

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 34/06; Petition 875-03
Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause: Rita Irene Wald Jaramillo and Family v. Panama
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,
Victor E Abramovich.
Dated: 14 March 2006
Citation: Wald Jaramillo v. Panama, Petition 875-03, Inter-Am. C.H.R., Report No.
34/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANT: the Center for Justice and International Law
Terms of Use: Your use of this document constitutes your consent to the Terms and
Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On October 22, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Center for Justice and International Law (CEJIL), Edwin Leslie Wald Jaramillo, and Edwina Mercedes Jaramillo (hereinafter “the petitioners”), alleging that the State of Panama (hereinafter, “the State”) did violate Articles 2, 4, 5, 7, 8, 19, and 25 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), in conjunction with the obligations assumed by the State under Article 1.1 thereof, together with Articles I, II, and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter the “Convention on Forced Disappearance”), through the forced disappearance of Rita Irene Wald Jaramillo. With respect to the violation of Article 5 of the Convention, the victims are identified as being, in addition to Rita Wald, her mother and her seven brothers and sisters.

2. The petitioners claim that on March 27, 1977, Rita Wald, a native of the province of Chiriquí who was studying at secondary school and was a student activist, was forcibly disappeared and that, to date, her whereabouts remains unknown. The petitioners claim that, as occurred in other cases under the military regime that ruled Panama between 1968 and 1989, no effective investigation was carried out.

3. The State reports on several legal proceedings that were carried out and statements that were taken in both a first investigation, conducted between 1977 and 1978, and in a second investigation, which took place between 1990 and 1994. The State describes the various errors committed during the preliminary proceedings and the negligence of some of the officials

involved in the case. However, the State maintains that the proceedings are still at the summary investigation phase, and so the remedies provided by domestic law have not been exhausted.

4. After examining the parties' positions in terms of the admissibility requirements set out in Article 46 of the American Convention, the Commission decides to declare this case admissible as regards Articles 2, 4, 5, 7, 8, 19, and 25 of the American Convention, in conjunction with the obligations assumed by the State under Article 1.1 thereof, and as regards Articles I, II, and III of the Inter-American Convention on Forced Disappearance of Persons. In addition, it resolves to notify the parties of its decision and to continue with its analysis of the merits, and it also decides to publish this report.

II. PROCESSING BY THE COMMISSION

5. The original petition was received by the Commission on October 22, 2003, and was recorded as No. 875/03. The victim was also named in a global case covering disappeared persons in Panama, which was assigned No. 882/03. On February 22, 2005, the petitioners told the Commission that in the case at hand the Truth Commission did not represent the alleged victim and that her representation had been assigned to her mother, Edwina Jaramillo, and her brother Edwin Wald, in conjunction with CEJIL Mesoamérica. On February 28, 2005, the Commission informed the General Director of Panama's Truth Commission that "it has proceeded to remove, from the list of victims given by [the Truth Commission] in complaint No. P-882/03, the name of Rita Wald Jaramillo." On July 13, 2005, the Commission conveyed the petition to the State, in compliance with Article 30.3 of its Rules of Procedure, and it set a deadline of two months for the State to reply. On September 14, 2005, the State requested a 30-day extension for submitting its response to the petition; it was given until October 14, 2005, in compliance with Article 30.3 of the Commission's Rules of Procedure. The State filed no response within the extended deadline granted; it did, however, do so on October 24, 2005, after the period of time provided for in the Rules of Procedure. The Commission transmitted this response to the petitioners on October 27, 2005.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. The petition deals with the forced disappearance of the minor child Rita Irene Wald Jaramillo on March 27, 1977, at which time she was seventeen years of age. The disappearance was allegedly carried out by officials of Panama's military regime as a reprisal for the minor's role as an opposition student leader.

7. The petition claims that between the military coup d'état of General Omar Torrijos on October 11, 1968, and the invasion by U.S. forces on December 20, 1989, Panama was under a military dictatorship during which many serious human rights violations were perpetrated. During that dictatorial regime, the officers of the National Guard dissolved the National Assembly and appointed a military-led Provisional Government Junta.

8. According to the petitioners, during this period political activities were all but suppressed by a hardline military regime that set about arbitrarily persecuting and systematically detaining the dictatorial government's opponents. One of the most controversial issues during the regime was the ratification of the Panama Canal Treaties (the Torrijos-Carter Treaties). In response to the Government's actions in connection with those treaties, groups of students began a series of protests. The State consequently decided to intimidate and repress the student movement.

9. It is also claimed that at this time, while at secondary school, Rita Wald was a member of the Democratic Student Society (Sociedad Estudiantil Democrática, SED). At the time of her disappearance, she was studying at the Colegio José Antonio Rendón in Panama City. The petition claims that she played an active role in student politics at this school. It notes that Rita was an active leader of the SED and was well known at the school for her ideology of fighting for social justice, democracy, and equality, and against the Canal Treaties.

10. The petition reports that according to the investigation carried out by the Second Superior Court of Justice following the return of democracy, it was common knowledge that Rita had been attacked and had received threatening phone calls because of political matters.

11. The petitioners report that on Sunday, March 27, 1977, Rita left her home at around 5:00 pm to return a car to a friend of hers, Mr. Emilio Garzola, a presenter on the Onda Popular radio station. The petition relates that Mr. Garzola said that Rita handed over the vehicle in the vicinity of Galerías Obarrio at 6:00 pm and then asked him to take her somewhere else, but that he refused. Mr. Garzola said that Rita went toward the Vía España to catch a taxi. Later, according to the petition, Rita called a friend, Reina Isabel Jaén, at approximately 8:30 pm. According to this friend, Rita called to say she had a friend who wanted to meet her; the girl declined, and Rita wished her goodbye, saying "I'll see you tomorrow." This call is the last that is known of Rita.

12. The petitioners report that after Rita failed to return home, on Tuesday, March 29, 1977, her sister Tania Wald Jaramillo reported the disappearance to the National Investigations Department (DENI), which launched a judicial investigation. They report that in the first statements taken by officials of this authority, they were asked about the minor's sexual relations and whether she was sexually attractive. The petitioners claim that such questions, totally unrelated to the context of a serious investigation, were commonly asked during that period by the DENI and the Prosecution Service. They argue that although Rita's family did everything they could to ensure an investigation was pursued,[FN1] on January 23, 1978, ten months later, the prosecutor's office asked that a provisional impersonal dismissal be issued on account of there being no evidence to indicate whether the disappearance was forced or voluntary.

[FN1] The petitioners report that her family even went as far as to send a letter, dated July 15, 1977, to General Omar Torrijos, then the country's head of government, asking him to pursue an investigation into Rita Wald's whereabouts. Four days later, Rita's mother and brother were taken to the office of Lt. Cleto Hernández, in the counter-intelligence section of G-2. According to the petitioners, this indicates how the intelligence services were interfering with the investigations.

13. The petition indicates that six years later, on February 7, 1984, the disappeared minor's brother Edwin Wald asked the Office of the Attorney General of the Nation to reopen the case. However, he received no reply. Subsequently, in January 1990, Rita's brother again tried to have the case reexamined, requesting that the case file be reopened and that Cleto Hernández, Emilio Garzola, and Lucho Gómez be investigated and statements taken from them. On April 17, 1990, the Second Superior Prosecutor formally requested that the Second Superior Court reopen the case file, which duly took place the following month.

14. According to the complaint, in contrast to the sixty-three pages (including the protocolary texts) that made up the initial investigation, the second phase of the investigation covers more than six hundred additional pages. Statements were taken from Manuel Noriega, Cleto Hernández, and Darío Arosemena. The petitioners claim that some the statements and evidence collected during this second phase in the proceedings indicate that Mr. Garzola, the last person to speak with Rita, was a G-2 member and was conducting intelligence work for the security forces. The petition states that Mr. Garzola was summoned to appear, but that he gave no evidence because he had left the country permanently for Czechoslovakia. It also claims that on January 31, 1992, a request was made for the initiation of proceedings against Emilio Garzola, Manuel Antonio Noriega, Cleto Hernández, and Darío Arosemena. In spite of the evidence indicating a relationship between Mr. Garzola and Rita Wald's disappearance, on September 13, 1994, the Second Superior Court of Justice provisionally dismissed Messrs. Emilio Garzola and Luis Antonio Gómez from the proceedings.

15. The petitioners say that in 2001, a set of human bones were found in clandestine graves and were identified as the remains of disapparee Heliodoro Portugal.[FN2] Following this discovery, the Government of Panama set up a Truth Commission to cast light on crimes committed by the dictatorship. On April 18, 2002, Rita Wald's case was included in the Commission's final report, which concluded that her disappearance and the lack of due diligence in its investigation had been politically motivated.[FN3]

[FN2] These facts have been analyzed in a complaint lodged with the Inter-American Commission. See: IACHR, Report No. 72/02, Petition 357/01, Heliodoro Portugal (Panama), October 24, 2002.

[FN3] The Truth Commission's Report states that: "There are sufficient elements of proof to conclude that the disappearance of Rita Irene Wald on March 27, 1977, was politically motivated... the officials charged with pursuing the investigation of this case did not act with due diligence, and they also failed to perform basic procedures, which leads to the conclusion that they were protecting the perpetrators of the disappearance." See: Report of the Truth Commission of Panama, April 18, 2002.

16. By tolerating Rita Wald's forced disappearance and failing to locate her, the petitioners claim that the Panamanian State incurred in international responsibility for violating Article III of the Inter-American Convention on Forced Disappearance of Persons and Articles 7, 5.1 and 5.2, 4.1, 8, 25, and 19 of the American Convention.

17. With reference to Article 2 of the American Convention, the petitioners say that the failure to adopt appropriate legislative, administrative, judicial, or other measures to safeguard the rights in question implies a violation of that Article. In particular, they note that the failure to criminalize the offense of forced disappearance, as established in the relevant Inter-American Convention, meant that even after the Convention on Forced Disappearances was ratified, the judiciary investigated forced disappearances as if they were homicides.

B. State

18. In its reply dated October 18, 2005, the State requested that the petition be ruled inadmissible. The State reports on legal proceedings conducted as part of the investigations in 1977 and the investigations carried out after 1990. In particular, they refer to several of the statements that were taken in connection with Rita Wald's disappearance.

19. The State's reply to the petition sets out the following conclusions:

1. The case documents show the background and student activism of RITA IRENE WALD.
2. They also show that at the time of her physical disappearance, the authorities responsible for investigating the incident failed to pursue the relevant formalities, omitting such basic elements as: inspecting the vehicle that, by its owner's admission, was occupied by RITA prior to her disappearance; requesting a list of incoming calls to the house of her friend REINA, who claims that RITA called her at around 8:00 pm; taking a statement from EMILIO GARZOLA immediately after the incident was reported; calling on her friends to give statements; checking with the Canal Zone authorities to see if the young woman had entered that area – access to the Canal Zone at that time was restricted, so if RITA did enter the area, there would be records of that.
3. It can also be seen that those responsible for investigating the incident manipulated and brought pressure to bear on the witnesses, so that the case file would include aspects of the young disapparee's private life that were not germane to the investigation.
4. Circumstantial evidence pointed to individuals who could have had an interest or stood to benefit from RITA's physical disappearance, but they were not summoned to give timely statements.
5. The veracity of the claims made by EMILIO GARZOLA when the case was reopened was not verified.
6. No statement was taken from LUIS ANTONIO GÓMEZ.
7. The time that the investigation took and the number of prosecutors (five in total) who handled it indicate the problems that the proceedings encountered, since each new prosecutor meant new opinions, objectives, plans, and results.
8. Although MANUEL ANTONIO NORIEGA, CLETO HERNÁNDEZ, and DARÍO AROSEMENA were identified as authorities at the time of RITA's disappearance, and they were associated with the failure to conduct an investigation, no statements were ever taken from them.
9. The other homicide detectives who supposedly participated in investigating RITA's physical disappearance were not called upon in order to clarify whether or not they did in fact investigate this case and whether or not their opinions differed from those of LESLIE LOAIZA

who clearly, and as indicated by the witnesses, did not adopt an impartial stance vis-à-vis the investigation.

10. The claims made by the witnesses against LESLIE LOAIZA, who they say was in charge of the questioning, were not examined.

11. The claims of CLETO HERNÁNDEZ that he did not participate in the investigation were not confronted with the statements of LESLIE LOAIZA and the witnesses who say that he did question them.

In light of the above, the Panamanian State is pleased to inform the Honorable Inter-American Commission on Human Rights that the case in question is in the summary investigation phase, and so the remedies offered by domestic jurisdiction have not been exhausted as described in Article 46.1.a of the Inter-American Convention (sic) on Human Rights and, consequently, Article 31.1 of the Rules of Procedure of the Inter-American Commission on Human Rights, and so the instant petition is deemed inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

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

20. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names, as its alleged victim, an individual person with respect to whom the Panamanian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As regards the State, the Commission notes that Panama signed the American Convention on November 22, 1969, and ratified it on June 22, 1978. In addition, Panama ratified the Convention on the Forced Disappearance of Persons on February 28, 1996, and that instrument came into force on March 28, 1996. The Commission, therefore, has competence, *ratione personae*, to examine the complaint.

21. The Commission has competence, *ratione loci*, to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

22. As regards its *ratione temporis* competence to hear the petition, the Commission holds that it describes an ongoing situation that has lasted for twenty-nine years, which began when the minor child Rita Wald suffered a forced disappearance on March 27, 1977, and the corresponding investigations were allegedly hindered by agents of the State. In consideration whereof, and bearing in mind that forced disappearance remains an ongoing or permanent crime for as long as the victim's whereabouts or fate is not established,[FN4] the Inter-American Commission is competent to examine the violations of human rights protected by the American Convention and the Convention on Forced Disappearance of Persons identified by the petitioners.

[FN4] Article 3 of the Inter-American Convention on Forced Disappearance of Persons, I/A Court H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988; I/A Court H. R., Godínez Cruz Case, Judgment of January 20, 1989; I/A Court H. R., Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989.

23. In addition, and although no such claim was made by the petitioners, the Commission has *ratione temporis* competence to examine human rights violations arising from the American Declaration of the Rights and Duties of Man.[FN5] Thus, as provided for in Articles 23 and 50 of its Rules of Procedure, the Commission is competent to examine and rule on alleged violations of the American Declaration by the Panamanian States arising from incidents occurring prior to the entry into force of the American Convention on Human Rights.

[FN5] At the time of the incident, Panama was a party to the OAS Charter and the obligation to respect the rights protected by the American Declaration was binding on it. A similar ruling on *ratione temporis* competence can be found in IACHR, Report No. 72/02, Petition 357/01, Heliodoro Portugal (Panama), October 24, 2002.

24. In its Consultative Opinion on the Interpretation of the American Declaration of the Rights and Duties of Man, the Inter-American Court stated that:

45. For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1.2.b and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.

46. For the States Parties to the Convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the Convention itself. It must be remembered, however, that, given the provisions of Article 29.d, these States cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto.[FN6]

[FN6] I/A Court H. R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights,, Advisory Opinion OC-10/89 of July 14, 1989, paragraphs 45 and 46.

25. Accordingly, the American Declaration has been taken to be a reference point for determining the scope of the Commission's reviews of human rights violations in contexts where its competence for dealing with Convention violations is restricted or nonexistent.

26. Consequently, the Commission has *ratione temporis* competence to hear and decide on the instant case under the American Declaration as regards the violations prior to June 22, 1978,

and under the American Convention as regards the violations that took place after that date.[FN7]

[FN7] IACHR, Report No. 24/98, Case 11.287, João Canuto de Oliveira v. Brazil, April 7, 1998; Report No. 9/00, Case 11.598, Alonso Eugénio Da Silva v. Brazil, February 24, 2000; Report No. 33/01, Case 11.552, Guerrilla del Araguaia – Julia Gomes Lund et al. v. Brazil, March 6, 2001; Report No. 40/03, Case 10.301, 42nd Police District – Parque São Lucas, São Paulo v. Brazil, October 8, 2003.

27. Finally, the Commission has competence *ratione materiae*, since the petition describes violations of human rights protected by the American Declaration, by the American Convention, and by the Inter-American Convention on Forced Disappearance of Persons.

2. Exhaustion of domestic remedies

28. Article 46.1.a of the Convention requires that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” Article 46.2.c of the Convention says that when there has been unwarranted delay in rendering a final judgment under those remedies, the rule requiring the exhaustion of domestic remedies need not apply. The Commission’s practice has been to analyze, on a prior basis and separately from the merits of the case, whether an exception is applicable. As regards the distribution of the burden of proof in determining compliance with this requirement, the Commission again notes that when a state claims nonexhaustion, it must indicate the resources still to be exhausted and their effectiveness. If the state claiming nonexhaustion can prove the existence of specific domestic remedies that should have been invoked, the petitioners must demonstrate that those remedies were exhausted or that one of the exceptions provided for in Article 46.2 of the Convention is applicable. In the following paragraphs, the Commission will analyze whether the requirement set out in Article 46.1.a of the Convention has been met, or whether the exceptions contained in Article 46.2 apply.

29. In the case at hand, the petitioners maintain that the ineffectiveness of the resources relieves them from having to comply with the exhaustion of domestic remedies, as provided for in Article 46.2.c of the Convention. The petitioners claim that the investigation began with the report of Rita Wald’s disappearance filed with the Homicide Division of the National Investigations Department (DENI) on March 29, 1977. They hold that, to date, there has been no exhaustive investigation of the incident and no serious attempt to identify, prosecute, or punish the guilty or to make amends to Rita’s family. They claim that following the dismissal of the summary proceedings in 1994 and in spite of the different efforts made by the family and the conclusions and recommendations of the Truth Commission, the State has refused to take any further legal action in connection with the case. The State maintains that domestic jurisdiction has not been exhausted because the case is still at the summary investigation phase and it recognizes the initial mistakes and subsequent problems.

30. Upon analyzing the parties' positions, the Commission notes that the minor child Rita Wald disappeared 29 years ago, that an ongoing situation persists to date, and that there has been no final judicial ruling regarding those guilty for the incident or the whereabouts of her remains. Consequently, the Commission believes that, *prima facie*, there has been an unwarranted delay in discharging the criminal investigation of the incident. The petitioners are therefore exempted from the requirement of exhausting the remedies that domestic law provides, as described in Article 46.2.c of the Convention. In the merits phase, the Commission will analyze the effectiveness of this remedy and its effects *vis-à-vis* Articles 8 and 25 of the Convention.

3. Filing period

31. Article 46.1.b of the Convention requires that petitions 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." As provided for by Article 46.2 of the Convention, the six-month period required in 46.1.b is not to be applied in certain exceptional cases. The Commission notes that although "the Convention's requirements that domestic remedies be exhausted and that the petition be lodged within six months following the judgment exhausting domestic jurisdiction are independent,"[FN8] the exceptions set out in Article 46.2 of the American Convention are common to both requirements.

[FN8] IACHR, Report No. 81/01, Case 12.228, Alfonso Martín del Campo Dodd., October 10, 2001, paragraph 20.

32. In the case at hand, the exception established in Article 46.2.c – "when there has been unwarranted delay" – has already been examined by the Commission in its analysis of the remedy exhaustion requirement set out in Article 46.1.a. Given the circumstances analyzed, the Commission does not need to reexamine whether or not this exception applies. Consequently, the Commission concludes that the deadline of six months for submitting petitions is not applicable, in accordance with Article 46.2.c of the American Convention. Under the Commission's Rules of Procedure, in those cases in which the exceptions to the prior exhaustion requirement apply, the petition must have been lodged within what the Commission considers a reasonable time. In this specific situation, the Commission takes into consideration the date on which the alleged violations occurred, the context against which they took place, and the procedural steps taken by the petitioners, and it concludes that the petition was lodged within a reasonable delay.

4. Duplication of international proceedings and *res judicata*

33. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

5. Characterization of the alleged facts

34. At the admissibility stage, the Commission must decide whether the stated facts could tend to establish a human rights violation, as stipulated in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or is “obviously out of order,” as stated in section (c) of that same Article.

35. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. This examination is a summary analysis, and does not imply prejudging the merits or offering an advance opinion on them.[FN9]

[FN9] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, paragraph 33.

36. The Commission does not find the petition to be “manifestly groundless” or “obviously out of order.” Consequently, the Commission believes that, *prima facie*, the petitioners have established the elements required by Article 47.b and c.

37. Moreover, the Commission believes that the forced disappearance of the minor child Rita Wald, which occurred twenty-nine years ago apparently in reprisal for her ideas and political activities,[FN10] together with the denial of justice that has characterized the case, could tend to establish a violation of Articles I, XXV, and XXVI of the American Declaration, Articles 1.1, 2, 4, 5, 7, 8, 19, and 25 of the American Convention, and Articles I, II, and III of the Inter-American Convention on Forced Disappearance of Persons.

[FN10] Report of the Truth Commission of Panama, *supra*, note 3.

V. CONCLUSIONS

31. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Commission concludes that the instant case satisfies the admissibility requirements set out in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Declare the petition under analysis admissible as regards Articles I, XXV, and XXVI of the American Declaration, Articles 1.1, 2, 4, 5, 7, 8, 19, and 25 of the American Convention, and Articles I, II, and III of the Inter-American Convention on Forced Disappearance of Persons.
2. To notify this decision to the State and to the petitioners.

3. To begin its processing of the merits of the case.
4. To publish this decision and to include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th 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, Paolo G. Carozza and Víctor E Abramovich, Commissioners.