicial protection) of the American Convention on Human Rights in relation to article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR

Filing of the petition	November 4, 2011
Notification of the petition	December 14, 2017
State's first response	May 25, 2018
Additional information submitted by the petitioner	October 19, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument of ratification made on June 23, 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 (right to life), 5 (right to humane treatment), 8 (right to fair trial) and 25 (right to judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument
Exhaustion or exception to the exhaustion of remedies	Exceptions under articles 46.2 (a) and 46.2 (c)
Timeliness of the petition	Yes, based on reasons below

V. SUMMARY OF ALLEGED FACTS

1. The petitioner party denounces the murder of Félix Antonio Ulloa (hereinafter "the alleged victim") by agents of the State during the internal armed conflict in El Salvador, as well as the lack of investigation and punishment of those responsible, to the detriment of his relatives.

2. It reports that between 1980 and 1991 a war took place in El Salvador between government armed forces and insurgents, during which more than 75,000 extrajudicial executions of the non-combatant civilian population were perpetrated; more than eight thousand enforced disappearances took place; and serious and systematic human rights violations such as arbitrary detentions and torture occurred, which also produced countless victims. The petitioner party also states that in January 1992, after the end of the war, a Truth Commission was created, the report of which indicates that the series of serious human rights violations were part of a systematic state policy in a context of exacerbated political violence; and that state repression officially assimilated the concept of political opponent with those of subversive and enemy, so that any person who in any way questioned the government was considered a "terrorist criminal" and should be eliminated or subdued.

3. According to the petitioners, when the alleged victim took office as President of the University of El Salvador in August 1979, he immediately placed himself in the political opposition arena in the country, and therefore in the crosshairs of the illegal armed groups known as "death squads" that operated with the acquiescence, tolerance and even participation of the State. In retaliation, the alleged victim suffered threats

against himself and her family,¹ for which reason they could not even sleep in their own house, but were forced to seek other places to protect themselves. It adds that every time the military and police forces besieged the University of El Salvador, the alleged victim had to leave in the trunk of a vehicle to avoid them, since it was known that some of them belonged to the death squads who threatened his life and that of his family. Within the framework of these types of operations, he gave statements to the press lying on the floor, because the snipers stationed in buildings near the university had shot and smashed the windows of the building where the President's office was located.

4. Despite the military incursions into the university's campus, and the assassinations of other prominent persons such as the Attorney General for the Poor and the Archbishop of San Salvador, the alleged victim continued with his academic and administrative activities. On October 28, 1980, after going to a bank branch located near the university campus, the alleged victim and his driver suffered an armed attack. The driver died instantly, while the alleged victim was seriously injured, for which he was transferred to a clinic, where he died at dawn the following day. The petitioner party indicates that the attack was part of a military operation.

5. The petitioner party also points out that a criminal proceeding was initiated that was never successful, due to the adamant refusal to establish the truth of the facts by the civil and military authorities at that time. It adds that on October 29, 2010, before submitting the petition to the IACHR, the Ulloa family reported the events to the Attorney General's Office, which had not investigated them *ex officio* during the previous three decades; and that after more than a year, there was no information on the investigative actions undertaken by said entity.

6. In turn, the State reports that once the present petition was notified to it, information was requested from different institutions. It indicates that on February 20, 2018, the Ministry of Defense conducted a search for information in the Central Archive of the Special Military Security Brigade, but that no record of the events was found; and that another search was made in the General Archive of the Joint Chiefs of Staff of the Armed Forces, but that no information was found either. The Supreme Court of Justice also requested information on the judicialization of the case from the Constitutional Chamber, the Criminal Chamber and the Judicial Documentation Center, without any record being found. Finally, it refers that the Office of the Attorney General of the Republic communicated that the Specialized Anti-Gang and Homicide Crimes Prosecutor Unit opened file 133-UFEADH-SS-2010, for the homicide of the alleged victim, which would be sent to the Investigation Unit of Crimes of the Internal Armed Conflict, in order to accumulate and continue with said investigation under reference 31-GIDCAI-2018.²

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner party considers that the exception of prior exhaustion of domestic remedies is applicable to its complaint due to the ineffectiveness of domestic remedies to satisfy demands in matters of truth, justice and reparation; and for the State's contempt for the decisions, recommendations and judgments of the international systems for the protection of human rights. On this last point, it refers to the IACHR's recommendations to El Salvador regarding its duties to investigate the facts and punish those responsible for human rights violations committed during the armed conflict in that country. In addition, it points out the

¹ According to the petitioner, for example, "[i]n the nights, National Police cars with active high-volume communication radios were placed in front of his house so that the Ulloa family could listen to the orders of their bosses who, shamelessly, were ordered to assassinate the members of the family"... whenever there was a popular mobilization or other activity at the University of El Salvador, a "Sherman" combat tank was placed in front of the institution's facilities in order to exert psychological pressure on its authorities; the same thing happened when President Ulloa was interviewed or made statements before the mass media of the time ". It also indicates that "undercover agents were permanently located in front of the Ulloa family's house or near it; on occasions, when the President, who was slain together with his wife and children, drove around in a vehicle, they were chased. " Finally, it refers that the family also received "daily phone calls from death squads", and "those messages from the 'White Hand' - whose members painted a hand that color on the front door of their house- were frequent"... "from the 'White Warrior Union' ", and" also from the 'Secret Anti-Communist Army' that published a 'Proclamation' on May 11, 1980, 'decreeing' the physical extermination of several 'enemy' people ". The alleged victim was among the first people included in that list. Initial petition of November 4, 2011.

² Brief of the State of May 25, 2018. In said brief, it is additionally stated that "[t]he Unit for the Investigation of Crimes of the Internal Armed Conflict created by the Office of the Attorney General of the Republic, is a special team of prosecutors responsible for the criminal investigation of cases that occurred in the context of the internal armed conflict, such as the case of Mr. Félix Antonio Ulloa. The creation of this Unit is an action that is part of the obligations that were reiterated by the Constitutional Chamber of the Supreme Court of Justice, in its judgment of unconstitutionality 44-2013 / 145-2013, of July 13, 2016, by means of which it declared in a general and obligatory way the unconstitutionality of the Law of General Amnesty for the Consolidation of Peace. ".

inactivity of the General Prosecutor's Office after the attempt of the relatives of the alleged victim to give impulse to the investigation of the facts and considers that this demonstrates the lack of diligence and will of the Salvadoran justice system to clarify the responsibilities and impose the corresponding sanctions.³

8. The State points out that the petition was presented to the IACHR on November 4, 2011, one year after the Office of the Attorney General of the Republic opened an investigation into the events denounced, which is still pending development and conclusion. It adds that in May 2018 the Attorney General's Office delegated the investigation to a specialized unit responsible for investigating serious human rights violations that occurred during the internal armed conflict; therefore, it maintains that at the time the petition was presented, the requirement of exhaustion of domestic remedies had not been met.⁴

9. According to Article 31.3 of the Rules of Procedure of the Inter-American Commission, when the petitioner party alleges the impossibility of verifying compliance with the requirement of prior exhaustion of domestic remedies, it will be up to the State to demonstrate that domestic remedies have not been exhausted. Additionally, the State has the burden of identifying the remedies to be exhausted and demonstrating that they are adequate to correct the alleged violation, i.e., its function in domestic law is suitable to protect the infringed legal situation.⁵ However, the IACHR observes that in this matter the State has not indicated or demonstrated what such remedies would be.

10. The petitioner party alleges the responsibility of State agents for the murder of the alleged victim during the internal armed conflict in El Salvador, as well as for the lack of investigation and punishment of those responsible, to the detriment of his next of kin. The era of the armed conflict was characterized by systematic human rights violations and impunity, facilitated in part by the ineffectiveness of the Salvadoran judicial system, as the Inter-American Commission itself had already established on different occasions.⁶

11. In short, the IACHR observes that, as of the date of adoption of this report, the investigation into the complaint of a politically motivated murder perpetrated more than four decades ago is still pending.⁷ In this regard, the Inter-American Commission reminds the State that the investigations must be carried out promptly, considering a series of factors, such as the time that has elapsed since the crime was committed; whether the investigation has gone beyond the preliminary stage; the complexity of the case; and the measures taken by the authorities. Based on all of the foregoing, the Inter-American Commission decides to apply the exception provided in the second part of Article 46.2 (c) of the American Convention to this case.⁸

12. Additionally, the petitioner party affirms that the lack of investigation of the facts was part of a context of impunity promoted by internal legal rules of amnesty and application of the statute of limitations; said allegation was not disputed by the State. In this regard, the Inter-American Commission has repeatedly held that the laws of amnesty or statute of limitations of crimes may make it impossible to investigate individual responsibility and the punishment of state agents involved in human rights violations and, therefore, the exception to the exhaustion of domestic remedies of Article 46.2 (a) of the American Convention is applicable.⁹

13. Article 32 of the Rules of Procedure of the Inter-American Commission provides that when exceptions to the exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, for which purpose the date of the alleged violation and the circumstances of each case shall be taken into account. In this regard, taking into account the situation of the various domestic

³ Initial petition of November 4, 2011.

⁴ Brief of the State of May 25, 2018.

⁵ IACHR, Report 26/16, Petition 932-03. Inadmissibility, Rómulo Jonás Ponce Santamaría, April 15, 2016, par. 25.

⁶ IACHR, Report 11/05, Petition 708/03. Admissibility. Gregoria Herminia, Serapio Cristián and Julia Inés Contreras. El Salvador, February 3, 2005, par. 25; IACHR, Report N 24/06, Petition 10.720. Admissibility, El Mozote Massacre. El Salvador. March 2, 2006, par. 35.

⁷ IACHR, Report N 50/08, Petition 298/07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24, 2008, par. 42. In the present case the elements presented by the parties indicate a delay of over three decades in the investigations. The State has not indicated any measure taken before 2018.

⁸ In the same sense, IACHR, Report 11/05, Petition 708/03. Admissibility. Gregoria Herminia, Serapio Cristián and Julia Inés Contreras. El Salvador, February 3, 2005, par. 33; IACHR, Report N 24/06, Petition 10.720. Admissibility, El Mozote Massacre. El Salvador. March 2, 2006, par. 35.

⁹ IACHR, Report 70/19. Petition 858-09. Admissibility. Luis José da Cunha "Crioulo" and family. Brasil. May 5, 2019, par. 8.

remedies in El Salvador, the Commission considers that the petition under study was presented within a reasonable period of time.¹⁰

VII. COLORABLE CLAIM

14. The petitioner party denounces the extrajudicial execution of the alleged victim by the military in an operation carried out during the internal armed conflict in El Salvador, preceded by various threats and acts of harassment against the alleged victim and her family. It also alleges that the next of kin have suffered the State failure to investigate and punish those responsible, and that the resulting impunity subsists to date.

15. After examining the factual and legal elements presented by the parties, the Inter-American Commission considers that the denounced facts, if verified as true, could constitute violations of the rights recognized in Articles 4 (life), 5 (personal integrity), 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) of the same instrument.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in connection with Article 1.1 and 2 of the same instrument; 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 12th day of the month of October, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarete May Macaulay, Members of the Commission.

¹⁰ IACHR, Report 11/05, Petition 708/03. Admissibility. Gregoria Herminia, Serapio Cristián and Julia Inés Contreras. El Salvador, February 3, 2005, par. 36-37; IACHR, Report N 24/06, Petition 10.720. Admissibility, El Mozote Massacre. El Salvador. March 2, 2006, par. 39.