

**REPORT No. 148/10**  
PETITION 830-07  
ADMISSIBILITY  
MARIA LUISA ACOSTA ET AL.  
NICARAGUA  
November 1, 2010

**I. SUMMARY**

1. On June 22, 2007 the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a complaint filed by María Luisa Acosta Castellón, the Center for Legal Assistance for Indigenous Peoples (CALPI), the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN), and the Nicaraguan Center for Human Rights (CENIDH) (hereinafter the "petitioners"), representing María Luisa Acosta Castellón, Francisco García Valle, Ana María and Álvaro Arístides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari (hereinafter the "alleged victims") against the Republic of Nicaragua (hereinafter the "State," "Nicaraguan State," or "Nicaragua"). The petition reports that on April 8, 2002 Francisco García Valle, husband of María Luisa Acosta (hereinafter "Mrs. Acosta"), was murdered and that the murderers' real objective was to take Mrs. Acosta's life. The petitioners allege that the criminal process conducted due to the murder of Mr. García Valle included a series of irregularities that involved, *inter alia*, the acquittal of the alleged masterminds of the murder and a perpetrator as well as judicial harassment of Mrs. Acosta.

2. The petitioners maintain that Nicaragua violated Articles 4 (right to life), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention") as they relate to Article 1.1 of the same instrument, to the detriment of Francisco García Valle; Articles 5 (right to humane treatment), 8, 11 (right to privacy), and 25 of the American Convention, as they relate to Article 1.1 of the same instrument, to the detriment of María Luisa Acosta Castellón, and Articles 5, 8 and 25 of the American Convention, as they relate to Article 1.1 of the same instrument, to the detriment of María and Álvaro Arístides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari. They argue that the domestic remedies have been exhausted.

3. The State maintains that the criminal prosecution for the murder of Mr. García Valle was conducted in accordance with domestic legislation and international agreements, dealing respectfully and equitably with all those subject to the process and reported that two people were convicted of murder. The fact that the alleged victims do not agree with the decisions of Nicaraguan justice, particularly the acquittal of three individuals prosecuted for the murder of Mr. García Valle, does not mean that their rights were affected and it is not the role of the IACHR to act as an instance for review of questions of merit already resolved by the domestic judicial system. The State also alleges a failure to exhaust domestic remedies.

4. Without prejudging the merits of the complaint, after analyzing the petitions, and in accordance with the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30, 36, and related articles of the IACHR Rules of Procedure, the IACHR concludes that it is competent to hear the complaint submitted, based on the alleged violation of Articles 5, 8, and 25 of the American Convention as they relate to Article 1.1 of the same convention, to the detriment of the relatives of Mr. García Valle. It also decides to declare the complaint inadmissible as regards the alleged violation of Articles 4 and 11 of the American Convention. Finally, the Commission resolves to notify the parties, publish this admissibility report, and include it in its Annual Report to the General Assembly of the OAS.

**II. PROCESSING BY THE COMMISSION**

5. The petition was received on June 22, 2007<sup>1</sup> and recorded as P-830-07.<sup>2</sup> On February 21, 2008 it was forwarded to the State, which was given a period of two months to submit its observations. Nicaragua's response was received on July 14, 2008. The Commission also received information from the petitioners on the following dates: September 22 and October 27, 2008; March 25, April 6, June 22, August 25, and December 16, 2009. These notes were duly forwarded to the State. In addition, the IACHR received observations from the State on December 12, 2008 and June 11, October 5, and November 16, 2009. These communications were duly forwarded to the petitioners.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

6. The petitioners report that Mr. Francisco García Valle was killed with a firearm on April 8, 2002 at his home located in Bluefields, Nicaragua. They assert that the murderers' objective was to kill his wife, Mrs. María Luisa Acosta, because she was affecting the interests of businessmen in the area by defending the territory of indigenous peoples.<sup>3</sup> They report that due to the murder of Francisco García Valle criminal procedure file No. 110-02 was filed with the District Criminal Court of Bluefields and later with the District Court for Civil and Criminal Matters of Bluefields.<sup>4</sup> They assert that two individuals were convicted for perpetrating the crime while the masterminds and another perpetrator were acquitted.

7. The petitioners assert that the criminal investigation conducted into the murder of García Valle had numerous irregularities, including actions taken by judicial officials to impede the search for justice and to intimidate Mrs. Acosta. In this regard, they indicate that the criminal proceeding was partially conducted, the investigation was insufficient, and the resources used were ineffective. In particular, they indicate:

- Evidence essential to clarifying the facts of the crime was not ordered, processed, or evaluated. For example, 1) items of evidence that would link those who were acquitted with those who were convicted were not included nor was the expert report from the National Police Criminalistics Laboratory indicating that the murder weapon belonged to one of the individuals acquitted; 2) Mrs. Acosta was not allowed to seek, produce and/or submit evidence against those who were prosecuted as the alleged masterminds of the murder; 3) Despite having been requested by Mrs. Acosta, no statement was taken from a convict who told the press that an alleged mastermind had sent him to the Garcia-Acosta home on the night of the crime.

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<sup>1</sup> The petition was received via fax on June 22, 2007 and stamped on June 25, 2007.

<sup>2</sup> On August 27, 2007 the petitioners submitted additional information.

<sup>3</sup> The petitioners report that Mrs. Acosta is an attorney who defends the rights of indigenous peoples. She is the founder and coordinator of CALPI, an organization dedicated to defending and disseminating the rights of the indigenous peoples on Nicaragua's Caribbean coast. She was the Coordinator of the Technical Committee that drew up the proposed Law on the Communal Ownership Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast and the Bocay, Coco, Indio, and Maiz rivers (Law 445). She has litigated cases on the rights of indigenous peoples in the domestic arena and before the inter-American human rights system. Specifically, the petitioners point out that since 2000 Mrs. Acosta has provided legal assistance to the indigenous and ethnic communities of the Laguna de Perlas basin, the indigenous Rama people and the ethnic community of Monkey Point, in a dispute with two individuals who sought to strip them of part of their ancestral land (island and continental) and that on March 16, 2002 the leaders of those communities gave Mrs. Acosta a general power of attorney to initiate judicial proceedings against those individuals.

<sup>4</sup> Identified as "District Court for Civil and Criminal Matters for Administration of the Law of Bluefield." They report that the case went on to be heard by that court on November 2002, based on the entry into effect of Nicaragua's new Code of Criminal Procedure.

- There was obvious intent on the part of the judges to obstruct access to remedies that would make it possible to pursue investigations regarding the crime. For example, 1) judicial officials prevented Mrs. Acosta's representative from meeting a formal requirement for submitting an appeal against the ruling that ordered the acquittal of the alleged masterminds of the murder; 2) All the appeals filed by the petitioners or the Office of the Attorney General seeking a declaration of the invalidity of the case due to the alleged irregularities were rejected or circumvented by the authorities through unfounded rulings based on grounds that were in violation of procedural law and/or erroneous.

8. The petitioners allege that these irregularities meant that the alleged masterminds and one of the alleged perpetrators of the crime were acquitted and that the appeal filed against that decision was rejected improperly on the basis of procedural issues. For this reason, they point out that partial immunity for the crime has been achieved even though two perpetrators were convicted of the murder of Mr. García Valle.

9. With respect to those who were convicted, the petitioners report that on November 21, 2003 a jury trial found Iván Arguello Rivera and Wilberth José Ochoa Maradiaga guilty of the crime of murder and on April 21, 2004 the District Court for Civil and Criminal Matters of Bluefields sentenced them to 20 years in prison for having committed the crime of murder against Francisco José García Valle. Subsequently, the Criminal Chamber of the Court of Appeals, in a decision dated November 29, 2004, increased their sentence to 23 years in prison. With respect to these convictions, the petitioners recognize that the Nicaraguan justice system "worked appropriately."

10. Regarding the other alleged participants in the crime, the petitioners report that on May 13, 2002 the Criminal District Judge of Bluefields definitively acquitted those who, according to the petitioners, were the masterminds<sup>5</sup> and one of the perpetrators of the murder. They report that Mrs. Acosta – as the accusing party and through her legal representative – filed an appeal that was declared void on June 3, 2002. They point out that judicial officials prevented Mrs. Acosta's legal representative from meeting a procedural requirement ordered by the judge ("submit the corresponding document to attest to all actions taken") and that the calculation of the period on the basis of which the appeal was declared void was incorrect.

11. The petitioners maintain that since that time they have pursued various judicial remedies seeking to have what was done in judicial file 110-02 declared null. They argue that some of these remedies were rejected by the courts and others were simply not processed. They allege that the Criminal Chamber of the Court of Appeals, in a decision dated November 29, 2004, rejected the arguments for nullification put forward by Mrs. Acosta and ruled that the decision to acquit was *res judicata*. The petitioners filed a special cassation appeal against that decision with the Supreme Court of Justice. It was declared inadmissible in a ruling dated December 19, 2006 because the decision to acquit had not been appealed at the proper procedural time and was, therefore, *res judicata*.

12. They also report that Mrs. Acosta was prosecuted for the crime of concealing the murder of her own husband. They maintain that the judge in the case initiated investigative action because one of the alleged masterminds of the crime accused her of concealing the crime in his signed statement. They allege that no lawyer was officially appointed to represent her – despite the fact that the request to have her own representative intervene in the proceeding had been rejected. They allege that an arrest warrant was issued against her and that the judge in the case, before handing down his decision, told the national media that Mrs. Acosta had concealed the murder of

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<sup>5</sup> The petitioners allege that the masterminds of the murder of Mr. García Valle were two individuals involved in a land dispute with the indigenous communities being advised by Mrs. Acosta, that the criminal plot had been directed against her, and since she was not there at the time of the murder, her husband was executed instead.

her husband. They report that she was finally acquitted on May 13, 2002. They state that the accusation against her was meant to frighten her and deter her from seeking an impartial investigation into the murder of her husband.

13. They state that, based on the irregular actions taken by various judicial authorities, namely, the Criminal District Judge in Bluefields, the District Court for Civil and Criminal Matters of Bluefields and the Judges of the Court of Appeals of Bluefields, six complaints had been filed with the Disciplinary Regime Committee of the Supreme Court of Justice, all without any response. They emphasize that in response to this situation, the Office of the Prosecutor for the Defense of Human Rights, in a ruling dated October 6, 2003, declared that Mrs. Acosta's right of access to timely justice had been violated and recommended that the President of the Supreme Court of Justice urge the judges on the Disciplinary Regime Committee to settle the complaints submitted. They assert that, having received no response, the Office of the Prosecutor publicly censured the actions of the judiciary and, in a ruling dated June 10, 2004, established that the conduct of the criminal trial for the murder of Mr. García Valle violated the human rights of Mrs. Acosta.

14. They also point out that due to the accusations that Mrs. Acosta made against the alleged masterminds of the crime against her husband, civil and criminal actions were filed against her<sup>6</sup> and all of them were settled in Mrs. Acosta's favor in late 2004.<sup>7</sup> In addition, they note that during the criminal investigation process there were various instances of interference in her private life due to certain procedures authorized by the judge in the case.

15. Regarding the deadline for submitting the complaint, the petitioners allege that the ruling of the Supreme Court of Justice on December 19, 2006 had exhausted the domestic remedies, since Mrs. Acosta was notified of the decision on December 22, 2006, so that the filing of the petition was in accordance with the deadline under the Convention. They also maintain that the complaint is not pending settlement in any other international proceeding.

16. Accordingly, the petitioners argue that the State of Nicaragua violated the following articles of the American Convention: 4, 8, and 25 to the detriment of Francisco García Valle; 5, 8, 11, and 25 to the detriment of María Luisa Acosta Castellón; and 5, 8, and 25 to the detriment of Ana María Vergara Acosta, Álvaro Aristides Vergara Acosta, Leonor del Carmen Valle de García, and Rodolfo García Solari, all as they relate to Article 1.1 thereof.

## **B. The State**

17. The State is in substantial agreement with the petitioners' report with respect to the date, time, and manner in which the murder of Mr. García Valle occurred. The information it provides also agrees with respect to the existence and content of the judicial decisions adopted in the context of the criminal process conducted as a result of the murder. However, the State maintains that the alleged violations of rights under the Convention cannot be deduced from the facts reported.

18. First, the State points out that the actions taken by the authorities involved in investigating the facts reported were consistent with their functions. It asserts that when Nicaraguan authorities learned of the murder, they initiated investigative proceedings. It adds that the court officials in charge of the criminal prosecution and who adopted the decisions on acquittal

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<sup>6</sup> Regarding the criminal accusations, the petitioners indicate that in June 2002 Mrs. Acosta was accused of the crimes of slander and libel before the Local Criminal Court of Bluefields. In addition, on October 2, 2002 a complaint was filed against her for the crimes of perjury and false accusation with the Civil and Criminal Judge of Bluefields.

<sup>7</sup> Specifically, the petitioners state that on August 23, 2004 the criminal process against Mrs. Acosta for perjury and false accusation was declared to have lapsed.

or conviction for the crime of murdering Mr. García Valle demonstrated objectivity in the exercise of their functions.

19. The State argues that this criminal prosecution was conducted with total respect and equal treatment for the parties involved. In particular, the State asserts that the Criminal District Judge of Bluefields gathered the formal accusations made by Mrs. Acosta against those allegedly responsible for murdering her husband and, as a result, directed the criminal action against all of them, despite the difficulties that the actions of Mrs. Acosta herself caused for the investigation, in that she failed to provide information that she had in her possession, while making “unnecessarily complicated an investigation in which the judicial apparatus was concerned with doing justice,” presumably due to the prejudice with which Mrs. Acosta had recourse to the courts. The State also maintains that, in order to identify, process, and convict those responsible for the crime, the authorities adopted their decisions based on factual and legal principles. As a result, the State asserts that those responsible for the murder of Mr. Francisco García Valle were convicted and the conviction was handed down following due legal process. In addition, the State emphasizes that the validity of domestic judicial procedures does not depend on whether or not the parties involved accept their results, but rather on the observance of the rule of due process during the conduct of the case.

20. Secondly, the State rejects the allegations made by the petitioners regarding the alleged limitations encountered in terms of access to justice by the relatives of Mr. García Valle. In this respect, the State maintains that the fact that the final decision to acquit those who were accused by the alleged victim of being the alleged masterminds and perpetrators of the murder of Mr. García Valle was not appealed on a timely basis implies tacit consent to that decision without any assumption that access to justice has been denied. Thirdly, the State disagrees with the petitioners regarding the causes that led to the referenced crime. It maintains that the murder of Mr. García Valle was an isolated act committed by “antisocial individuals with criminal instincts” and that it had no connection with issues involving indigenous peoples, State policies, or the persecution of human rights defenders.

21. The State rejects the accusations made by the petitioners regarding the alleged corruption affecting the system for administering justice in Nicaragua. It asserts that it is not the policy of the State to foster corruption and that it is impossible to make a generalized assessment of the entire justice system because a party involved in a judicial proceeding does not agree with the judgment made by the competent authority. It also maintains that, with respect to the instant case, the judges did not act opportunistically, did not seek personal advantage, and did not ensure – as the petitioners maintain – a situation of impunity, but rather acted in a manner consistent with their functions.

22. With respect to domestic remedies, the State asserts that the domestic jurisdiction was not exhausted, despite the assertions made by the petitioners. In this respect, the State maintains that, although the domestic remedies were exhausted with respect to the conviction of Iván Arguello and Wilber José Ochoa Maradiaga for the crime of murdering Francisco José García Valle, they were not exhausted with respect to the acquittal of the other individuals who were prosecuted in the same case. In this regard, it maintains that the exhaustion of domestic remedies should not be confused with acceptance of the rulings adopted by the domestic authorities administering justice, whether based on conformity or the failure to mount a proper challenge. In the instant case, according to the State, the second of these assumptions applies, in that the alleged victim did not appeal the decision ordering the final acquittal of the individuals prosecuted in the context of court case No. 110-02 within the timeframe established by law.

23. Therefore, the State alleges that since the fundamentals of the question have been settled, whether through exhaustion of the domestic jurisdiction or the consent of the alleged

victim, the IACHR cannot hear the merits of the case in that its purpose is not to act as a special instance. Based on the foregoing, the State asks that the instant petition be declared inadmissible.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence *ratione personae*, *ratione temporis*, *ratione loci*, and *ratione materiae* of the Inter-American Commission**

24. The petitioners are authorized by Article 44 of the American Convention to submit complaints to the IACHR. The petition indicates as the alleged victims natural persons with respect to whom the State has agreed to respect and guarantee the rights enshrined in the American Convention. With respect to the State, the Commission indicates that Nicaragua has been a State Party to the American Convention since September 25, 1979, the date on which it deposited its ratifying instrument. Thus, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of rights protected in the American Convention that occurred within the territory of Nicaragua, a State Party to that treaty.

25. The Commission is competent *ratione temporis* because the obligation to respect and guarantee rights protected by the American Convention was in force for the State on the date when the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae* because the petition denounces possible violations of human rights protected by the American Convention.

##### **B. Exhaustion of domestic resources**

26. Article 46.1.a of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to learn of the alleged violation of a protected right and, if appropriate, resolve it before it is heard by an international body.

27. In the instant case, the petitioners assert that the domestic remedies were exhausted with the ruling of the Criminal Chamber of the Supreme Court of Justice of Nicaragua (Case No. 2019-2004) of December 19, 2006, which declared inadmissible a cassation appeal filed by Mrs. Acosta. In contrast, the State maintains that the domestic remedies have been improperly exhausted, because the ruling ordering the final acquittal of the individuals identified by the petitioners as being responsible for the murder of Mr. García Valle was not appealed in the proper time and manner.

28. In order to analyze satisfaction of the requirement that domestic remedies be exhausted, the Commission must identify the appropriate remedy to be exhausted according to the circumstances, which is understood to mean the remedy that can resolve the violated legal status.<sup>8</sup> According to the report, the suitable remedy for responding to the situation reported was the criminal case initiated for the murder of Mr. García Valle, which included various courts.

29. The information appearing in the case file indicates that on May 13, 2002, in the criminal process under court file 110-02, the District Criminal Court of Bluefields issued a final decision in favor of three individuals prosecuted for the crime of murdering Mr. Francisco García Valle. On May 16, 2002, the legal representative of Mrs. Acosta filed an appeal against the decision

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<sup>8</sup> IACHR, Report No. 22/09, Admissibility, Igmarr Alexander Landaeta Mejías, Venezuela, March 20, 2009. Para. 45.

to acquit. The appeal was admitted on May 17 and the judge ordered “that the appellant submit to the clerk’s office the corresponding document to attest to all actions taken”, that is to say, give sheets of white paper needed to photocopy the court case file. The file before the IACHR indicates that on May 22, 2002, Mrs. Acosta’s representative filed an appeal for amendment against this ruling,<sup>9</sup> and attempt to deliver \$200 cordobas for photocopy costs. However, the court employee did not accept the money claiming that she was “not authorized to receive money for photocopies.”<sup>10</sup> On the same date, the judge in the case, at the request of one of the parties, asks for verification as to “whether the accusing party submitted the corresponding document attesting to all actions taken or submitted the amount corresponding to the value of the photocopies in order to process the appeal.” On June 3, 2002, the appeal was declared invalid because the appellant had not supplied paper for photocopy the judicial proceedings nor had it provided the funds needed for this.

30. Various appeals were later filed with the first instance courts that continued to hear criminal proceeding 110-02 against Iván Arguello Rivera and Wilberth José Ochoa Maradiaga: i) on June 10, 2002, the legal representatives of Mrs. Acosta filed a motion to invalidate all actions taken since April 19, 2002<sup>11</sup> and a motion for recusal against the judge in the case. The motion to invalidate was declared inadmissible on August 5, 2002, and this ruling was appealed. The appeal was declared inadmissible on August 8, 2002;<sup>12</sup> ii) on January 24, 2003 an appeal was filed seeking invalidation of action taken since April 19, 2002. This appeal was declared inadmissible – in conjunction with an appeal to invalidate previously filed by the Office of the Attorney General – in a ruling dated March 4, 2003, with the argument that the allegations on invalidity referred to a stage in the process that had already concluded.

31. On November 21, 2003 the jury trial found Iván Arguello Rivera and Wilberth José Ochoa Maradiaga guilty of the crime of murdering Francisco José García Valle. On April 21, 2004, the District Court for Civil and Criminal Matters of Bluefields sentenced them to 20 years in prison for the crime of murder. On April 26 and 27, 2004 the representatives of Mrs. Acosta and the defense attorney for Mr. Ochoa Maradiaga, respectively, appealed the conviction. On November 29, 2004, the Criminal Chamber of the Court of Appeals for the South Atlantic Circuit (Case File No. 02-04) increased the prison term by three years. With respect to these convictions, the petitioners recognize that the system of justice “worked appropriately.”

32. While the criminal process was being reviewed by the second instance courts, on May 11, 2004 Mrs. Acosta sought a declaration of invalidity with respect to all action taken since April 19, 2002 due to procedural irregularities (indicating *inter alia* irregularities that allowed the appeal filed against the decision to acquit to be declared invalid). On October 28, 2004, the Regional Prosecutor for the Autonomous Region of the South Atlantic sought to set aside the proceedings conducted against the alleged masterminds and against Mrs. Acosta. On November 29, 2004, the Chamber established that “alleged reasons for nullification and the petitions made by the parties [...] were inadmissible, in that the decision issued by the District Judge of Bluefields on May 13, 2002 definitively acquitting the accused [...] is final and has become *res judicata*.”

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<sup>9</sup> Appeal denied through judicial order of May 31, 2002.

<sup>10</sup> As shown on the back of sheet 202 of court file number 110-02.

<sup>11</sup> In addition, the file indicates that previously, on May 10, 2002, Mrs. Acosta had filed another appeal for nullification with the first instance authorities seeking nullification of action taken since April 19, 2002. The file does not indicate that that appeal was processed. Subsequently, in a ruling dated May 13, 2002, the competent judge responded to the allegations made in the filing of the appeal, but did not expressly indicate his rejection or acceptance thereof.

<sup>12</sup> In response to this decision, on August 29, 2002, the representatives filed an appeal on substantive grounds, which was rejected for procedural error on September 23, 2002; subsequently, on October 10 of the same year, the appeal was resubmitted, correcting the indicated procedural defect, and was rejected on October 11, 2002 for lapse and extinction of the right to file.

33. On December 9, 2004 Mrs. Acosta filed a special cassation appeal against the decision of November 29, 2004 and asked that all actions taken since April 19, 2002 be declared null with respect to the alleged masterminds of the crime. For his part, the Assistant Prosecutor of the Office of the Attorney General asked for a decision on nullification based on the ruling of April 17, 2002 and that a proceeding being drawn up against the alleged masterminds of the crime. On December 19, 2006, the Criminal Chamber of the Supreme Court of Justice (Case 2019-2004) declared the cassation appeal inadmissible, stating that “*res judicata* underlies the decision in question [definitive interlocutory judgment of acquittal] by virtue of the fact that the parties were legally informed thereof and consented to it by not mounting any appeal against it.”

34. The Commission understands that this criminal process – considering as such the sum of all procedural actions occurring in the various judicial instances and in incidental issues – must be evaluated and analyzed as a whole and, as a result, notes that the process ended at the point when the Criminal Chamber of the Supreme Court denied the special cassation appeal submitted by Mrs. Acosta’s legal representatives. Given that the circumstances that allegedly prevented the acceptance of the appeal against the decision to acquit form part of the petitioners’ substantive allegations and were made known to the authorities, those allegations and the consequences thereof require analysis in the merits phase. Therefore, the Commission concludes that the domestic remedies were exhausted through the decision handed down on December 19, 2006 by the Criminal Chamber of the Supreme Court of Justice of Nicaragua. Accordingly, the Commission believes that the requirement established in Article 46.1.a of the American Convention has been met.

#### **C. Timeliness of the petition**

35. In accordance with the provisions of Article 46.1.b of the American Convention, in order for a petition to be admitted it must be submitted within a period of six months from the date on which the complainant was informed of the final decision issued at the national level.

36. The IACHR has established that the decision of the Supreme Court of Justice of Nicaragua on December 19, 2006 exhausted the domestic remedies. The information provided by the parties indicates that the alleged victims were informed of that decision on December 22, 2006. As a result and bearing in mind that the petition was filed on June 22, 2007, the IACHR considers the requirement established in Article 46.1.b of the American Convention to have been met.

#### **D Duplication of proceedings and international *res judicata***

37. In order for a petition to be declared admissible, the American Convention requires in Article 46.1.c that the matter not be pending settlement in any other international proceeding and in Article 47.d that it not duplicate the content of a petition already examined by this or any other international organization. The petitioners assert that the petition is not pending settlement in any other international proceeding and the case file does not indicate otherwise. Therefore, the IACHR considers the requirements established in Articles 46.1.c and 47.d of the American Convention to have been met.

#### **E Colorable claim**

38. For purposes of admissibility, the Commission must decide whether the alleged facts, if proven, could tend to establish a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order” in accordance with paragraph (c) of that article. The criterion for evaluating those requirements is different from that used to rule on the merits of a petition. The Commission must perform a *prima facie* evaluation to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of

rights. This determination represents a preliminary analysis that does not entail a prejudgment of the merits of the case.

39. In the instant case, the Commission notes that, if proven, the arguments presented by the petitioners regarding the alleged denial of justice to the detriment of the relatives of Mr. García Valle, allegedly caused by factual and legal obstacles that were apparently set up by agents of the State, could characterize a possible violation of Articles 8 and 25 as they relate to Article 1.1 of the American Convention, to the detriment of the relatives of Mr. García Valle. In addition, the IACHR feels that the alleged effects that the relatives of Mr. García Valle suffered as a result of the alleged denial of justice, if proven true, could characterize a possible violation of Article 5 of the American Convention as it relates to Article 1.1 thereof. Therefore, the Commission considers the requirements established in Articles 47.b and c of the American Convention to have been met.

40. The IACHR concludes that the petitioners have not submitted evidence to indicate potential responsibility of the State under Articles 4 and 11 of the American Convention.

## **V. CONCLUSIONS**

41. The Commission concludes that it is competent to hear the complaint submitted by the petitioners and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention, with respect to the alleged violation of Articles 5, 8, and 25 of the American Convention as they relate to Article 1.1 thereof, to the detriment of the relatives of Mr. García Valle.

42. The Commission decides to declare this petition inadmissible with reference to alleged violations of Articles 4 and 11 of the American Convention.

43. Based on the factual and legal arguments presented above and without prejudging the merits of the case,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare this petition admissible with reference to the alleged violations of rights protected in Articles 5, 8, and 25 as they relate to Article 1.1 of the American Convention.
2. To declare this petition inadmissible with reference to the allegations regarding violations of Articles 4 and 11 of the American Convention.
3. To transmit this report to the petitioners and to the Nicaraguan State.
4. To continue with analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 1st. day of the month of November 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission..