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Title/Style of Cause: Leonor La Rosa Bustamante v. Peru
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Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo, Henry Forde.
Dated: 8 December 1998
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Represented by: APPLICANTS: Miguel Jugo Vieira and Heriberto Manuel Benitez Rivas
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I. SUMMARY

1. By letter of June 2, 1997, Miguel Jugo Vieira and Heriberto Manuel Benítez Rivas, representing the Pro Human Rights Association (hereafter APRODEH), lodged a petition with the Inter-American Commission on Human Rights (hereafter "the Commission"), on behalf of Mrs. Leonor La Rosa Bustamante. Among other things, the petition alleged that Mrs. La Rosa Bustamante, who was working as an agent of the Peruvian Army Intelligence Service (hereafter SIE), had been tortured by members of that institution, and it further stated that Articles 7(a) and (b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women had been violated.[FN1]

[FN1] Art. 7(a) "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate said violence and undertake to:

- a. Refrain from engaging in any act or practice of violence against women and ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
 - b. Apply due diligence to prevent, investigate, and impose penalties for violence against women.
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II. FACTS

2. The petitioners stated that on February 8, 1997, Mrs. La Rosa Bustamante was kidnapped by members of the Peruvian Army Intelligence Service (SIE), and subsequently tortured by those agents in the basement of the Army's general quarters. According to the case records, the victim was beaten, electric current was applied, and her hands, legs, and arms were burned. As a result of the torture inflicted, Mrs. La Rosa Bustamante suffered nasal and vaginal hemorrhaging, and received an injury to her spinal cord that has left her prostrate in a wheelchair.

3. After that, Mrs. La Rosa Bustamante was confined to a Military Hospital, where she was kept *incomunicado*, and, according to the petition, was the victim of another abduction attempt. At the request of the petitioners, on May 23, 1997, the Commission adopted precautionary measures and recommended to the government that Mrs. La Rosa Bustamante be transferred to a civilian hospital and that the order to remain silent be lifted. It considered that such measures were necessary "to prevent irreparable damage to persons."

4. The petitioners indicated that the investigation into the case did not begin until the acts of torture were made public in a television interview given by the victim. Although a military court convicted four members of the SIE for the acts described and sentenced them to eight years in prison, a higher military court overturned the judgment for two of the agents and acquitted them.

5. Finally, the state informed the Commission that for humanitarian reasons, it had decided to finance the victim's medical treatment. However, the petitioners indicated that the government prevented that assistance from being provided.

III. GENERAL CONSIDERATIONS

A. Competence of the Commission

6. Peru is a State Party to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, since it deposited its instrument of ratification on June 4, 1996. Pursuant to Article 12 of that instrument,[FN2] the Commission is competent to hear petitions that contain denunciations or complaints of violations of Article 7 by a State Party. In view of the fact that the petitioners allege that the acts reported constitute a violation of Article 7(a) and (b) of that Convention, the Commission is therefore competent to consider the alleged violations.

[FN2] Article 12 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women establishes that:

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

7. Moreover, the Commission believes that the reported acts are also in violation of Article 5 of the American Convention on Human Rights, ratified by the Republic of Peru on July 28, 1978. In these circumstances, the Commission also has competence to consider the possible violation of the right to humane treatment enshrined in Article 5 of the Convention.

B. Admissibility of the Petition

1. Exhaustion of domestic remedies

8. The government stated in its response to the petition that the petitioners had not exhausted domestic remedies since a decision was pending before the Review Court of the Supreme Council of Military Justice, on the appeal filed against the judgments issued by the War Court of the Supreme Council of Military Justice. However, it appears from the records that this situation has changed.

9. In fact, according to information appearing in the case file, the Supreme Council of Military Justice handed down a final guilty verdict against Army Commander José Salinas Zuzunaga and Army Major Percy Salcedo Sandoval, and sentenced them to eight years in prison, and acquitted Army Colonel Carlos Sánchez Noriega and Army Major Ricardo Anderson Kohatsu in February 1998.

10. In these circumstances, and since the judgment was final, the requirement of admissibility established in Article 46(1)(a) has been met.

2. Deadline for lodging the petition

11. The petition was lodged before the period of six months counting from the final judgment handed down by the Supreme Council of Military Justice, which partially revoked the judgment of a lower military court, by convicting two of the persons charged and acquitting the other two. In fact, this decision was issued in February 1998, and the petition was lodged on June 2, 1997.

12. It is justified on the basis of the fact that the petition contained a request for precautionary measures which the Commission supported. As stated, at the time the petition was lodged, Mrs. La Rosa Bustamante alleged that she had been admitted to a military hospital, after having been tortured by personnel of the Army Intelligence Service. According to the complaint, while in the hospital, she had been the victim of an attempted abduction, and the Commission considered that it was necessary to transfer her to a civilian hospital "to prevent irreparable personal damage."

13. Therefore, the Commission considers that the petition is in conformity with the requirement stipulated in Article 46(1)(b).

3. Other international entities

14. The petition meets the requirements of Art. 46(1)(c), since it is not pending in another international proceeding for settlement. Nor is it a duplication of another petition already

considered and settled by the Commission or by another international organization to which the affected state is a party.

15. In this regard, account should be taken of the fact that although the violations under consideration were reported to the Special Rapporteur on Torture of the United Nations Human Rights Commission, this situation does not prevent the Commission from hearing the case, pursuant to Article 39(2)(a) of the Commission's Regulations.

16. In fact, according to that provision, when the procedure followed before another organization or agency is limited to an examination of the general situation on human rights in the state in question and there has been no decision on the specific facts that are the subject of the petition, or when it will not lead to an effective settlement of the violation denounced, the Commission shall not refrain from taking up and examining the petition.

17. Since the proceedings of the Special Rapporteur on Torture of the United Nations Human Rights Commission are of a general nature, the Commission concludes that there is no duplication of procedures.

IV. CONCLUSION

18. The Commission concludes that it has competence to take up the case in point and that it is admissible pursuant to the requirements established in Articles 46 and 47 of the American Convention.

Based on these factual and legal arguments, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify the parties of this decision.
3. To pursue its consideration of the merits of the case.
4. To put its services at the disposal of the parties with a view to arriving at a friendly settlement based on respect for the rights protected by the American Convention and invite the parties to reach a decision on this within two months.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed on the eighth of December, 1998. (Signed by): Carlos Ayala Corao, President; Robert K. Goldman, First Vice-President; Jean Joseph Exumé, Second Vice-President; and, Commissioners Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo, and Henry Forde.