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File Number(s):	Report No. 14/06; Petition 617-01
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Raquel Natalia Lagunas and Sergio Antonio Sorbellini v. Argentina
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza. Commissioner Victor E. Abramovich, an Argentine national, did not participate in either the deliberations or the decision on the present case, in keeping with Article 17.2 of the Commission's Rules of Procedure.
Dated:	2 March 2006
Citation:	Lagunas v. Argentina, Petition 617-01, Inter-Am. C.H.R., Report No. 14/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. This report concerns the admissibility of petition 617/01, which Leandro Nicolás Lagunas, Graciela Lambert de Lagunas and Irma Girolami de Sorbellini (hereinafter “the petitioners”) filed against the Argentine Republic (hereinafter “Argentina” or “the State”). The Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission” or “IACHR”) received the petition on September 6, 2001 and initiated its processing. The petition concerned the deaths of the petitioners’ children, Raquel Natalia Lagunas, age 17, and Sergio Antonio Sorbellini, age 19, in the Argentine province of Río Negro in March 1989.

2. The petitioners allege that rather than conduct an effective investigation when their children’s lifeless bodies were discovered, the police set about covering up the facts and either eliminating or tampering with the evidence. The petitioners cite a number of procedural irregularities that actually resulted in the conviction of two persons. Eventually, however, their convictions were overturned on the grounds of those same procedural irregularities. The petitioners point out that the Legislature created a special committee to investigate the chain of cover-ups in this case, which it regarded as matters of grave public concern. The petitioners also state that thanks to the action taken by this special committee, the bodies of the two alleged victims were exhumed and it was discovered that the legally sworn autopsies were in fact never done and that the police records and the reports of the experts were falsified.

3. The petitioners allege that despite the many years that have since passed, the main case involving the deaths of young Lagunas and Sorbellini and the various related cases having to do with the supposed cover-up, have not progressed past the probable cause phase and those responsible for the crime and its cover-up have thus far eluded justice. The petitioners allege that the facts in this case establish violations of the right to life, the right to a hearing with due guarantees, the right to equal protection and the right to judicial protection, recognized, respectively, in Articles 4.1, 8.1, 24 and 25.1 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”).

4. For its part, the State contends that owing to the apparent irregularities said to have been present in the case, a police committee and a special legislative committee were formed to look into this case. The State recounts the numerous efforts of that legislative committee, which succeeded in having the bodies of the two victims exhumed in September 1997 and had two forensic physicians indicted on charges of aggravated perjury, as well as the ballistics expert who participated in the case. The State also reports that cases have been brought against a number of police officers who had a hand in the case, on charges of criminal conspiracy. It also notes that Judge Fernando Bajos has been removed from the bench for judicial misconduct. The State reports that inasmuch as the principal case is still open, and although mistakes and negligence attributable to police and court officials were made, the matter has now been corrected and the State is intent upon solving the crime and punishing those who had a role in the preliminary probable cause phase.

5. Without prejudging the merits of the complaint, the Commission concludes that it is competent to examine the petition concerning the deaths of Raquel Natalia Lagunas and Sergio Antonio Sorbellini, as regards the alleged violations of the rights to life, to a hearing with due guarantees and to judicial protection, recognized in Articles 4, 8 and 25 of the American Convention. Furthermore, in application of the principle *jure novit curia*, in the merits phase the Commission will look at whether Articles 5 and 19 may have also been violated, coupled with violation of the generic obligation to respect and ensure the Convention-recognized rights, provided for in Article 1.1 of the Convention. These articles are implied in the description of the facts in the complaint, even though the petitioners did not specifically single them out. The Commission also decides to notify the parties of this decision, to publish it and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING WITH THE COMMISSION

6. The petition was received at the Commission on September 6, 2001, and the pertinent parts thereof were forwarded to the State on October 12, 2001. The latter was given a period of two months in which to submit its response. On December 19, 2001 and again on January 17, 2002, communications from the Government were received at the Commission containing the State’s response to the petition. The State’s comments were forwarded to the petitioners on January 31, 2002.

7. On March 25, 2002, the petitioners’ observations on the State’s response were received at headquarters, and then forwarded to the State on April 19, 2002. The State sent its observations on May 23, 2002 and added more information on June 12, 2002. The State’s report and the

additional information it supplied were sent to the petitioners on June 27, 2002. The petitioners submitted their observations on August 10, August 22 and September 9, 2002.

8. The Commission conducted a working visit to Argentina in August of 2002. During that visit, the delegation traveled to Río Negro to meet with the authorities and the petitioners in this and other complaints. Since that time, a friendly settlement process was formally arranged between the parties, who met on a number of occasions to pursue the process.

9. Accordingly, on September 4 a communication was received at the Commission wherein the State informed the IACHR that its talks with the petitioners with a view to arriving at a friendly settlement had formally gotten underway. In subsequent communications the State kept the Commission informed of the progress made in the friendly settlement process.

10. On October 18, 2002, during its 116th regular session, the Commission held a working meeting with the parties to move the friendly settlement process forward. The Commission also met with both parties during its working visit to Buenos Aires in August 2003.

11. On several occasions thereafter, both the State and the petitioners wrote to the Commission to report on the friendly settlement process. As part of that process, the parties signed a document on September 22, 2002, spelling out the points of consensus achieved as of that time; other issues remained pending, including the question of reparations. In their later communications, both parties indicated that they had not reached agreement on certain essential issues, such as reparations.

12. On October 6, 2003, the petitioners wrote to the Commission to formally advise it of their decision to withdraw from the friendly settlement process. They asked the Commission to proceed with its consideration of the petition's admissibility. This communication was received at the Commission on October 24, 2003. On April 7, 2004 and February 28, 2005, the petitioners repeated their request that the Commission decide on the petition's admissibility.

III. POSITION OF THE PARTIES

A. The petitioners

13. The petitioners contend that on March 12, 1989, sometime after lunch, their children Sergio Antonio Sorbellini and Raquel Natalia Lagunas set off for the countryside on a tandem bicycle to gather grass for their rabbits. When they did not return, the parents and relatives began searching for them. Around midday on March 13, 1989, the family of the victims allegedly found Raquel Natalia Lagunas and Sergio Antonio Sorbellini, 17 and 19, respectively, shot to death in Río Colorado, a small, isolated community in the province of Río Negro.

14. The petitioners point out that rather than undertake an effective investigation when the bodies were discovered, the police set about covering up the facts and either eliminating or tampering with the evidence. The petitioners cite the following specific irregularities during the first phase of the investigation: the site where the bodies were discovered was not cordoned off; tracks at the site were erased; Raquel Lagunas' underwear had been replaced; the ballistics report

by expert Arriola was said to have been falsified; the autopsies described by the forensic physicians were never conducted; police officers had fabricated statements given in testimony; various materials taken into police custody allegedly disappeared; court records and other documents were falsified. The petitioners also contend that these irregularities were proven years later.

15. The petitioners allege that the police first arrested Mario Oscar González, a minor, in connection with these events; some days later, they arrested Héctor Fabián Llavel and Raúl García, who were charged based on false ballistics evidence taken from a weapon that the police had seized. The petitioners further assert that the minor Oscar González and Mr. Raúl García were convicted and sentenced to life in prison, while Mr. Llavel was acquitted. When the two convicted men appealed the ruling, the Provincial Superior Tribunal nullified the proceedings on the grounds of procedural irregularities and the weakness of the evidence. Following that, the new examining magistrate, Dr. Juan Rodolfo Torres, ordered them released.

16. Thereafter, the petitioners allege, the case languished in the courts until April 1994, when the mothers of the victims allegedly requested publicly that the son of a provincial lawmaker and a second person be investigated. Within days of their announcement, the second person purportedly committed suicide.

17. With their neighbors support, the petitioners allegedly continued to stage public demonstrations. They point out that in 1995, the newly-elected Governor, Dr. Verani, formed a police commission answerable to the new judge assigned to the case, Dr. Torres, to undertake a credible investigation into the facts of this case. However, the petitioners allege that the judge hearing the case refused to issue the court order requesting any evidence compiled by that police commission.

18. In March of 1997 and in response to popular demonstrations, the Legislature created a Special Committee composed of a number of lawmakers. The committee's mission was to investigate the chain of cover-ups, as they were regarded as very serious public concerns.

19. The creation of the special committee succeeded in reviving the case, with the result that in September 1997, the bodies of the two young people were exhumed. Prior to September 1997, the victims' parents had several times requested the judge and the prosecutor on the case to exhume the bodies to establish the cause of the victims' deaths. When at last the bodies were exhumed, it was established that the legally sworn autopsies had never in fact been conducted, that the bullets supposedly taken from the bodies did not match the weapon said to have been used in the commission of the crime, and the testimony given by the police and the experts and included in the case record was false. It was also discovered that the victims' clothing had disappeared.

20. The petitioners allege that the special committee added new energy to the case and instituted a reward and witness protection program that brought new evidence and testimony to light, which in turn was instrumental in implicating another lawmaker. The new witnesses included retired police officers, accomplices and accessories, and prisoners serving time for similar crimes. The judiciary, however, instituted proceedings only against the police and experts

involved and charged them with perjury. In the end, only the ballistics expert was convicted; he was given a two-year suspended sentence and disqualification. The petitioners add that Examining Judge Fernando Bajos was impeached and removed from the bench. And yet, according to the petitioners, no criminal charges have been brought against him or the other officials presumably responsible, even though conduct proven to have been committed by them would constitute crimes of several types. The petitioners point out that various cases have been instituted in connection with this investigation, but most have been discontinued, which means that crimes like perjury, denial of justice, violation of suspension, breach of public duty, flight, falsification of documentary evidence, breach of procedural duties, failure to discharge one's public functions and the like have gone unpunished.

21. The petitioners enclose the final report of the Special Legislative Committee created under Law No. 3088 of December 22, 1997, especially to look into the case. The report describes the case as one of the most enigmatic and complex unsolved cases in the history of the province. The report describes the police inquiry and probable cause proceeding as flawed and underscores the fact that the Public Prosecutor's Office did virtually nothing on the case. The report states that police forensic physician Andrés Ferreras admitted to the committee that he had not performed the routine procedures that an autopsy involves or the additional studies that are essential, even though his description of the autopsy appears in the files of the principal case. The special legislative committee's report also states that the evidence provided by ballistics expert Julio César Arriola was the basis upon which the men initially charged were convicted, but it was later determined that the weapon linked to the convicted minor was not the murder weapon, since it was not a match for the bullets taken from the victims' bodies.

22. The report in question, supplied by the petitioners, contains a list of 16 irregularities alleged to have occurred during the police investigation. They included poor detective work at the site where the bodies were discovered, a failure to cordon off the site, failure to keep a record of the evidence, replacement or loss of the victims' personal effects, failure to search for witnesses or to conduct searches, falsification of procedural documents by the police, excessive reliance on one witness with ties to the police force, the alleged forgery of a police document, improper seizure of a vehicle linked to the defendants, etc. The report also states that all these irregularities were from the same file, the very file that the probable cause judge and the trial judges used. The report also singles out serious errors in the conduct of the judge and the prosecutor. The petitioners allege that the Special Legislative Committee tried to do what the judiciary could not do. However, starting in 1998 the committee became less and less active and is now virtually inactive.

23. Based on the legislative committee's report, the police who were involved in the probable cause phase were allegedly charged with the crime of criminal conspiracy. However, the petitioners report that on December 3, 2003, all the police officers charged with conspiracy and double aggravated homicide in the murder of the petitioners' children were acquitted. Later, during the friendly settlement process initiated, the petitioners allegedly asked the government to institute administrative law proceedings against the police involved. The petitioners contend, however, that the Government chose instead to retire these police officers with full rank and benefits.

24. The petitioners point out that they were permitted to participate as plaintiffs in the principal case, but not in the many related cases prosecuted to investigate and punish the police and judicial cover-up in this case. They allege that they had taken every measure possible and had cooperated vigorously in the investigation. With the petition they filed with the Commission, the petitioners enclosed copies of the statements they made in the principal case, as private plaintiffs. However, they make the point that it should not be up to private citizens to correct the errors of the courts.

25. According to the petitioners, the facts in this case would indicate that political figures, police and members of the judiciary were implicated in their children's murder. They add that at around the same time, dozens of similar crimes were committed in the province of Río Negro; the same people were involved in many such cases. The petitioners allege that despite the time that has passed, the main case involving the deaths of young Lagunas and Sorbellini and the various related cases having to do with the supposed cover-up, have not progressed past the probable cause phase and those responsible for the crime and its cover-up have thus far eluded justice. Given these facts, the petition filed with the Commission alleges violations of the right to life, the right to a hearing with due guarantees, the right to equal protection and the right to judicial protection, recognized in Articles 4.1, 8.1, 24 and 25.1 of the Convention.

B. The State

26. The State contends that Raquel Natalia Lagunas and Sergio Antonio Sorbellini were allegedly shot to death, for no apparent motive. When their bodies were discovered on March 13, 1989, the State deployed its resources in search of evidence.

27. The State reports that the case was assigned to the Examining Court of Dr. Fernando Héctor Bajos. It adds that once the probable cause phase was completed, the case went to trial, where Mr. González and Mr. García were convicted and Mr. Llavell acquitted. Later, the tribunal of cassation nullified the order binding the defendants over for trial and all its effects, and returned the case and the defendants to the examining court. In February 1992, the case was assigned to Judge Juan Torres, who acquitted Mr. González and Mr. García.

28. The State contends that out of sympathy for the suffering of the victims' next of kin, the Provincial Governor of Río Negro suggested the creation of a police commission and a Special Legislative Committee dedicated exclusively to investigating this crime. The State recounts the numerous efforts of the Special Legislative Committee created for the Sorbellini-Lagunas case. The State asserts that when it discovered the many irregularities in the proceedings, the Special Legislative Committee prepared the corresponding criminal and administrative law complaints to establish who was to blame and to determine whether police personnel were guilty of negligence or malice, criminal involvement or cover-up.

29. The State highlights a number of the Committee's accomplishments, among them the exhumation performed in 1997 and the criminal cases for aggravated perjury brought against physicians Andrés Bernardo Ferreras and Antonio Fonseca, and against ballistics expert Julio César Arriola, as well as the police officers who had a hand in the police investigation. It also alleges that by order of the Río Negro Judiciary Council, responding to the complaints filed,

Judge Fernando Bajos was removed from the bench, having been found guilty of judicial misconduct. The State adds that, as observed in the Legislative Committee's report supplied by the petitioners, the provincial legislature passed a number of laws that have provided useful tools in the investigation process, such as the witness protection law and the rewards law.

30. The State also reports that the main case is still open and that the families have been plaintiffs in the case, which means that they would have full access to the case file and to the remedies under domestic law. The State also reports that with removal of Dr. Bajos, the case was being heard by Dr. Juan R. Torres. According to the State, the remaining cases have not yet been settled and the petitioners have become plaintiffs.

31. In connection with the aforementioned related cases, the State attaches a ruling dated November 19, 2001, delivered in case 1991/00 against medical expert Andrés Bernardo Ferreras. There, he was convicted of aggravated perjury for his report on the autopsy supposedly done on Lagunas and Sorbellini, and was given a three-year suspended prison sentence and barred from practicing for a period of six years. The State points out that the exhumation performed in September 1997 showed that no autopsy had been performed, which meant that expert Ferreras had perjured himself when he described an autopsy that had never been done. The Commission has learned that the defense allegedly filed a complaint on December 17, 2001, so that the sentence has not yet been finalized.

32. The information supplied by the State also includes the December 12, 2001 ruling delivered in case 1955/00, against medical expert Ricardo Luis Fonseca. There, he was cleared of the charge of aggravated perjury in connection with the expert medical report he prepared in the Lagunas and Sorbellini case. The ruling includes a notation dated December 17, 2001, to the effect that the ruling was not yet final. In its reports, the State also mentions that a case was also instituted against ballistics expert Julio César Arriola, on charges of aggravated perjury. Mr. Arriola was convicted and disqualified from the practice of his profession.

33. The State observes that cases have also been brought against the police officers involved on charges of criminal conspiracy, namely: Héctor Almendra, Juan Moyano, Rodolfo Hugo Bohlmann, Viterbo Castro and Reinaldo Raúl Pérez. In its report the State opined that the case against the police officers was the most important of the related cases, since "the police were suspected of involvement in the murders. There was a strong suspicion that the victims had come upon a smuggling operation in which livestock were taken from the province of Río Negro to the province of La Pampa, circumventing the health barrier, and that these police were involved. They were suspected of belonging to a criminal gang formed for that purpose." The State encloses the document in which the prosecutors request that the police officers be tried on charges of criminal conspiracy. This document suggests that, in the view of the prosecutors,

"one or several participants in the criminal conspiracy at that time and place murdered Sergio Sorbellini and Raquel Lagunas, shooting them with a 22-caliber rifle. The two young victims were shot several times. The bullets damaged vital organs and were thus the cause of death. Sergio Sorbellini was killed between 6:00 p.m. and 8:30 p.m., while Raquel Lagunas was killed sometime between midnight and the early hours of the following day. It was impossible to say whether they were assaulted as well. Raquel had been burned by one or several of the members

of the criminal conspiracy or gang; a burning-hot object had been placed on her chest while she was still alive. From the evidence thus far gathered, it has been established that the defendants in this case either perpetrated the crime themselves or provided the authors of the crime with essential assistance or cooperation, or decided to commission their partners-in-crime to do the deed. [...] For a better understanding of what happened, it is important to recall that four days prior to the two murders, on March 8, 1989, a considerable number of cattle were stolen from Mr. Herminio Sorbellini, father of one of the victims.” The prosecutors’ document also states that there is “clear evidence pointing to the fact that the police were aware that the two young people had been killed even before news of the killings was reported.”

34. The State also encloses the Judiciary Council’s June 3, 1998 decision ordering Judge Fernando Bajos removed from the bench for judicial misconduct in the inquiry instituted into the murder of Lagunas and Sorbellini.

35. Thus, in the State’s view, “although mistakes and negligence attributable to the police and officers of the court involved in this case were made, the matter has now been corrected and enormous efforts have been made to move the investigation forward, despite the obstacles posed by the complexity of the case and the distractions caused by rumor and false testimony.” The State acknowledges the very serious irregularities committed by certain police officers, but concludes nonetheless that the existence of a chain of police cover-ups cannot be assumed.

36. The State’s position is that it has demonstrated its willingness to solve the crime and punish those who played a role in the probable cause phase. The State argues, therefore, that the petitioners have not satisfied the rule requiring exhaustion of domestic remedies. It points out that this is not a case of unwarranted or unjustified delay, as the case is a complex one. The State contends that the motive for the crime remains a mystery, as does the identity of the perpetrators. It argues that the fact that the required effects have not been achieved cannot be blamed on a lack of diligence in complying with its duties.

IV. ADMISSIBILITY

A. Competence of the Commission

37. Under the terms of Article 44 of the Convention, the petitioners have standing to lodge a petition with the Commission. The petition under examination here states that the alleged victims were subject to the jurisdiction of the Argentine State at the time the events occurred. As for the State, the Commission notes that Argentina is a State party to the American Convention, having deposited its instrument of ratification on September 5, 1984. The Commission is, therefore, competent *ratione personae* to examine the petition lodged. It is also competent *ratione materiae* because the petitioners are alleging violations of rights protected under the American Convention.

38. The Commission is competent *ratione temporis* to examine the petition, inasmuch as the allegations made therein concern facts that took place starting on March 13, 1989, the date on which the lifeless bodies of Raquel Natalia Lagunas and Sergio Antonio Sorbellini were found. By that date the State’s obligations as a party to the American Convention were already binding

upon it. Furthermore, the Commission is competent *ratione loci* to take cognizance of the petition because the violations of Convention-protected rights alleged therein purportedly occurred within the territory of a State party to the Convention.

B. Other admissibility requirements

1. Exhaustion of local remedies

39. One of the requirements stipulated in Article 46 of the American Convention for a petition to be admissible is that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

40. The petitioners argue that it was impossible to exhaust the remedies under domestic law. They contend that the resources still available in this case are being indefinitely prolonged by the State, allowing the murders of the petitioners’ children to go unpunished. The petitioners report that the action taken on these cases has been useless, that no one has been held accountable in the principal case, and that no criminal charges have been brought against all those alleged to be responsible for the cover-up. Furthermore, the petitioners allege, in the related criminal cases opened against some of those alleged to be responsible, the defendants were either acquitted or convicted, but the convictions have not yet become final. The petitioners explain that in a number of the related cases, principally the case brought against the police officers involved, the petitioners were not allowed to intervene as private plaintiffs. Moreover, they assert that the Argentine Government did not indicate what remedies remained to be exhausted or what recourse they have when the courts fail to act.

41. Based on the foregoing, and given the number of years that have passed since the murders of their children, the petitioners contend that the State cannot reasonably argue a preliminary objection that asserts a failure to exhaust local remedies. They therefore request that the exceptions allowed under Article 46.2 of the Convention be applied, since by now the violations have become continuing.

42. Under Article 46.2 of the Convention, the exception to the rule requiring exhaustion of local remedies applies when 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, or when 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 when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. The exception to the rule requiring exhaustion of local remedies does not apply when such remedies are not available, either as a matter of law or as a matter of fact.[FN2] The remedies that the petitioners are required to exhaust are those that are available and effective; remedies that are not decided within a reasonable period of time are neither available nor effective. Therefore, when a petitioner contends that he or she is unable to exhaust local remedies, Article 31.3 of the Commission’s Rules of Procedure provides that it shall be up to the State concerned to demonstrate to the Commission that there remain effective domestic remedies against the harm alleged. The Commission then proceeds to analyze the State’s arguments regarding exhaustion of domestic remedies.

[FN2] See I/A Court H.R., Exceptions to the exhaustion of domestic remedies (Articles 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

43. The State, for its part, contends that the petitioners failed to show that the remedies under domestic law were not made available to them or that they were somehow prevented from exhausting them. The State also notes that the Province of Río Negro has suitable remedies in place that the petitioners could have used to assert their rights in the case and effectively defend those rights. It also contends that the petitioners did not file a civil suit for damages and injuries, which is allowed under the Río Negro Procedural Code. The State has not denied the presence of irregularities in the investigation of this case, both on the part of the police and the courts. However, the State argues that those irregularities were corrected and the main case continues to be prosecuted, as do the related cases. Given these considerations, the State asks that the petition be declared inadmissible.

44. The Commission notes that the facts of this case are crimes that the State is obliged to prosecute *ex officio*. Thus, the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame. The petitioners, for their part, have persevered in their quest for justice. They were plaintiffs in the principal case, but their requests to become plaintiffs in the related cases were denied. The Commission therefore finds that while the petitioners did everything the law allowed, almost 17 years have passed since the events in this case and still the petitioners have no answer from the authorities as to why their children died and at whose hands. The gravity of their predicament was only compounded by the various irregularities committed during the police investigation and the court proceedings.

45. According to information received by the Commission, the main case is still open, but the identity of the perpetrator(s) is still unknown. The conviction of medical expert Ferreras has still not become final. Medical expert Fonseca was allegedly acquitted, although that decision is purportedly not yet final either. Ballistics expert Arriola was said to have been convicted and disqualified from the practice of his profession, but the IACHR has no information as to whether that decision has become final. The State notified the Commission that a case had been brought against the police on charges of criminal conspiracy, but the petitioners reported that the police were acquitted. The State has thus far said nothing to contradict the petitioners' claims. The latter are unable to provide additional details regarding the case against the police officers, as their request to become private plaintiffs in the case was denied.

46. The State has not provided the Commission with any specifics as to what concrete steps the petitioners must take to exhaust domestic remedies both in the principal case and in the related cases, if indeed there are such steps. The State's claim that the petitioners did not bring a civil suit for damages and injuries carries no weight since a civil suit cannot remedy the irregularities in the criminal investigation and cannot guarantee that the facts of the case will be solved and criminal responsibilities assigned. Nor has the State provided sufficient information

to justify the delay in the resolution of the various cases still pending; indeed, it has admitted that the irregularities present at the start of the case may have delayed it.

47. For the foregoing reasons, the Commission concludes that based on Article 46.2 of the Convention, the petitioners are exempt from the rule requiring exhaustion of domestic remedies.

2. Time period for lodging the petition

48. Under the terms of Article 46.1.b of the Convention, to be admissible a petition must be lodged within a specific time frame, which is within six months from the date on which the party alleging violation of his rights was notified of the final judgment at the domestic level. The rule does not apply, however, when the domestic remedies could not be exhausted owing to a failure to afford due process of law, or when access to the remedies under domestic law has been denied or there has been an unwarranted delay in rendering a final judgment. Here the petitioners point out that inasmuch as the facts of the case have thus far not been solved and the identity of those responsible has not been established, the many years that have passed since the events that motivated this petition occurred far exceed what could be considered a reasonable time period for a State to complete the process. The petitioners add that the denial of justice is a continuing violation.

49. The Commission observes that the present petition is a case in which domestic remedies could not be exhausted, so that the rule requiring that the case be lodged within a six-month period does not apply. For cases such as this one, where the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, Article 32.2 of the Commission's Rules of Procedure provides that "the petition shall be presented within a reasonable period of time, as determined by the Commission." It goes on to state that "[f]or this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

50. In the instant case, the violations being alleged began with the disappearance of the alleged victims on March 12, 1989, and the discovery of their bodies the following day. The petitioners allege that, since then, the police and court authorities have obstructed efforts to establish the facts, for the sake of a cover-up. The petitioners also contend that they continued to wage efforts to obtain justice, but without the expected results. Despite the complaints the petitioners filed with the courts and the government, neither the facts nor responsibilities have been established; the main case is still open and the verdicts in the related cases are not final. The petitioners contend that this constitutes a continuing violation of their rights to judicial protection with due guarantees. For these reasons, the Commission considers that the present petition was lodged in timely fashion.

3. Duplication of proceedings and res judicata

51. Article 46.1.c provides that the admission of a petition shall be subject to the requirement that "the subject of the petition or communication is not pending in another international proceeding for settlement", while Article 47.d of the Convention provides that the Commission shall not admit a petition that "is substantially the same as one previously studied by the

Commission or by another international organization.” In the instant case, neither party has alleged the presence of either of these two conditions for inadmissibility, nor is there any record to that effect.

4. Characterization of the facts alleged

52. For admissibility purposes, the Commission must decide whether the petition states facts that tend to establish a violation of rights guaranteed by the Convention, as required under Article 47.b thereof, or whether the petition is manifestly groundless or obviously out of order” as provided in Article 47.c. The standard by which to assess these admissibility requirements is different from the standard used when deciding the merits of a petition. For admissibility purposes, the Commission must make a prima facie evaluation to determine whether the petition establishes the grounds for a possible or potential violation of a Convention-protected right, but it does not have to establish the actual violation of rights. For admissibility purposes, the Commission does an initial analysis, without prejudging the merits of the case.

53. Given these observations, the Commission notes that the facts recounted by the petitioners tend to establish violations of the rights protected by Articles 4, 8, and 25 of the American Convention. The Commission also notes that Ms. Raquel Natalia Lagunas was a minor at the time of the events in this case and that, based on the facts alleged by the petitioners and documents submitted by the State, it is possible to infer that her right to humane treatment may also have been violated. Therefore, in application of the principle *jure novit curia*, the Commission will, during the merits phase, examine whether there exists a possible violation of Articles 5 and 19 of the American Convention, in combination with a violation of the generic obligation to respect and ensure the rights recognized in the Convention, embodied in Article 1.1 thereof, since those articles are implicit in the petition’s description of the facts, even though not specifically cited by the petitioners themselves.

54. The Commission considers that the facts described in the petition do not tend to establish a violation of the right to equal protection recognized in Article 24 of the Convention.

V. CONCLUSIONS

55. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible under Articles 46 and 47 of the American Convention.

56. Given the arguments of fact and of law herein made, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible insofar as it concerns alleged violations of the rights recognized in Articles 1.1, 4, 5, 8, 19 and 25 of the American Convention.

2. To declare the present case inadmissible insofar as it concerns alleged violations of the right recognized in Article 24 of the American Convention.
3. To notify the parties of this decision.
4. To proceed with the analysis of the merits of the case.
5. To make the present report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, and Paolo G. Carozza Commissioners.