

REPORT N° 63 / 04
PETITION 60/03
ADMISSIBILITY
CARLOS ANTONIO LUNA LOPEZ
HONDURAS
October 13, 2004

I. SUMMARY

1. On January 13, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission", the "Inter-American Commission", or the "IACHR") received a complaint lodged by the Center for Justice and International Law [*Centro por la Justicia y el Derecho Internacional*] and the Team for Reflection, Research and Communication [*Equipo de Reflexión, Investigación, y Comunicación*] (hereinafter "the petitioners"). This complaint alleges that the Republic of Honduras (hereinafter "Honduras", the "Honduran State", or the "State") is responsible for the violation of Articles 4, 5(1), 5(2), 8(1), and 25(1) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), to the detriment of Mr. Carlos Antonio Luna López (hereinafter also the "alleged victim"), in relation to Article 1(1) of said international instrument.

2. The complaint states that the State is responsible for violating the right to life, judicial guarantees and protection of Mr. Carlos Antonio Luna López, as well as the right to the personal integrity of his family, all in conjunction with the obligations contained in Article 1.1 of the Convention. The petitioners claim that there is a pattern of extrajudicial executions of those defending the environment in Honduras, that the authorities have not carried out an effective investigation of the murder of Mr. Carlos Antonio Luna López that took place on May 18, 1998, and that, in addition, remedies available under domestic law have been ineffective in this case. With regard to the admissibility of the matter, the State claims that domestic remedies have not been exhausted in the present case and that the delay in the investigation was due to the fact that this is a complex case.

3. Having studied the positions of the parties, the Commission concludes that it is competent to decide on the claim lodged by the petitioners, and that the case is admissible under the terms of Articles 46 and 47 of the American Convention. The Commission therefore decides to publish the present report in the Annual Report of the General Assembly of the OAS and to notify both parties.

II. PROCESSING BY THE COMMISSION

4. On May 16, 2003, the IACHR proceeded to process petition No. 60/2003 in accordance with the Rules of Procedure in force since May 1, 2001, and communicated to the State the notice of the complaint, with a time limit of two months for the presentation of observations.

5. On July 17, 2003, the State presented its observations, which were transmitted to the petitioners on July 30, 2003. Due to a technical defect, the observations presented by the State were illegible when received by the Commission. The IACHR requested the State to send a legible version of its observations, which were received on December 9, 2003.

6. The observations of the State were transmitted to the petitioners on December 10, 2003. They were given 30 days to present a reply, which was received on January 12, 2004. On February 4, 2004, the IACHR transmitted to the State the response from the petitioners, informing the State that it had one month in which to make observations. At the request of the State, the Commission granted an extension of 30 days. The observations of the State were received in the Commission on May 3, 2004, and are the last communication in this file.

III. POSITIONS OF THE PARTIES

A. Petitioners

7. The petitioners argue that the facts of the instant case are consistent with a pattern of extrajudicial murders of ecologists and indigenous activists, and subsequently there has been an “atmosphere of impunity concerning each of the murders.”¹

8. The petitioners state that Carlos Antonio Luna López was a town councilor (*regidor*) in the town of Catacamas in the Department of Olancho, Honduras, who introduced policies to control “ghost cooperatives” and denounce the illegal felling of trees. As a consequence of these activities, the alleged victim began to receive threats because his investigations and actions were affecting the interests of local politicians and businessmen, and on May 18, 1998, around 10.45 pm, he was shot down while leaving the Municipality where there had been a meeting of the town council. He died while he was being taken to hospital.

9. The criminal case was opened on May 19, 1998. On October 27, of the same year, one of those allegedly responsible for the death of Mr. Luna, was captured. His name was Mr. Oscar Aurelio Rodríguez, alias “Machetío”, and he was sentenced to 20 years in prison for murder. The petitioners also claim that three other alleged participants in the crime, Mr. Italo Iván Lemus, Mr. Marcos Morales, and Mr. Wilfredo Pérez are currently fugitives from justice and that the warrants for their arrest, issued on February 21, 2001, have proved to be ineffective. They also claim that the commitment order against Mr. Jorge Chávez, one of the alleged instigators of the crime, was cancelled. This cancellation was subsequently appealed by the prosecution [*Fiscal*] and the file was sent to the Third Court of Appeal, which resolved to revoke the order to release the accused, who then filed a writ of amparo [*recurso de amparo*] before the Supreme Court of Justice in appeal. The writ of amparo was heard by the Supreme Court on April 2, 2003, which revoked the findings of the Third Court of Appeal and sent the case back so that the Court could correct the errors in its finding.² According to the information supplied by the petitioners, the accused remains in prison, awaiting a decision on the writ of *amparo* he presented.

10. With regard to Mr. José Angel Rosa, who is named as the other alleged instigator, the petitioners state that he is currently in prison but for crimes other than the murder of Mr. Carlos Antonio Luna López, and for that reason no warrant for his arrest has been issued.

11. The petitioners claim that more than four and a half years have elapsed without all the guilty parties having been punished for this act because the authorities have no interest in solving this crime. They claim that on several occasions the case has remained dormant for different reasons. Consequently, the petitioners allege that there has been an unwarranted delay in the investigation and bringing to trial of all those who are alleged to have been responsible, as well as in resolving the instant case. They therefore request the Commission to admit the petition based on the exception to the rule of prior exhaustion of domestic remedies contemplated in Article 46.2.c of the Convention.

B. State

12. Honduras denies the existence within its jurisdiction of the alleged pattern of extrajudicial executions or persecution and harassment of community or environmental leaders. The State claims that since the 1990s the human rights situation in the country has improved.

13. The State claims that the case concerning Mr. Luna López has been handled diligently by the Office of the Attorney General [*Ministerio Público*] and that several remedies brought by the accused with a view to winning their freedom were rejected by courts of appeal.

14. With regard to the perpetrator of the crime, Mr. Oscar Aurelio Rodríguez, alias “*Macheteo*”, the State advises that he has been sentenced to 20 years imprisonment without right of appeal for the crime committed against Mr. Carlos Antonio Luna López and to seven years for “the

¹ Indictment, January 14, 2003, p.2.

² In considering the writ of amparo, the Supreme Court indicated that the Third Court of Appeal did not adequately substantiate its decision and in addition used “terms such as “vil asesinato”[foul murder] which implies a degree of subjectivity that should not be part of a judicial proceeding, damaging a fair trial and the principle of legality.”

crime of causing serious injury to Mrs. Silvia Esperanza González [...].³The State therefore claims that there has been neither impunity nor unwarranted delay in this case.

15. The State also advises that not all domestic remedies have been exhausted in this case because the case is complicated and the accused have lodged different appeals against the decisions adopted in the domestic courts. The State claims that although these remedies “interrupt the normal progress of the process,” [it is not possible] “to charge those responsible for the administration of justice in the State of Honduras with unwarranted delay.”⁴

IV. ANALYSIS

A. Competence

16. The petitioners are empowered by Article 44 of the American Convention to lodge petitions with the IACHR. The petition identifies as alleged victim an individual person, whose rights under the American Convention the Honduran State is committed to respect and guarantee. As far as the State is concerned, the Commission states that since September 8, 1977, the date when it deposited its instrument of ratification, Honduras has been a State Party to the American Convention. Therefore the Commission has competence *ratione personae* to deal with this petition.

17. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention that took place in the territory of a State Party to said Convention. The IACHR has competence *ratione temporis* since the obligation of respecting and guaranteeing the rights protected by the American Convention was already in force for the State on the date when the events alleged in the petition took place. Finally, the Commission has competence *ratione materiae* because the petition covers violations of human rights protected by the American Convention.

B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

18. The petitioners allege that even after more than four and a half years since the death of Mr. Carlos Antonio Luna López, all those responsible have not been punished. For this reason they claim that the present case falls within the exceptions defined by Article 46.2 of the American Convention and should therefore be declared admissible.

19. The state claims that in the instant case all remedies under domestic law have not been exhausted in that “at present one case or proceeding is underway against those who appear to be implicated in the death of Mr. CARLOS LUNA [...].”⁵

20. The American Convention establishes as a general rule in Article 46.1.a that for a petition to be declared admissible “all the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”⁶ Paragraph (2) of the same Article establishes the following exceptions to the general rule as follows:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

³ Indictment, op.cit., note 1, p.3.

⁴ Responses to observations from the petitioner, April 23, 2004, p.5.

⁵ Initial response to the petition, July 16, 2003, p. 7 (emphasis in the original).

⁶ American Convention on Human Rights, Article 46.1.a.

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

21. The exceptions defined in Article 46(2) of the Convention have been established precisely in order to guarantee international action when the remedies available under domestic law and under the State's own domestic judicial system have not been prompt and effective to ensure respect for the human rights of the victims.⁷ In the same way, the general rule that requires prior exhaustion of domestic remedies recognizes the right of the State to "resolve the problem according to domestic law before embarking on an international process."⁸ This general rule not only recognizes the above-cited right of the State, but imposes on the State the duty to provide the persons under its jurisdiction with remedies that are suitable to address the infringement of a legal right and capable of producing the result for which they were designed.⁹

22. The Commission considers it important to clarify that the exceptions to the rule of exhaustion of domestic remedies are closely linked to the definition of possible violations of certain rights contained in the Convention, such as the right to a fair trial (Article 8), and the right to judicial protection (Article 25). It should be remembered, however, that the content of Article 46(2), in its nature and subject, is independent of the substantive norms of the Convention and the criteria used to arrive at its definitions are distinct from the criteria used to establish violations of Articles 8 and 25 of the Convention. The result of this is that the applicability of the exceptions to the rule of exhaustion of the remedies available under domestic law defined in sub-headings (a), (b), and (c) of Article 46.2 should be resolved prior to proceedings in a special pronouncement, as the Commission is doing by publishing the present report.¹⁰

23. As a general rule, a criminal investigation should be carried out promptly in order to protect the interests of the victims and preserve evidence. In the present case, although one of those involved in the crime was sentenced to 20 years' imprisonment, the others who were alleged to have been involved have still not been brought to trial. In addition, three of them (for all of whom arrest warrants have been issued) are fugitives from justice and the State has presented no proof of efforts made to locate them. A fourth alleged participant, Mr. Jorge Chávez is in preventive custody for the crime of attempted murder of Sra. Silvia González and not for that of Carlos Antonio Luna López.¹¹ The Commission estimates that the time that has lapsed without an effective investigation taking place or the rest of the alleged participants in the crime having been brought to trial or punished, amounts to an unwarranted delay, and that there is little likelihood that this remedy will be effective in bringing those responsible to trial or punishment.¹² In the present case, the Commission considers that domestic remedies have not been exhausted and that the judicial proceedings initiated in connection with the murder of Mr. Carlos Antonio Luna López have exceeded the reasonable time limit for their completion. The State has not provided any justification regarding the reason why the arrest warrants have still not been executed nor has it provided any information regarding reasonable measures adopted with a view to executing them. Nor has the State offered any explanation of the supposed complexity of the affair.

24. Based on the foregoing considerations, the Commission concludes that the case *sub judice* is admissible on the basis of the exception described in Article 46(2)(c) of the American Convention.

2. Deadline for presentation of petitions

⁷ IACHR, Ramón Hernández Berrios and Others, Report No 15/02, February 27, 2002, paragraph. 27.

⁸ Inter-American Court of Human Rights, Velásquez Rodríguez. Judgment of July 29, 1988, Series C. No.4, paragraph 61.

⁹ IACHR, Ramón Hernández Berrios and Others, see note 7 above, paragraph. 26.

¹⁰ Ibid., paragraph 30.

¹¹ Judgment of Amparo, No. 784-941-1179-02 of the Constitutional Court of the Supreme Court of Justice of Honduras, April 2, 2003.

¹² Ibid., paragraph 35.

25. Article 46.1.b of the Convention states that a petition must be lodged within six months from the date when the person whose rights are alleged to have been infringed is notified of the final judgment.

26. The Commission concludes that in the present case there has been an unwarranted procedural delay on the part of the Honduran authorities in solving this case, sufficient to satisfy this requirement. Article 32(2) of the Rules of Procedure of the IACHR states in this respect:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

27. The petition was received on January 13, 2003 and the events that gave rise to this proceeding occurred from May 18, 1998 with the murder of Mr. Luna López, and the issuing of arrest warrants on February 21, 2001. Therefore the Commission concludes, based on what has been stated *supra*, that the petition was presented within a reasonable time.

3. Duplication of procedures and *res judicata*

28. The file concerning the petition contains no information that would suggest that this subject is currently pending in another international proceeding, or that it reproduces a petition that has already been brought before this or another international organ. Therefore, the IACHR concludes that it has met the provisions laid down in Articles 46.1.c and 47.d of the American Convention.

4. Description of the alleged facts

29. The Commission considers that the allegations made by the petitioner with regard to the alleged violation of judicial guarantees and protection due to the victim, if proven, would amount to a violation of the rights guaranteed by Articles 4, 5.1, 5.2, 8.1, and 25.1 in accordance with Article 1.1 of the American Convention.

V. CONCLUSIONS

30. The Commission concludes that the case is admissible and that it has competence to examine the complaint lodged by the petitioners in connection with the alleged violation of Articles 4, 5(1), 8(1), and 25(1) in conjunction with Article 1(1) of the American Convention, pursuant to Articles 46(1)(c) and d., 46(2)(c) and 47(b) of the same Convention.

31. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare this petition admissible, in relation to Articles 1(1), 4, 5(1), 5(2), 8(1), and 25(1) of the American Convention.
2. To give notice of this decision to the petitioner and to the State.
3. To begin an analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on October 13th, 2004. (Signed): José Zalaquett, President; Clare K

Roberts, First Vice-President; Susana Villarán, Second Vice-President; Members of the Committee, Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez.