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Title/Style of Cause: Myrna Mack v. Guatemala
Doc. Type: Decision
Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated: 5 March 1996
Citation: Mack v. Guatemala, Case 10.636, Inter-Am. C.H.R., Report No. 10/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)

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I. BACKGROUND

1. On September 11, 1990, Myrna Mack left her office in Guatemala City to return home. Two individuals armed with knives ambushed and attacked her, killing her with 27 knife wounds. The perpetrators then left the scene, taking with them the victim's portfolio and purse and a plastic bag she carried.

2. The petitioners presented a petition to the Inter-American Commission on Human Rights (the "Commission") denouncing the murder of Myrna Mack and requesting investigation and clarification of the incident. Mrs. Mack was a Guatemalan anthropologist whose research and work was focused on the issue of displaced persons in Guatemala. The petitioners alleged that agents of the security forces of the Government of Guatemala had been responsible for the murder of Myrna Mack as a reprisal for her work which was critical of the State. On September 17, 1990, the Commission opened this case as case number 10.636.

II. Proceedings before the Commission

3. After they presented their original complaint and up until December 21, 1995, the petitioners sent numerous communications to the Commission providing additional information in relation to this case. They provided information about the police investigation, the arrest of Noël Beteta (one of those allegedly responsible for the murder of Myrna Mack), the death of José Mérida Escobar, the police investigator who prepared the investigative report in the case, the advances in the domestic criminal processes, and the appeals and other judicial processes initiated by Helen Mack requesting access to certain evidence and the opening of a criminal proceeding against other persons who planned and committed the crime against Myrna Mack.

Finally, the petitioners urged that the investigation and the criminal processes in Guatemala be brought to a conclusion and requested that the Commission order compensation for the family members of Myrna Mack.[FN1]

[FN1] The petitioners sent information on the following dates: September 11, 1990, January 3, 1991, February 8, 1991, May 30, 1991, October 29, 1991, January 15, 1992, March 12, 1992, January 28, 1993, February, 1993, August, 1993, February 9, 1995, April, 1995, November, 1995, December 21, 1995.

4. The Government provided to the Commission a response in the case on February 20, 1991. After that date and up until February 14, 1996, the Commission received additional information from the Government about the police investigations, the arrest of Noél de Jesús Beteta Alvarez, the results of the various proceedings initiated by the Public Ministry and the petitioners within Guatemala and the advances in the domestic proceedings.[FN2]

[FN2] The Government sent information on the following dates: February 20, 1991, December 12, 1991, November 30, 1992, February 12, 1993, May 5, 1993, May 12, 1993, June 30, 1993, April 28, 1995, July 14, 1995, February 9, 1996.

III. Facts Relating to the Question of Admissibility

The facts described below were included in the information provided by the petitioners and the Government. The facts alleged by the petitioners were not denied by the Government.

A. Investigations Carried Out by the Guatemalan Police

5. The investigations carried out in Guatemala in the case of Myrna Mack began with the investigative work of the Criminal Investigations Department on the same day of the murder under the direction of the General Director of the Police. The agents in the Criminal Investigations Department arrived at the scene of the crime immediately after the murder.

6. The Justice of the Peace on duty also appeared at the scene of the crime and ordered that Myrna Mack's corpse be taken to the Forensic Services Office for Autopsies at the Judicial Organism.

7. The report prepared by the forensic physician concluded that Myrna Mack's death was caused by 27 wounds to the neck, thorax and abdomen and the resulting hypervolemic shock. The report also concluded that the weapon used was a knife. The report failed to include any analysis of the victim's hair or of the pieces of skin found under the victim's fingernails which presumably belonged to the aggressors.

8. During the investigations carried out by the Homicide Section of the Criminal Investigations Department of the National Police, negligent acts and omissions occurred which endangered and obstructed the assignment of responsibility in the case:

-- At the scene of the crime, even with the Director of the National Police present, the police did not take the samples necessary to allow for fingerprint testing, alleging that rain precluded the completion of that task. However, there was no rain the day of the murder until several hours after the police arrived at the scene of the crime.

-- The scene of the crime was not protected with a police cordon which would have kept those not involved in the investigations away from the scene.

-- The police failed to analyze the remains of a plastic bag which was found in the victim's hands and which presumably would have been touched by the persons responsible for the murder. Nor was the victim's clothing held to allow for tracing of the blood stains left by the aggressors.

9. The head of the Homicide Section of the National Police, José Mérida Escobar, prepared a report dated September 29, 1990 with Julio César Pérez Ixcajop. In that report, Noel de Jesús Beteta Alvarez was identified as the suspected material author of the murder of Myrna Mack. The report also established that Beteta acted under orders from his superiors, high-level officials of the Guatemalan Presidential High Command ("EMP"). The report's conclusions were based on the statements of Noel Beteta, who declared that he had worked under the orders of Edgar Godoy Gaitán (an EMP official) and the statements of witnesses who provided descriptions of persons involved in the murder, stating that they appeared to be military persons. On June 26, 1991, investigator Mérida Escobar testified before the court ratifying his report of September 29, 1990.

10. On August 5, 1991, investigator Mérida Escobar was shot and murdered less than 100 meters from the offices of the police. At the time of his murder, Mérida Escobar was advancing in the investigations in the Myrna Mack case and in the preparation of the case for trial. However, the investigations into the death of Mérida Escobar do not treat his death as linked to his work in the Myrna Mack case.

11. In a new report dated November 4, 1990, the police concluded that the motive for the murder of Myrna Mack was theft and no member of the military or higher EMP official is implicated as a suspect. The November 4, 1990 investigative report of the Homicide Section of the National Police simply quotes directly from medical and other reports. The report shows no effort at independent evaluation or investigation. In addition, the police report fails to mention several important pieces of evidence. For example, the report does not mention that eyewitnesses stated that the persons who attacked Mrs. Mack took her portfolio and purse but not her jewelry or her car, implying that the motive for the murder was not robbery.

12. The original police report dated September 29 can no longer be ratified by its authors. Investigator Escobar was murdered and Mr. Pérez decided to leave Guatemala as a result of threats that he received. In addition, two witnesses now refuse to ratify their previous statements to police investigators which were included in the September 29 report. The statements of these two witnesses indicated that the witnesses had observed the surveillance under which Myrna

Mack was placed before her murder and had noted that the men who engaged in the surveillance appeared to be from the military and had recognized one of them specifically as an employee of the EMP. One of the two witnesses has specifically requested that he not be involved in the case "for reasons of his security."

13. It is also no longer possible to obtain statements from the only two eyewitnesses to the murder itself, José Tejada Enríquez and Juan Carlos Marroquín Tejada. A few days before these two witnesses were to appear before the court to provide testimony, they received anonymous letters in which they were threatened with death. During the same time period, the house of Mr. Marroquín was machine-gunned by a group of armed men. These incidents forced the witnesses to leave the country.

B. The Domestic Criminal Proceedings

14. The Public Ministry is the prosecuting agent in the original criminal proceeding which was initiated to investigate the death of Myrna Mack. Helen Mack, sister of the victim, intervened as private accuser. The criminal proceeding was carried out against Noel de Jesús Beteta Alvarez, suspected material author of the murder. The criminal proceeding against Beteta lasted for four years. The case was seen by a total of twelve judges.

15. The private accuser, Helen Mack, attempted to prove in the criminal proceeding the participation in the crime as intellectual authors of Edgar Augusto Godoy Gaitán, Juan Valencia Osorio y Juan Guillermo Oliva Carrera, Beteta's superiors at the EMP. Helen Mack also accused Juan José Larios, Juan José del Cid Morales and another individual with the last name Charchal as the persons who assisted Beteta in the surveillance of Myrna Mack and in the actual execution of the murder. All of these employees of the EMP were included in the police report of September 29 as suspected material and intellectual authors of the murder. Helen Mack sought to include these persons as defendants in the criminal proceeding.

16. The Public Ministry and the private accuser, with the intention of proving that the above-named persons were guilty of having participated in the murder, requested through the court with jurisdiction over the case specific information and documentation from State agencies such as the Ministry of Defense and the EMP. The information which was requested was related to the identity and activities of the suspected material and intellectual authors and to other questions surrounding the murder. Each of these requests was rejected on the grounds that the information was confidential and included State secrets.

17. The decision in the criminal proceeding carried out against Beteta was issued on February 12, 1993 by the Third Court of First Instance for Decision in Criminal Matters. The Court of First Instance convicted only Noel de Jesús Beteta Alvarez. The other suspected material and intellectual authors of the murder were neither processed nor convicted by the court because of insufficient evidence. The decision of the court convicted Beteta as guilty of having committed the crime of murder against Myrna Mack and ordered an incommutable sentence of 25 years in prison. The decision also rejected the petition to open a proceeding against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, Juan José Larios, Juan José del Cid Morales and the individual of last name Charchal. The evidentiary basis for the

decision of the Court of First Instance was the investigation carried out by the police and included in the report dated November 4, 1990. That report did not mention any employee of the EMP or other military official, other than Beteta, as a possible participant in the crime which resulted in Myrna Mack's death.

18. The private accuser filed an appeal against the sentence of the Third Court of First Instance, petitioning for the opening of a criminal proceeding against the other material and intellectual authors of the crime. By resolution of April 28, 1993, the Fourth Chamber of the Court of Appeals affirmed in its totality the conviction which had been appealed. On May 4 and May 21, 1993 respectively, the appellate court also issued decisions rejecting the appeals for "amplification" and "replacement" filed by the Public Ministry. Helen Mack also filed an appeal for "amplification" requesting that the Court of Appeals explain further the reasons upon which it based its rejection of the petition to try the other persons suspected of having participated in the murder of her sister. On June 14, 1993, that appeal was also rejected.

19. The private accuser filed an appeal of "cassation" with the Supreme Court of Guatemala against the sentence of the Fourth Chamber of the Court of Appeals emitted on April 28, 1993. At this point, the Public Ministry refused to continue to pursue any further appeals or to request the initiation of a criminal proceeding against the intellectual authors of the murder.

20. In support of the appeal of cassation, the private accuser alleged violations of her rights to petition and to freedom of access to the courts of justice, arguing that her petitions to open an investigation with respect to the other persons involved in the death of her sister had been repeatedly denied. In the public hearing on the appeal which took place on July 26, 1993 at the Supreme Court, the Public Ministry stated that, if a new proceeding were to be initiated, that proceeding should only be brought against the other material author who participated in the actual murder with Beteta. The Public Ministry asked that no proceeding be initiated against the suspected intellectual authors at the EMP.

21. On February 9, 1994, the Supreme Court rejected the appeal of cassation holding that Helen Mack's rights had not been violated as alleged. The Court also rejected the appeal of "amparo" brought by Beteta against the decision of the Fourth Chamber of the Court of Appeals which upheld his conviction.

22. Pursuant to the powers granted by Article 749 of the Guatemalan Criminal Procedure Code, the Supreme Court decided *sua sponte* ("de oficio") to analyze again the decision of the Court of Appeals. Analyzing the case for the second time, the Court held that the right of the private accuser to carry out the accusation had been violated. The Court concluded that sufficient indicia of the possible participation of other persons in the murder were produced in the first proceeding. By decision of February 9, 1994, the Court ordered that a criminal proceeding be opened against the following suspects: Edgar Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, Juan José Larios, Juan José del Cid Morales and an individual of the last name Charchal. The question of the participation of these suspects in the murder of Myrna Mack was to be decided in this new proceeding.

23. The new criminal proceeding was delayed while the accused higher officials attempted without success to nullify the February 9, 1994 order of the Supreme Court requiring the initiation of a proceeding against them. On December 6, 1994, the Court of Constitutionality issued a decision rejecting the petition for amparo brought by the accused persons. However, the new criminal proceeding remained inactive during almost one year, after the December 6, 1994 sentence until the end of 1995, because of the failure to appoint a new prosecutor and because of the refusal of the military to cooperate in the investigation providing the necessary information.

24. In this second proceeding, the private accuser filed with the Supreme Court a request for "Injunctive Relief of Attachment" of documents in the possession of the National Ministry of Defense and the EMP. Helen Mack filed this request in an attempt to protect and obtain evidentiary items important to her attempt to prove the complicity of the second set of defendants in the murder of Myrna Mack. The request was rejected by the Court on March 18, 1994.

25. The private accuser filed an appeal for amparo with the Court of Constitutionality against the Supreme Court decision of March 18, 1994 rejecting the request for the injunctive relief of attachment. The appeal was based on the argument that she had been denied her rights to petition and to freedom of access to the courts, protected by the laws and Constitution of Guatemala. On October 18, 1994, the Court of Constitutionality denied the appeal for amparo, without analyzing the merits. The Court simply stated that the Supreme Court had acted in accordance with its legal powers, because that court no longer had possession of the Myrna Mack case file within which the injunctive relief was requested and thus the court of first instance, which did have possession of the case file, should have ruled on the request. The private accuser filed an appeal for clarification against that resolution of the Court of Constitutionality, which was rejected on December 21, 1994 on the grounds that it lacked merit. Later, the Court of Appeals reversed its decision, ordering that the requested documents be provided by the Defense Ministry.

26. The Ministry of Defense has provided only a portion of the information it was ordered by the appellate court to produce, arguing that the relevant information is found in documents containing military and diplomatic information related to national security and that certain information was provided by private individuals under the guarantee of confidentiality provided for in Article 30 of the Guatemalan Constitution. The following documents, covering the period of the crime in 1990 forward, were not provided: the requested portion of the daily journal of activities of the EMP, general orders of the Army, the organizational chart of the EMP, the names of the various departments of the EMP and the persons which head them. These documents would likely have allowed the courts to try all of the persons suspected of involvement in Myrna Mack's death in one proceeding if they had been provided during the first criminal proceeding brought against Beteta. In the second proceeding, the documents would be used by the accusation team to prove that Noël Beteta Alvarez had received a medical release and worked as an employee of the EMP when he murdered Myrna Mack, that he acted under the orders of higher level officials of the EMP and that other employees of the EMP were involved in the murder in some manner.

27. Some of the information which was provided by the military consisted of documents which the military had alleged did not exist during the first proceeding. These documents were

provided for the first time in the second proceeding and have now been presented as evidence calling into question the guilt of Beteta, even though Beteta has already been convicted and has no more available appeals.

28. At this time, the second criminal proceeding is in the investigative stage before a military tribunal.

IV. OBSERVATIONS OF THE PARTIES ON THE ISSUE OF THE ADMISSIBILITY OF THE PETITION

A. The position of the Government

29. The Government has argued that domestic remedies have not been exhausted. The Government, invoking Articles 46(1) and 47 of the American Convention on Human Rights (the "Convention"), has asked the Commission to declare the complaint inadmissible.

B. The position of the petitioners

30. The petitioners have argued that they denounced to state judicial and human rights institutions on numerous occasions the irregularities committed in the investigation carried out by the Guatemalan police. They noted that they have complained of the negligence of the police which prevented the proper conservation of the evidence found at the scene of the crime, which evidence would have been crucial to the identification of all persons responsible for the murder of Myrna Mack and other circumstances surrounding the murder.

31. The petitioners also allege that they utilized all of the remedies provided for in Guatemalan law in an attempt to obtain the necessary evidence to process all the persons responsible for the murder of Myrna Mack, including information about the names and activities of the employees of the EMP. The petitioners point out that each of these requests for information was rejected by the judicial authorities and the Government without adequate legal justification. The petitioners additionally allege that only a portion of the information which was finally ordered to be produced by the Court of Appeals has actually been produced. The petitioners assert that this failure to produce evidence prejudices the ability of Helen Mack to obtain access to domestic remedies to process all persons against whom there exist indicia of culpability.

32. The petitioners allege that, although a second proceeding has been opened to investigate the other persons responsible for the murder of Myrna Mack, this proceeding remains in its preliminary stage and no important progress has been made.

33. According to the petitioners, the circumstances of this case indicate that they have not had effective access to domestic remedies in their efforts to insure that all persons responsible for the death of Myrna Mack are properly tried. They argue that five years have passed since the first domestic proceedings were initiated and still no effective results have been obtained. They allege finally that this time lapse constitutes an unjustifiable delay in the domestic proceedings intended to judge the persons responsible for this crime of murder.

V. ADMISSIBILITY

A. Formal requirements

34. The petition fulfills the formal requirements of admissibility contained in Article 46(1)(d), and the same is not manifestly groundless or obviously out of order.

35. The Commission may consider the present case, because the petition alleges violations of human rights which are delineated in Articles 1(1), 4, 8 and 25 of the American Convention on Human Rights. The present case is within the competence of the Commission, pursuant to Article 44 of the Convention.

36. In accordance with Articles 46(c) and 47(d) of the Convention, the Commission has confirmed that the petition does not substantially reproduce a petition already studied by the Commission nor is the petition pending in any other international proceeding.

37. The requirement of Article 46(b) of the Convention, which establishes that a petition should be filed within a period of six months from the date on which the final judgment in the case was issued, does not apply in this case, because there still has not been issued a definitive judgment in the case. Applying Article 37(2) of the Regulations of the Commission, relating to exhaustion of domestic remedies, read in conjunction with Article 38(2) of the Regulations, the petition was presented within a reasonable period of time. Nor has the Government of Guatemala alleged the failure to comply with this requirement.

B. Exhaustion of domestic remedies

38. Pursuant to Article 46(2) of the American Convention, the requirement of exhaustion of domestic remedies found in Article 46(1)(a) is not applicable in this case. Article 46(1)(a) specifies that admission of a petition requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." However, pursuant to Article 46(2)(b), exhaustion is not required where "the party alleging violations of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them." Pursuant to Article 46(2)(c), the requirement of exhaustion does not apply where "there has been unwarranted delay in rendering a final judgment." In addition, the Inter-American Court of Human Rights in relation to the exceptions to the requirement of exhaustion of domestic remedies has held that, "[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective." (I/A C.H.R., Velásquez Rodríguez Case, Preliminary Objections, Sentence of June 26, 1987. Series C, No. 1, para. 93). The nature and circumstances of the investigations and domestic criminal proceedings which have taken place in the instant case, as described above, make clear that the provisions of Article 46(2)(b) and (c) excuse exhaustion.

39. The Commission has determined that although Helen Mack, one of the petitioners in this case before the Commission and family member of Myrna Mack, has had formal access to the domestic remedies, she has not had effective and real access to those domestic remedies. She has

not been able to obtain a trial of all persons against whom there exist serious indicia of participation in the murder of Myrna Mack, as determined by the organisms of the State of Guatemala including the Supreme Court.

40. Helen Mack engaged in repeated efforts to insure that all persons responsible for her sister's death were tried in a single proceeding. However, she could not achieve that result, because some Government agents did not properly carry out the investigation of the case and others refused to provide the evidence necessary to carry out such a trial. In addition, the Guatemalan Courts refused to provide for the simultaneous processing of all persons responsible for the murder. As a result, it became necessary to begin a second criminal proceeding to process the persons who had not been tried in the first proceeding. In this second proceeding, the private accuser Helen Mack has again been denied access to the evidence which would allow her to support her accusation against all of the persons responsible for the death of her sister. The absence of certain witnesses whose testimony would have provided greater elements of proof to assist in clarifying the responsibility of all of the defendants also limits the accusation in this second proceeding and prejudices its result.

41. The investigation carried out by the Guatemalan police in the Myrna Mack case suffered from clear deficiencies in the protection and gathering of the evidence which would tend to clarify the crime and the identity of those responsible. The evidence which the police failed to properly gather and protect would have clarified the participation of persons other than Beteta within the first judicial proceeding and would have been of use in properly trying those other defendants in the second proceeding.

42. The private accuser constantly appealed to governmental and judicial authorities to obtain access to the relevant evidence, basing her requests on Guatemalan law and filing every appropriate remedy to obtain the documentary and other evidence in possession of officials of the EMP and the Army. However, her requests for evidence were rejected on formalistic grounds. The judicial authorities did not provide adequate legal grounding for the denials. Even after the Court of Appeals finally ordered that the requested evidence be produced, the Government again refused to provide certain evidence. In addition, at this late date, the testimony of at least five witnesses considered by the petitioners to be vitally important can no longer be effectively utilized in the case. Some of the witnesses have left the country and others refuse to ratify testimony that they previously gave. The evidence necessary to properly pursue this case against all of the persons named by the Guatemalan authorities as responsible for the crime is simply not available any longer.

43. The Commission also finds that there has been an unwarranted delay in the domestic proceeding. Only four years after Myrna Mack's death did the Guatemalan Supreme Court finally order that a criminal case be opened against all of the suspected intellectual authors of the murder and the material authors who worked with Beteta in the commission of the crime. Two more years have passed and this new proceeding remains in the investigative stage. There is no indication that the proceeding will move forward or that the facts of the murder will be clarified. On the contrary, the manner in which the previous proceeding developed creates a reasonable expectation that this proceeding will not achieve any affirmative result. In conclusion, almost six years have lapsed since the murder of Myrna Mack, and the State of Guatemala still has not

issued a final decision in the case relating to her death and there exists no indication that such a decision is forthcoming in the near future.

44. The requirement of prior exhaustion of domestic remedies allows the State to resolve a case through the legal means available within the jurisdiction of that country before being brought before an international forum. However, the mere fact that domestic proceedings continue cannot imply that the Commission may not take jurisdiction of case. Such a rule would permit a State to carry out inefficient and ineffective investigations and domestic judicial proceedings, prolonging those proceedings unreasonably with the objective of avoiding the intervention of the inter-American system. When there has not existed effective access to remedies and there has been a delay in the application of justice, the requirement of previous exhaustion of domestic remedies cannot prevent a case of alleged human rights violations from being heard by an international forum such as the Commission.

45. Based on the foregoing arguments, the Commission concludes that the requirement of exhaustion of domestic remedies does not apply in the present case. The petitioners have demonstrated that effective access to domestic remedies was denied and that an unwarranted delay in the application of justice has resulted considering the time which has lapsed since the commission of the crime. Therefore, applying the exceptions to the requirement of exhaustion of domestic remedies established in Article 46(2)(b) and (c) of the Convention, the Commission declares the present case admissible.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible, in accordance with Articles 46, 47 and 48 of the Convention, the petition presented in the present case number 10.636.
2. To send this report on admissibility to the Government of Guatemala and to the petitioners.
3. To publish this report in the Annual Report of the Commission.
4. To continue with the consideration of the merits of the case.