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REPORT No. 62/20
PETITION 1520-13
REPORT ON ADMISSIBILITY

JASON Z. PURACAL AND FAMILY
NICARAGUA

Approved electronically by the Commission on March 17, 2020.

Cite as: IACHR. Report No. 62/20. Admissibility. Jason Z. Puracal. Nicaragua. March 17, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Seattle University School of Law – Ronald A. Peterson Law Clinic; Jason and Janis Puracal
Alleged Victim	Jason Puracal and family members ¹
Respondent State	Nicaragua
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (property), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention on Human Rights ² in relation to its Articles 1 (obligation to respect rights) and 2 (domestic legal effects); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	September 19, 2013
Notification of the petition to the State	July 9, 2018
State's first response	July 9, 2019
Addition observations from the petitioner	August 19, 2019
Warning on the potential archive:	May 3, 2017
Petitioner's response to the warning of archive:	May 4, 2017

III. COMPETENCE

<i>Competence ratione personae</i>	Yes
<i>Competence ratione loci</i>	Yes
<i>Competence ratione temporis</i>	Yes
<i>Competence ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on September 25, 1979) and Inter-American Convention to Prevent and Punish Torture (deposit of instrument of adhesion on November 23, 2009)

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

Duplication of procedures and International res judicata:	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (property), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Articles 1 (obligation to respect rights) and 2 (domestic legal effects); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on July 23, 2015; the exception from art. 46.2.b of the American Convention applies.
Timeliness of the petition	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners allege that Mr. Jason Z. Puracal, a citizen of the United States, was illegally detained by the Nicaraguan authorities; submitted to a criminal process that violated his procedural rights and

¹ The petitioners identify the following individuals as close relatives of Jason Puracal and victims in the present case: (1) Magu Scarleth Flores Vargas (wife), (2) A.A. (son), (3) Janis Puracal (sister); (4) Jaime Puracal (sister); and (5) Daisy Zachariah (mother). The IACHR has reserved the identity of the child A.A. to protect his rights.

² Hereinafter, the "American Convention" or the "Convention".

³ Observations from each party were duly transmitted to the opposing party.

guarantees; subjected to inhuman conditions of detention, amounting to psychological torture; and deported to his country of origin. They also denounce that during the course of these proceedings Mr. Puracal's assets were confiscated by the State without having been returned to him until this date.

2. The factual and legal allegations presented by the petitioners are as follow:

- (i) *Irregular detention and initial detention in inhuman conditions.* The petitioners report that Mr. Puracal lived in Nicaragua with his wife and son, and operated a real estate company. On November 11, 2010, National Police agents stormed his office without a search warrant and arrested him, while seizing his documentary and electronic files, telephones and computers; the police also broke into his house and searched it without having a court order at that moment, taking documents, money and other valuables, as well as his vehicle. They allege that after his arrest, Mr. Puracal suffered physical and verbal abuse by police officers, including blows with a gun to the arm and the back of his head and punctures with a sharp object. He was then detained for two days at the Rivas police station without being accused of any crime, nor allowed to speak with a lawyer. Moreover, petitioners affirm he was not informed of his right to consular assistance, and he was allegedly denied his right to call his family at the time of his arrest, eventually communicating with them several days later. On November 14, 2010 Mr. Puracal, along with other people, attended a hearing in Rivas, in which he was accused of drug-related crimes. The court allegedly denied him access to a translator and rejected his request for release under bail. After this hearing, Mr. Puracal was transferred to the “El Chipote” detention center, where upon his arrival, the petitioners allege, he was stripped of his clothes and confined in his underwear in a dark, dirty and isolated cell, without bedding, with a tube that drained water over a hole in the floor that served as a bathroom, toilet and drinking fountain, in spaces infested with insects and snakes, and in a state of abandonment. He was not fed for the entire first day he was held there; soap, towel or toilet paper were not provided to him until the second day of his imprisonment. Even on the third day his family had not been informed of his location, and he had not been allowed to speak with his lawyer. His wife unsuccessfully filed a constitutional writ of protection of human rights -*amparo*- to determine his location. Two days later, Mr. Puracal was transferred to the Modelo prison, outside Managua, where he spent a total of twenty-two months deprived of his liberty.
- (ii) *Incarceration in the Modelo Prison and prison abuse.* Mr. Puracal was allegedly held initially in a high-security pavilion for two months, during which he claims he was excessively restricted from access to sunlight. He was then transferred to another pavilion for three months, where he was also allegedly restricted from access to sunlight, and where he was in deplorable conditions due to the infestation of rats and insects there. He also claims to have suffered mistreatment by police officers and guards during the entire time of his imprisonment, especially during the transfers to legal proceedings that took place in Rivas, two hours away from the Modelo prison. During his detention in this prison, Mr. Puracal allegedly suffered different health problems: respiratory, digestive and dermatological, that were not properly treated.
- (iii) *Criminal prosecution and conviction.* The petitioners allege that the process against Mr. Puracal was subject to successive delays and postponements, in violation of the procedural rules, and that the trial began on August 9, 2011, nine months after his arrest, and lasted until August 29, 2011. They argue that the judge entertaining the case was not an impartial judge; and that he arbitrarily denied multiple pieces of evidence requested by Mr. Puracal's defense to prove his innocence. Likewise, he was not allowed to access his own bank, business or personal records once they were seized by the Police, despite the fact that they were necessary evidence to reject the prosecutor's charges. The petitioners add that during the trial Mr. Puracal was not allowed to speak privately to his lawyer; access the evidence presented against him or present key witnesses.

On August 29, 2011, Mr. Puracal was convicted of the crimes of money laundering, drug trafficking and organized crime and sentenced to a total of twenty-two years in prison. Mr. Puracal's lawyer was personally notified of this ruling on September 21, 2011, and by legal mandate he had to wait until all the other convicted

persons were duly notified of the conviction to file the appeal, thus delaying the appeal for several months. The judge of first instance who received the appeal allegedly refused to refer it to the competent court until December 2011, after intense media and legal pressure. In September 2012 the appeal was granted, the conviction annulled, and Mr. Puracal was released on September 13, 2012.

- (iv) *Deportation from Nicaragua.* The day after his release, on September 14, 2012, Mr. Puracal was deported from Nicaragua, in an allegedly arbitrary manner, as a result of having being convicted in first instance. He travelled to the United States where he currently resides.

3. The petitioners denounce that the acts of the State had serious repercussions on the lives of the relatives of Mr. Puracal. They argue that his wife had to face the social and professional repercussions of his being presented publicly as a drug trafficker, and that her life project was affected by having to move unexpectedly to the United States, among other circumstances, without knowing the language; and that his son, a child with Down syndrome, suffered his father's estrangement.

4. The State, for its part, affirms that during the arrest, deprivation of liberty, trial, and deportation of Mr. Puracal, his human rights and procedural guarantees were fully respected, in accordance with international and domestic law; and details the main actions of the case:

- (i) On November 11, 2010, Mr. Puracal was arrested because he was considered to form part of an organized criminal structure dedicated to money laundering, drug trafficking and other crimes, and the respective order was issued for his arrest.
- (ii) The office and residence of Mr. Puracal were searched in compliance with the Code of Criminal Procedure, whose art. 246 allows the subsequent judicial validation of the raids in cases of urgency, which was granted by the Judge of the Rivas Criminal District Hearing on the following November 12. That same day, the police authorities presented the corresponding police report to the Public Ministry; which brought the criminal action presenting its formal accusation against Mr. Puracal and several other persons for the offences of organized crime, money laundering, international drug trafficking and others, accusation filed on November 13, 2010 that was presented within the legal term of 48 hours after detention.
- (iii) The District Judge of the Criminal Court of Hearings of Rivas held on November 14, 2010, within the legal term, the preliminary hearing against Mr. Puracal and others, in which he was guaranteed his right to defense, by appointment of a defense lawyer who exercised her duties until she was replaced by an attorney chosen by the defendant.
- (iv) At the request of the Public Ministry, the competent judge declared that due to the complexity of the case the procedural terms could be extended, a decision that was appealed by the defense but confirmed in the second instance; in the same decision the preventive detention measure was imposed, which is the only legally appropriate one for the criminal description investigated.
- (v) Once the trial stage concluded, and respecting the right of defense and contradiction of evidence, the judge issued judgment of first instance number 152/2011 convicting Mr. Puracal for the offences of organized crime, money laundering, international transportation of narcotics and illegal possession of weapons. The conviction was appealed by the defense, and the Court of Appeals of Granada, through judgment No. 80/2012 of September 12, 2012 declared the annulment of the preparatory hearings of trial and ordered the liberation of the accused.
- (vi) The Public Prosecutor and some of the defenses of other defendants filed an extraordinary appeal to the Criminal Chamber of the Supreme Court of Justice, which, through a ruling dated July 23, 2015, declared that there was no place for such appeals, thus confirming the decision of the court of second instance.

5. Regarding the allegations of penitentiary ill-treatment and denial of medical care, the State describes in general terms the conditions of its prison system, and argues that Mr. Puracal was granted numerous prison services and care, for example: 222 corresponding to medical care; 37 to family visits and conjugal visits; and five to consular visits with their respective defense lawyers; as well as sunlight activities, phone calls and purchases at the prison shop.

6. Regarding the deportation of Mr. Puracal, the State affirms that on September 14, 2012, after an administrative process conducted in accordance with law, the Migration and Foreigners Directorate, through Resolution 090/2012, ordered his deportation “in considering that he constitutes a danger for citizen security and public order, the State reserving the right not to allow his entry into the country”. Nicaragua clarifies that neither the wife nor the son of Mr. Puracal, who are Nicaraguan citizens, have been prevented from re-entering the country. And it notes that in the deportation resolution of Mr. Puracal, he was prevented from entering the national territory for a period of twenty-four months, which expired on November 19, 2014; and that after that date, the State will exercise, in due course, its sovereign right to grant or deny entry or residence visas to foreign citizens.

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

7. Regarding the analysis of exhaustion of domestic remedies, the Commission observes that the fundamental object of the present petition is related to the alleged arbitrary and irregular detention of the alleged victim; the fact that his whereabouts were unknown during the first three days of his detention in which his wife was denied information about his location and he was allegedly not allowed to contact his lawyer; and the alleged ill-treatment during his arrest and deprivation of liberty, and his criminal prosecution and subsequent deportation. As well as the consequences that these events had on the lives of the members of his family. In this regard, the Commission observes that Mr. Puracal allegedly filed several complaints with the staff of the Modelo Prison regarding his detention conditions, and that he even formally requested the judge of the case to transfer him to the Granada Prison, in addition to other efforts before various authorities, without them having any effect on his material situation. The State, for its part, does not question the exhaustion of domestic remedies with regard to the different allegations appertaining to the rights to freedom and personal integrity of the alleged victim. Regarding the main criminal process, and therefore its consequences, there is also no dispute between the parties regarding the exhaustion of domestic remedies; in fact, the State, in its brief received at the IACHR on November 5, 2019, affirmed that it did not invoke this exception because the criminal process effectively concluded with the adoption of the Supreme Court ruling of July 23, 2015.

8. In view of these considerations, the Commission concludes that the petition meets the requirement of exhaustion of domestic remedies under the terms of Article 46.1.a of the American Convention; In addition, since the petition was filed on September 19, 2013, it complies with the requirement of the submission deadline established in Article 46.1.b of the same instrument.

9. Regarding the deportation order of Mr. Puracal, the Commission observes that it was executed the day after he was released, therefore, he was prevented from exercising any type of judicial or administrative appeal, since he was physically expelled from the territory of Nicaragua. In this regard, the Commission considers that with respect to this claim the exception to the exhaustion of domestic remedies established in Article 46.2.b of the American Convention is applicable.⁴ Regarding the deadline for submission, the Commission observes that Mr. Puracal's deportation took place on September 14, 2012 and the present petition was received on September 19, 2013, so it concludes that it was filed within a reasonable term in the terms of Article 32.2 of the Rules of Procedure of the Inter-American Commission.

VII. ANALYSIS OF COLORABLE CLAIM

10. After examining the factual and legal elements presented by the parties, the Commission considers that the petitioners' allegations are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated as true, could amount to violations of the rights established in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (judicial protection), 21 (property), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of Mr. Jason Puracal and his family members duly individualized in this report.

11. Likewise, the Commission considers *prima facie* that the facts presented before it could amount to violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, due to the omission of the authorities to investigate the alleged violations of the alleged victim's right to

⁴ See, for example, IACHR, Report N. 146/17. Admissibility. Orosmán Marcelino Cabrera Barnés. Mexico, October 26, 2017, par. 10 and 11.

personal integrity described in this report, despite the claims and efforts of his representatives. On the other hand, and although it was not expressly alleged by the petitioners, but rather based on the information provided by the State itself, the Commission observes that the mandatory application of preventive detention to the alleged victim due to the type of crime he was accused of could constitute a violation of the right to personal liberty under the terms of Article 7 of the American Convention.

VIII. DECISION

1. To find the instant petition admissible regarding Articles 5, 7, 8, 11, 21, 22 and 25 of the American Convention, in relation to its Articles 1.1. and 2; and Articles 1, 6 and 8 of the inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of the decision; to continue with the analysis on the merits of this matter; and to publish this decision and to 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 17th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.