

REPORT N° 67/05
PETITION 61/03
ADMISSIBILITY
BLANCA JEANNETTE KAWAS
HONDURAS
October 13, 2005

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 petition lodged by the Center for Justice and International Law and the Reflection, Investigation, and Communication Team (hereinafter "the petitioners"). In that petition, it is alleged that the Republic of Honduras (hereinafter "Honduras" the "Honduran State" or "the State") is responsible for 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"), all considered in relation to Article 1(1) of that international instrument, to the detriment of Mrs. Blanca Jeannette Kawas (hereinafter the "alleged victim").

2. The complaint alleges that the State is responsible for violating the right to life, the right to a fair trial, and the right to judicial protection of Blanca Jeannette Kawas Fernández, rights to be considered in conjunction with the obligations contained in Article 1(1) of the Convention. The petitioners contend that there is a pattern of extrajudicial executions of environmental defenders in Honduras, that the authorities have not conducted an effective investigation into the murder of the alleged victim which occurred on February 6, 1995, and that, in addition, domestic remedies pursued in this case have proven to be ineffective. With regard to the admissibility of the case, the State argues that the remedies provided under the domestic legal system have not been exhausted, and that the delay in the investigation was due to the complexity of the case.

3. After examining the positions of the parties, the Commission concludes that it has competence to decide on the petition lodged by the petitioners, and that the case is admissible, in accordance with Articles 46 and 47 of the American Convention. The Commission also resolves to publish this report in the Annual Report to the OAS General Assembly and to notify both parties.

II. PROCEDURES OF THE INTER-AMERICAN COMMISSION

4. The Commission received the petition on January 16, 2003, and assigned it number 061/03. On July 13, 2003, the petitioners sent additional information. On that same date, the information was transferred to the State, which requested an extension on September 10 2003, which was granted on October 14, 2003. The State submitted its observations on October 17, 2003, and they were forwarded to the petitioners. Petitioners responded on December 4, 2003 and that response was sent to the State on January 26, 2004. The State sent its observations on March 23, 2004, and the petitioners responded to them on April 30, 2004. That response was forwarded to the State on May 6, 2004. On June 4, 2004, the observations of the State were received. On July 8, 2004, additional information was sent by the petitioners, and on July 14, 2004, the petitioners' response to the State's observations was received and responded to by the State on August 31, 2004. This response was transmitted to the petitioners on September 13, 2004, and their response to it was received on September 28 of that year. Those observations were transmitted to the State on October 6, 2004, and it responded on October 4, 2004 [sic]. Both parties subsequently submitted additional information which was forwarded to the other parties.

III. POSITIONS OF THE PARTIES

A. The Petitioners

5. The petitioners allege that on February 6, 1995, Blanca Jeannette Kawas, 47 years of age and President of the Foundation for the Protection of the Natural Resources of the Regions of Lancetilla, Punta Sal, and Texiguan (PROLANSATE), was at home in the company of her personal assistant, Mr. Marcial Bueno, when she was murdered by gunshot.

6. They further allege that Mr. Marcial Bueno was a witness to the event, and he stated that the alleged victim fell to the floor as a result of a shot that went through her left cheek. The judicial inspection report described in the record of removal of the body that a 9 mm caliber firearm had been used, and that the alleged victim died instantly from a shot to the back of the neck with a exit wound in the left cheek.

7. On the day following these events, the petitioners indicate that an investigation was opened, and various statements were obtained providing information on the alleged perpetrators, a description of the vehicle used by them, and the presumed motives. They also report that the Criminal Court [*Juzgado de Paz de lo Criminal*] of Tela, Department of Atlántida, in charge of the investigation also received information from persons who had disputes with the alleged victim as a result of her environmental work, and who gave information on the alleged parties responsible for both the planning and execution of the crime.

8. They further contend that from these initial statements, it is evident that the alleged victim received a series of threats as a result of the work she performed. Moreover, according to a report from the office of the First Regional Command of the Public Security Forces (CORE), they had information on persons suspected of the crime, but no investigation was conducted on the basis of that information.

9. They also argue that confidential testimony was offered to Edmundo Orellana, the Public Prosecutor [*Fiscal General*] at the time, involving information on the alleged perpetrators of the murder, and that none of those persons was investigated or summoned to give a statement, and that no efforts were made to inquire further into the information provided.

10. The petitioners also contend that on March 6, 1995, Juan Francisco López gave a statement, containing his version regarding the alleged perpetrators, which included a woman by the name of Reina Mc-Voy, who allegedly asked him to contact a hit man or murderer. He also provided the names of the alleged principals who committed the crime. Mr. López gave the same statement to a CORE Commander.

11. They report that, as a result of this, the judge in charge of the case decided that same day to issue a warrant for the arrest of the persons named in the statement.

12. The petitioners argue that two days after issuing the arrest warrants, the same judge rescinded the warrants in a resolution, without offering any grounds or cause. Moreover, the prosecutor in charge of the case did not appeal the decision by the judge or request an explanation of the reasons for it.

13. The petitioners further contend that in September 1995, Rogelio A. Pacheco Barahona, Chief of Operations of the Criminal Investigation Department (DIC), sent a memo to the assistant director of that department explaining the reasons why he believed that the party allegedly responsible for planning the crime was a person by the name of Jorge Montoya. This neither triggered an investigation, nor resulted in a summons of the alleged author to testify.

14. In addition, they allege that one year later, on May 10, 1996, that same organization (DIC) submitted a report in which the same above-mentioned person was linked to the murder of the alleged victim, and that the reason was the sale of land by Mr. Montoya to the Maloff brothers, who requested that he return the money from the sale, because they were unable to log the land due to cancellation of the logging permit, as a result of steps taken by Jeannette Kawas involving the national office in charge of those matters.

15. In addition, the name of a possible murderer was given. Mrs. Mirtala Gómez Amaya, the sister-in-law of the alleged victim, was said to have committed the murder, partly as a result of personal altercations related to the assets of Mr. Jacobo Kawas, the brother of the alleged victim.

16. They further maintained that the same State agents admitted that they were frightened to proceed with the investigation in the case, as a result of the magnitude of the interests involved in it.

17. The eye witness to the crime, Mr. Marcial Bueno, has also refrained from giving a statement out of fear for his life, since he believes that the perpetrators of the murder are persons from the same area, and that they are highly dangerous.

18. The petitioners additionally contend that Sergeant Perdomo of the Public Security Forces coerced Juan Francisco López Mejía to say that he had committed the crime. That same Sergeant was seen visiting the home of Mr. Jorge Montoya, the person who allegedly planned the murder.

19. Thus the petitioners contend that there are various theories regarding the murder of the alleged victim, and that none of them was investigated in full, and moreover that "since 1996 the case has been inactive, without any steps taken to clarify the facts, or identify and punish the persons responsible for planning and executing the crime, and finally that the only legal action taken after 1996 was the appearance of a new prosecutor on June 8, 2001."¹ The petitioners maintain that the investigation into the murder of Blanca Jeannette Kawas Fernández "has not been serious or effective in bringing justice to this renowned environmentalist."² Despite the existence of witnesses, declarations, DIC reports etc., that set forth different hypotheses regarding the murder of the victim, to date "no responsible party has been identified, and none of the lines of investigation into the different theories has been completed."³

20. The petitioners also allege that the case is part of a policy of extrajudicial executions and harassment against environmental defenders. They claim that this is a situation that the State either endorses or tolerates.

21. In the same sense, the petitioners argue that the threats received by the presumed victim, and his later assassination, are a reflection of the critical situation in which environmentalists in Honduras live. The execution of other leaders of this movement, such as Héctor Rodríguez Pastor Fasquel, Carlos Roberto Flores, Carlos Luna and Carlos Escaleras Mejía, reflect this pattern so much so that Amnesty International, the United Nations, and the Department of State of the United States of America have included it in several reports. That the judicial delay is part of the attitude of the State towards defenders of the environment, in this case in particular, has gone beyond any conception of a reasonable period of time.

22. Finally, the petitioners state that the steps indicated by the State do not resolve the considerable defects in the investigation, and that they were only taken after a long period of time had elapsed following the murder.

B. The State

23. The Honduran State rejects the claim that there is a systematic policy of persecution and extrajudicial executions against defenders of the environment, and claims that the State has been promoting and defending human rights ever since a considerable improvement in this area in the 1990's.

¹ Petition lodged by the petitioners on January 13, 2003.

² *Idem.*

³ *Idem.*

24. The State contends that various judicial proceedings related to the allegations of the petitioners are under way at the request of the *Ministerio Público* [Office of Public Prosecutor]. It further claims that the code of criminal procedure (Decree No. 189-94) does not in any article establish that cases are closed because of the time elapsed, and that therefore investigations are continuing.

25. It states that according to criminal procedure, the judge is in charge of these formalities, and that the *Ministerio Público* acts only after the full proceedings have been opened. The State contends that this is the result of the previous system of inquiries, which has been changed now to the accusatory system, under which it is possible to strike a better balance between the stages of a legal proceeding. It further explains that under the previous system, the judge did not have the inputs that the *Ministerio Público* has at the present time, which affects the case in question, but that nonetheless the judge acted with due diligence.

26. It argues that on the basis of the laws at the time, Saúl Benjamín Mejía gave a statement on January 20 2004, and that this statement enabled the minor implicated in the crime, Juan Francisco López Mejía, to be released, since he was pressured by the chief of police of Tela, who went so far as to threaten him with death, to confess to being one of the murderers.

27. The State asserts that on the basis of that declaration, the involvement of the police chief was investigated. The investigation led to a village named Esparta, where one of the persons who had planned the murder of the alleged victim, nicknamed "El Tigre," was living.

28. The State maintains that, according to the testimony of Benjamín Mejía, the perpetrator of the crime had acted in collusion with other wealthy persons from the area in planning the crime. The main reason was the alleged victim's opposition to development of tourism in the bay of Tela, a zone protected as a National Park. The State further contends that the brother of the alleged victim, despite being the prosecutor's liaison for investigation of the crime, did not assist the prosecution with the corresponding investigation, since he omitted important relevant information.

29. The State further alleges that on March 3, 2004, at the request of the *Ministerio Público*, the *Juzgado de Letras Seccional* [court of first instance] with headquarters in Tela issued a warrant for the arrest of Ismael Perdomo for the crimes of abuse of authority and coercion, to the detriment of the public administration and witnesses Alex Dencen Andino, Sabas Gómez, Juan Gómez, and Juan Francisco López. The state adds that Mario Pineda, a Guatemalan citizen who is suspected of acting as an instigator of the murder, gave a statement.

30. The State also holds that in view of the foregoing, the investigation stage is still in process under the prior procedural law (1984 Code of Criminal Procedure) and that is why the proceedings have not been closed, since that is not permitted under the referenced legislation.

31. The State further maintains that in order for criminal proceedings in the present case to lapse under statutes of limitations, a period longer than the maximum sentence for the crime in question must have elapsed, and in this case that would be in excess of twenty years (in accordance with Articles 96.6, 97.1, and 117 of the Criminal Code).

32. It argues that the State of Honduras cannot be held responsible for malicious crimes committed by individual criminals, whose liability will be determined by the administration of justice, which requires the cooperation of the victim's next of kin, a situation which the State claims is not present in this case.

33. Based on all the aforesaid arguments, the Honduran State requests that the petition be declared inadmissible, on the grounds that there is still an investigation in process and that all the remedies under domestic law have not been exhausted.

III. ANALYSIS

A. The Commission's jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

34. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition states that the alleged victim is an individual in respect of whom the Honduran State undertook the obligation to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Honduras has been a party to the American Convention since September 8, 1977, the date on which it deposited the corresponding instrument of ratification. Consequently, the Commission has personal jurisdiction to consider the petition.

35. The Commission has jurisdiction of place to take cognizance of the petition, because the alleged violations of the rights protected by the American Convention took place within the territory of a state party to that instrument in this case the State of Honduras. The Inter-American Commission has jurisdiction *ratione temporis*, because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date on which the acts alleged in the petition occurred. Finally, the Commission has subject matter jurisdiction, since the petition reports violations of the human rights protected by the American Convention.

B. Other requirements for admissibility of a petition

1. Exhaustion of domestic remedies

36. Article 46(1)(a) of the American Convention states that admissibility of a petition lodged with the Commission is subject to the requirement "that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law." Article 46(2) of the Convention establishes three situations in which the rule of exhaustion of domestic remedies does not apply: 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 c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

37. In the case in point, the petitioners allege that over ten years have elapsed since the death of Mrs. Blanca Jeanette Kawas Fernández, yet none of the persons responsible for planning or executing the crime has been punished. For this reason, they argue that this case falls within the scope of the exceptions stipulated in Article 46(2) of the American Convention and that as a result the case should be declared admissible.⁴

38. The Commission has held as a general rule that a criminal investigation should be conducted promptly to protect the interests of the victims, preserve evidence, and safeguard the rights of any suspects considered in the context of the investigation.⁵ Therefore, on application of the exception to exhaustion based on unwarranted delay, the Commission considers that although a series of investigations has been carried out by State judicial entities, involving different possible perpetrators of the crime, up to now they have not proceeded with identification and punishment of the perpetrators. Since more than ten years have elapsed since the murder of the alleged victim, the Commission must therefore decide at this point on the admissibility of the petition, on the basis of the arguments presented by the parties. It should be noted that the causes and effects that have prevented exhaustion of domestic remedies in this case will be examined as relevant in the report adopted by the IACHR on the merits of the case, in order to determine whether they in fact represent violations of the American Convention.⁶

1. Deadline for presentation

⁴ Report N° 63/04 Petition 60/2003, Carlos Antonio Luna López, Admissibility, Honduras, October 13, 2004.

⁵ Report N° 34/01, Case 12,250, Mapiripán Massacre, 2001 Annual Report of the IACHR, paragraph 24.

⁶ Report N° 34/01, Case 12,250, Mapiripán Massacre, 2001 Annual Report of the IACHR, paragraph 24.

39. Article 46(1)(b) of the American Convention states that in order for a petition to be admissible, it must be “lodged with a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

40. Article 46(2) of the American Convention establishes that the provisions of Article 46(1)(b) shall not apply when: 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 c) there has been unwarranted delay in rendering a final judgment.

41. In the case in question, compliance with the requirement established in Article 46(1)(b) of the American Convention is related to application of the exceptions to exhaustion of the remedies under domestic law established in the Convention itself, as analyzed in the foregoing paragraphs. The Commission has concluded that in the present case, there has been an unwarranted delay in procedures to clarify the case on the part of the Honduran authorities, as a result of which this requirement is considered as met.⁷

42. On this point, Article 32(2) of the IACHR’s Rules of Procedure states as follows:

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.

43. The petition was received on February 6, 2003, and the event that gave rise to this process, the murder of Blanca Jeannette Kawas, occurred on February 6, 1995, while investigations, testimony, and inquiries followed and generated information on alleged perpetrators, but without any results, up to the time before the petition was lodged. Therefore, in the opinion of the Commission, based on the foregoing considerations and the specific circumstances of the case in question, the petition was lodged within a reasonable period of time.

2. Duplication of international proceedings and *res judicata*

44. It does not appear from the case files that the matter of the petition is pending in another international proceeding, or that it replicates a petition already examined by this or another international entity. It is therefore considered that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

3. Characterization of the alleged facts

45. The Commission is of the view that the allegations of the petitioners regarding the alleged violation of the right to a fair trial and to judicial protection owing to the victim, if proven, could characterize a violation of the rights guaranteed in Articles 4, 5(1), 5(2), 8(1), and 25(1), considered in relation to Article 1(1), of the American Convention.

IV. CONCLUSION

46. The Commission concludes that the case is admissible and that it is competent to examine the complaint lodged by the petitioners regarding the alleged violation of Articles 4, 5, 8, and 25, considered together with Article 1(1) of the American Convention, in accordance with the provisions of Articles 46(1)(c) and (d), 46(2)(c), and 47(b) of that international instrument.

47. On the basis of the aforesaid factual and legal arguments, and without prejudice to the merits of the case,

⁷ Report N° 63/04 Petition 60/2003, Carlos Antonio Luna López, Admissibility, Honduras, October 13, 2004

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
DECIDES:**

1. To declare this petition admissible, in relation to Articles 1(1), 4, 5, 8, and 25 of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To initiate procedures on the merits of the case.
4. To publish this decision and include it in its Annual Report to be presented to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 13th day of October 2005. (Signed) Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez.