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Decided by: President: Claudio Grossman;
First Vice-President: Juan E. Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 3 December 2001
Citation: Lopez Alvarez v. Honduras, Case 12.387, Inter-Am. C.H.R., Report No. 124/01, OEA/Ser./L/V/II.114, doc. 5 rev. (2001)
Represented by: APPLICANT: Gregoria Flores, president of Organizacion Fraternal Negra Hondurena
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I. SUMMARY

1. On December 13, 2000, the Inter-American Commission on Human Rights (hereafter “the Commission” or “IACHR”), received a petition submitted by the Organización Fraternal Negra Hondureña, OFRANEH [“Honduran Black People’s Fraternal Organization”], represented by its president Mrs. Gregoria Flores (hereafter “the Petitioner”), on behalf of Mr. Alfredo López Alvarez, a Honduran citizen of Garífuna descent (hereafter “the victim”), against the Republic of Honduras (hereafter “the Honduran State”, “Honduras”, or “the State”). The petition declares that the victim is a recognized Garífuna leader, a defender of his people’s human rights, that in this context he was arrested on April 27, 1997, and accused of a crime that he did not commit, that he has been held until this date in preventive detention, and that his case is still at the indictment stage. The violations denounced relate to alleged irregularities committed by the justice authorities during the criminal proceedings undertaken against the victim, involving trial for the crime of possession of and trafficking in narcotics, whereby the Honduran State violated the right to due process, to judicial guarantees and to the right of equality before the law, enshrined in the American Convention on Human Rights (hereafter “the Convention” or “the American Convention”).

2. With respect to admissibility, the Petitioner argues that her petition is admissible, in light of the exceptions to the requirement of exhaustion of domestic remedies and the deadline for submitting the petition, as stipulated in Article 46(2)(a) and (b) of the Convention.

3. For its part, the State argues, on the question of admissibility, that Mr. Alfredo López Alvarez was imprisoned for the crime of possessing and trafficking in narcotics, one for which release on bail does not apply, that all guarantees granted by the right of legitimate defense have

been observed, and that criminal justice actions available under Honduran domestic legislation are still in process.

4. The Commission considers that the Petitioner's charges, if proven, could constitute violations by the State of the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to equality before the law (Article 24), the obligation to respect rights (Article 1(1)) and the right to judicial protection (Article 25), of the Convention, to the prejudice of Alfredo López Alvarez, and after examining the positions of the parties and fulfillment of the requirements stipulated in Articles 46 and 47 of the Convention, it has concluded that it is competent to hear the complaint and to declare the petition admissible.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On December 13, 2000, the Commission received the petition submitted by the Petitioner against the Honduran state, and on January 11, 2001, it sent the relevant portions of the petition to the State and requested it to transmit any observations with respect to how the complaint should be handled, within 30 days. On March 23, 2001, the Petitioner requested the Commission to order precautionary measures on behalf of the victim, in light of the fact that he had been removed from the Tela Penal Center, and that his whereabouts was unknown at the time of the application. The Commission asked the State to provide information on the application for precautionary measures, on the same date. On March 24, the Commission was advised by the Petitioner, by telephone, that Mr. Alfredo López Alvarez had been transferred to the Cortés Penal Center. On April 11, 2001, the Commission again asked the State to submit observations on the petition, the relevant portions of which were sent to it on January 11, 2001.

6. On April 20, 2001, the State sent the Commission its observations on the petition and on the request for precautionary measures, and these were duly transmitted to the Petitioner. On May 25, 2001, the Petitioner sent to the Commission her response to the State's observations. On June 15, 2001, the Petitioner sent the Commission a copy of the decision of May 2, 2001, of the La Ceiba Court of Appeals, declaring null and void the decision to take the case to plenary, and ordering that procedural irregularities be remedied and that a new judgment be issued. On that same date, the Commission requested additional information from the State and from the Petitioner. On August 9 and 10, 2001, the Petitioner and the State, respectively, sent the Commission their responses to these requests, with the relevant information.

7. On August 23, the Petitioner submitted additional information, which was sent to the State on August 24, 2001. On November 20, the State submitted additional information which was transmitted to the Petitioner.

8. During its 113^o regular session, the Commission intended to hold a hearing, but this was suspended at the request of the Petitioner, for reasons of force majeure.

III. POSITIONS OF THE PARTIES

A. The Petitioner

9. In the complaint, the Petitioner declares that the OFRANEH was created in 1978 to defend the individual and collective rights of the Garífuna people, rights that for decades had been usurped. Beginning in 1992, the tourist business Marbella and other foreign investors, with the complicity of the civilian and military authorities, had usurped the property rights of the Garífuna community of “Triunfo de la Cruz”, located in the municipality of Tela. Faced with the loss of their lands, community and national organizations launched a series of complaints, and were successful in having some of the usurping acts of the tourist promoters suspended. During this struggle, according to the Petitioner, Mr. Alfredo López Alvarez distinguished himself as an outstanding defender of the rights of the Garífuna people. The Petitioner maintains that, because Mr. Alfredo López Alvarez acted as secretary of OFRANEH and president of the Committee for the Defense of Tribunal Lands (CODET), he was arrested on April 27, 1997, in the city of Tela, together with Messrs. Luis Angel Acosta Vargas and Zuni Loreto Cubas, and accused of possessing and trafficking in narcotics. The Petitioner claims that the victim is innocent of the crime of which he is accused, and that the accusation for which he was arrested is a fabrication concocted by persons with an interest in the Garífuna lands, together with government agents, in order to frighten and inhibit the Garífuna people from defending their territories.

10. The Petitioner maintains that during the criminal trial of the victim there were serious irregularities, that he was not offered elementary judicial guarantees, and that due process and the right to a fair trial have been violated. She adds that the victim was convicted on November 7, 2000, in the court of first instance, without any evidence to demonstrate his guilt, and was sentenced to 15 years in prison and a fine of one million lempiras.[FN1]

[FN1] Mr. Acosta Vargas received the same sentence. Mr. Zuni Loreto Cubas died on June 25, 1999, while he was being held under preventive detention

11. The serious irregularities during the criminal trial are clear to see, according to the Petitioner, in the negative outcome of the second analysis of the drug sample that was supposedly seized from the accused. This analysis was conducted on May 4, 1998,[FN2] by the Toxicological Chemical Laboratory, and was in fact ordered by the court hearing the case. Although the result was negative,[FN3] the court did not terminate proceedings. As additional information, the Petitioner submitted a resolution of the Court of Appeals of La Ceiba, dated May 2, 2001,[FN4] relating to an appeal brought against the initial conviction. In that resolution, the court noted that a number of irregularities had been committed during the procedures, and declared null and void all judicial actions taken since the decision of October 8, 1997, opening the plenary trial. Moreover, it ordered the case to be returned to the court of first instance, to correct the errors indicated in that resolution. The operative portion of the court resolution indicates:

[FN2] Page 128 of the file examined at proceedings before the Sectional Court of Tela, beginning on April 28, 1997, against Messrs. Luis Angel Acosta Vargas, Zuni Loreto Cubas and Alfredo López Alvarez.

[FN3] Results of the preliminary analysis issued on May 14, 1997, tested positive.

[FN4] Document attached by the Petitioner, received on June 15, 2001.

In the present case, neither the public prosecutor who appointed the narcotics agents who carried out the operation, nor the judge of first instance took the pains to summon those persons to their offices, and were content to rely upon the statement of a journalist who did not witness the seizure of the drug, which means that the investigation into the facts was not completed. Moreover, during the confrontation hearing, the accused was forced to testify under oath, all of which constitutes a violation of constitutional guarantees to the right of defense and due process.” The resolution adds “that the foregoing procedural irregularities constitute a violation of compulsory standards, the penalty for which is absolute nullity of proceedings, which this tribunal is obliged to declare ex officio.[FN5]

[FN5] Resolution of the Court of Appeals of La Ceiba, dated May 2, 2001.

12. The resolution of the Court of Appeals of La Ceiba returned the case to the indictment stage, which means that the victim has been in preventive custody since April 27, 1997, until today, or 56 months, without completion of indictment proceedings, nor has his guilt been demonstrated in the crime of which he is accused. On July 20, 2001, according to additional information from the Petitioner, an appeal for habeas corpus[FN6] was brought before the Court of Appeals of La Ceiba on behalf of the victim, but this was declared out of order on July 23, 2001.

[FN6] Document submitted by the Petitioner, received August 23, 2001.

13. With respect to the precautionary measures requested on behalf of the victim, on March 23, 2001, the Petitioner, in her observations to the response of the State, declared that the transfer of Mr. López Alvarez from the Tela Penal Center to the Cortes Center was arbitrary. She also indicated that in 1999 a complaint had been brought before the Honduran Committee on Human Rights (CODEH), because the Director of the Tela Penal Center, Mr. Nasir López, prohibited the victim from speaking in Garífuna with his family when they visited him, noting that by using this language he could transmit information to denounce the arbitrary measures that had been committed against the prisoners. The Petitioner states that the events of March 22, 2001, represented a reprisal by the head of the penal center, who had ordered the “Mara 18”[FN7] to attack the prisoners because they had organized a Committee for the Defense of Prisoners (CODIN), of which Mr. López Alvarez was vice president.

[FN7] A gang of delinquents.

14. The Petitioner maintains that her petition is admissible, because of the exceptions to the requirements for exhaustion of domestic remedies and the time limit for submitting a petition, provided in Article 2(a) and (b) of the Convention.

B. The State

15. On April 24, 2001, the State sent the Commission its response to the petition and the application for precautionary measures.

16. With respect to the petition, the State declared that Mr. López Alvarez was in custody for the crime of possessing and trafficking in narcotics, a crime which according to Honduran legislation did not allow for provisional release. With respect to the process, it reported that the sentence of the Tela court (file 2852-2001) convicting Mr. López to 15 years imprisonment and payment of a fine of one million lempiras, was appealed to the Court of Appeals of the city of La Ceiba, and that it was pending decision by that tribunal, which must either confirm the sentence or overturn it on legal grounds. Finally, the State declared that in the present case all guarantees covered by the right to legitimate defense had been observed.[FN8]

[FN8] Communication from the State received on April 23, 2001.

17. With respect to the application for precautionary measures, the State attached a note from the Director of the Penal Center of Tela addressed to the judge of the sectional court of Tela, Lizeth Gomez Robleda, reporting on the violent events that had happened in that center, provoked by the prisoners themselves, which had resulted in several injuries and death threats, including against the prisoner Alfredo López Alvarez. It adds that the decision to transfer him to the penal center of Puerto Cortés was taken on instructions of the senior authorities of the Secretariat of State for Security, to ensure his personal safety, and to avoid possible bloodshed.

18. On August 10, 2000, in response to a request from the Commission for information, the State reported, with respect to the above-mentioned resolution of the Court of Appeals of La Ceiba dated May 2, 2001, as follows:

a) Proceedings have returned to the indictment stage. With nullity having been declared, the parties are free to present the relevant evidence. The court annulled proceedings because, despite having twice summonsed the police officers who had arrested the accused, those officers were never subjected to legal examination because they failed to appear in court. The State notes that, in returning the case to the indictment stage, the Court of Appeals had allowed the attorneys for the accused ample opportunity to present evidence.

b) The State adds that the law sets no specific time period for correcting the errors identified by the Court of Appeals, and that they must be rectified as quickly as possible.

c) It declares that, given the nature of the crime of which the accused are standing trial, national legislation does not offer the benefit of an alternative to imprisonment. Moreover, Decree No. 127/1996, which provides benefit of release for persons held under preventive detention in penal institutions, establishes that prisoners who are being tried for the crimes of

treason, parricide, murder, kidnapping, rape, robbery followed by homicide, or automobile theft may not benefit from those provisions, nor may those imprisoned under the law on illicit use and trafficking of drugs and psychotropic substances, regardless of the degree of the crime, the form of participation, or the degree of guilt of the accused.

d) Finally, it indicates that Honduran criminal legislation sets no maximum limit on preventive detention in criminal proceedings.

19. With respect to admissibility, the State maintains that criminal proceedings are still underway, as provided in Honduran domestic legislation, and that all of the guarantees pertaining to the right of legitimate defense have been observed.

IV. ANALYSIS WITH RESPECT TO COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission, *ratione loci*, *ratione personae*, *ratione temporis*, *ratione materiae*

20. The Petitioner is entitled, under Article 44 of the American Convention, to bring complaints before the Commission. The petition in question names individuals as presumed victims whose rights, as enshrined in the Convention, the State of Honduras was bound to respect and guarantee. As concerns the State, the Commission notes that Honduras is a party to the American Convention, having ratified it on September 8, 1977. The Commission therefore has competence *ratione personae* to hear the complaint.

21. The Commission has competence *ratione loci* to hear this petition because it alleges violations of the rights protected in the American Convention, committed within the territory of a member State.

22. The Commission has competence *ratione temporis*, because the facts alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was already in effect for the State.

23. Finally, the Commission has competence *ratione materiae*, because the petition alleges violations of human rights protected in the American Convention.

B. Requirements of admissibility

a. Exhaustion of domestic remedies

24. Article 46(1)(a) of the Convention establishes, as a requirement for admitting a petition, that the remedies available under domestic jurisdiction have been exhausted, in accordance with generally recognized principles of international law. Article 46(2) of the American Convention establishes that the provision of Article 46(1)(a) 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 under the aforementioned remedies.

25. In the current case, the State opposed the exception of inadmissibility in the initial stage of proceedings, because of the failure to exhaust domestic remedies, and declared in its response to the complaint that judicial proceedings consistent with domestic legislation were still underway.

26. The Petitioner, on the other hand, alleges that there has been excessive and unjustified delay in handling criminal proceedings against the victim, and that serious irregularities have been committed during the process.

27. The Commission has indicated as a general rule that a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve evidence and safeguard the rights of any person who might be considered a suspect in the course of the investigation.[FN9] The Commission appreciates that the Court of Appeals of La Ceiba has overturned the conviction because of procedural irregularities. Nevertheless, it notes that, although 56 months have passed since the investigation began, it is still at the initial indictment stage, and the accused remain in preventive custody, which constitutes clear evidence of delay and little regard for the effectiveness of those remedies, for purposes of the requirement established in Article 46(2) of the American Convention. As the Inter-American Court has indicated, while any criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies does not mean that international intervention on behalf of victims must be delayed until it is useless.

[FN9] Report N° 34/01, Case 12.250, Massacre at Mapiripan, Annual Report of the IACHR 2001, paragraph 24.

28. Therefore, given the characteristics of the present case, the Commission considers that the exception stipulated in Article 46(2)(c) of the American Convention is applicable, and that the requirements of the American Convention with respect to the exhaustion of domestic remedies do not apply.

29. It remains to note that invoking exceptions to the rule of local remedy exhaustion as stipulated in Article 46(2) of the Convention is strictly related to determining possible violations of certain rights enshrined therein, such as the right to a fair trial, personal liberty, equality before the law, and judicial protection. Nevertheless, Article 46(2), because of its very nature, is a standard that must prevail independent of the substantive standards of the Convention. Therefore, the determination of whether the exceptions to the rule of local remedy exhaustion stipulated in that role are applicable to the case in question must be made in advance, and separately from the analysis of the substance of the issue, since it depends on a standard of appreciation different from that used in determining violations of Articles 8, 7, 24 and 25 of the Convention. As to the causes and effects that have prevented the exhaustion of domestic remedies in this case, they will be analyzed, as they apply, in the report that the Commission will

adopt on the substance of the dispute, in order to determine whether they actually constitute violations of the American Convention.

30. With respect to the exhaustion of remedies and the length of imprisonment, the Commission notes that Honduran legislation, as the government indicates, does not permit a person to be released from prison if he is being processed for crimes such as those of which Mr. López is charged. Therefore, consistent with Article 46(1)(a), the petitioners are exempt from exhausting the remedies of internal jurisdiction.

b. Time limit for submission

31. Article 46(1)(b) establishes that one of the requirements of admissibility for a petition is that it must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment".

32. Article 46(2) of the American Convention establishes that the provision of Article 46(1)(b) will 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 under the aforementioned remedies.

33. In the case in question, fulfillment of the requisite established in Article 46(1)(b) of the American Convention is related to the application of the exceptions to domestic remedy exhaustion established in the Convention, as discussed in the previous paragraphs.

34. Therefore, the Commission finds that the petition is not subject to the requirement of Article 46(1)(b) of the Convention, and that it has been presented within a reasonable time limit.

c. Duplication of proceedings and judgments

35. Articles 46(1)(c) and 47(d) of the Convention establish as requirements of admissibility that the subject of the petition or communication is not pending in another international proceeding for settlement and that it is not substantially the same as one previously studied by the Commission or by another international organization.

36. The file does not suggest that the petition is pending settlement in another international proceeding, or that it is substantially the same as one previously examined by the Commission or by another international organization.

37. The Commission therefore includes that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the alleged acts

38. Article 47(b) of the Convention establishes that any petition will be inadmissible if it “does not state facts that tend to establish a violation of the rights guaranteed by this Convention”.

39. The Commission considers that the Petitioner's allegations, if proven, could characterize a violation of the rights guaranteed in Articles 7, 8, 25 and 24 of the Convention, taken in concordance with Article 1(1) of that international instrument.

40. The Commission therefore considers that the requirements of Article 47(b) and (c) of the American Convention are satisfied.

V. CONCLUSIONS

41. The Commission concludes that it has competence to hear the complaint submitted by the Petitioner, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention.

42. On the basis of the arguments of fact and of law set forth above, and without prejudice to the substance of question,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the complaint of the Petitioner on the presumed violation of Articles 7, 8, 24, 25 and 1(1) to the prejudice of Mr. Alfredo López Alvarez.
2. To notify this decision to the Honduran State and to the Petitioner.
3. To continue its analysis of the substance of the case; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on December 3, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.