

REPORT No. 59/12¹
PETITION 266-03
ADMISSIBILITY
LILIA ALEJANDRA GARCIA ANDRADE ET AL.
MEXICO
March 19, 2012

I. SUMMARY

1. On April 9, 2003, the Inter-American Commission on Human Rights (hereinafter, "Commission," "Inter-American Commission" or "IACHR") received a petition lodged by Norma Esther Andrade (hereinafter, "petitioner"),² on behalf of her daughter Lilia Alejandra Garcia Andrade (hereinafter, "alleged victim"). The petition was filed against the United Mexican States (hereinafter, "State" or "Mexican State" or "Mexico"), for failure to investigate the disappearance and subsequent death of 17-year-old Lilia Alejandra Garcia, in Ciudad Juarez, State of Chihuahua, in February 2001, allegedly in the context of a pattern of violence against women.

2. The petitioners allege that the Mexican State is responsible for violation of the rights enshrined in Article 4 (life), Article 5 (humane treatment), Article 7 (personal liberty), Article 8 (fair trial), Article 19 (rights of the child), and Article 25 (judicial protection) of the American Convention on Human Rights (hereinafter, "Convention" or "American Convention"), in connection with the overarching obligation set forth in Article 1.1 and 2 of said instrument and, violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter, "Convention of Belem do Para), to the detriment of the alleged victim.

3. In response, the State contends that the petition should not be admitted inasmuch as the case is currently in the investigation stage. Consequently, it requests the IACHR to refrain from entertaining the matter and allow it to be heard under the domestic legal system.

4. Without prejudice to the merits of the matter, after reviewing the positions of the parties and in keeping with the requirements set forth in Article 46 and 47 of the American Convention, the Commission finds the case admissible for the purpose of examining the alleged violation of the rights enshrined in Article 4, 5, 7, 19 and 24 of the American Convention, in connection with Article 1.1 and 2 of said international instrument, to the detriment of Lilia Alejandra Garcia Andrade. Additionally, the IACHR considers that the facts at issue may tend to establish potential violations of Article 7 of the Convention of Belem do Para. The IACHR further finds the case admissible as to the alleged violation of the rights enshrined in Article 5.1, 8.1, 25, in conjunction with Article 1.1 and 2 of said instrument, with respect to Norma Esther Andrade (mother), Jose Garcia Pineda (father), Jade Garcia Andrade (daughter), José Kaleb García Andrade (son) and Maria Luisa Garcia Andrade (sister). The Commission also decides to notify the parties of this decision, publish it and include it in the Annual Report to the OAS General Assembly.

¹ Pursuant to Article 17.2 of the Rules of Procedure of the Inter-American Commission on Human Rights, Commissioner Jose de Jesus Orozco Henriquez, a Mexican national, did not take part in the discussion or the voting on the instant case.

² In a communication dated April 13, 2004, the petitioner included attorneys David Peña Rodriguez and Karla Michel Salas Ramirez of the Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers), as legal representatives.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On April 9, 2003, the Commission received the petition and registered the claim under number 266-03. On August 18, 2003, it forwarded the pertinent parts of the petition to the Mexican State, requesting a response thereto within a period of two months, as established in Article 30.2 of the IACHR Rules of Procedure. The State requested an extension on October 20, 2003 and, in a communication dated December 5, 2003, submitted its response. Said communication was duly forwarded to the petitioners.

6. Additionally, the IACHR received information from the petitioners in communications dated April 13, 2004, October 18, 2004, September 7, 2005 and June 3, 2010. Said communications were duly forwarded to the State.

7. Likewise, the Commission received information from the State on May 24, 2004 and April 1, 2005. Said communications were duly forwarded to the petitioners.

III. POSITION OF THE PARTIES

A. The Petitioners

8. The petitioners allege that 17-year-old Lilia Alejandra Garcia went missing on February 14, 2001, after leaving for work at the Planta Maquiladora Servicios Plásticos Ensamblados S.A. and, as of that day, her whereabouts remained unknown until her lifeless body was found on February 21, 2001, in a vacant lot located nearby the assembly plant (*maquila*) where she worked. For approximately seven days after her disappearance, the authorities did not have enough agents available to conduct a search operation to locate her. They note that the mother of the alleged victim claimed that on the date of her daughter's disappearance, there were only two agents in the unit in charge of investigating disappearances. This failure to act is reflected in the fact that the investigation was not opened until the day the body was found and, therefore, an opportunity to locate her alive and identify the perpetrators was lost.

9. As of February 21, 2001 when preliminary investigation 4324/2001 was opened, the same date the dead body of the alleged victim was found, up to the present date, no criminal charges for the crime have been brought and the investigation remains open.

10. The petitioners contend that the investigation has moved at a slow pace and has been marred by irregularities in the actions of the authorities. By way of illustration, they point to a more than two-year delay since the time the body was found, for tests to be conducted on the body of the alleged victim and on certain evidence that had been collected and argue that this has led to the loss of valuable evidence that could have served to clarify the facts. They allege that the site where the body was found was not visited until November 9, 2003 in order to determine the exact location of the body, as well as to identify the surrounding area. They further contend that some tests, such as a fingernail analysis of the right hand of the alleged victim, could not be conducted because requests to do so were not submitted in a timely fashion. The petitioners also mention that the autopsy and the toxicological and semen tests were not completely performed.

11. They argue that the report on the autopsy performed on February 22, 2001, determined that the life of the alleged victim was taken on or about February 19 or 20 at night or the morning of February 20 and that other evidence showed that the victim was raped for an extended period of time. The petitioners allege that, according to recently obtained information (without specifying the source), when the victim was thrown into the lot where she was found, she was still alive. They further contend that several hours after leaving her there, the assailants returned to the location and, when it was discovered that she was still alive, she was hit very hard on the head with a heavy object to take her life.

12. The petitioners claim that even though relevant information was submitted to the Office of the Public Prosecutor (without indicating the source thereof), this Office has still not rectified the

irregularities that were detected, and that this is the basis for the family's reasonable suspicion that the authorities of the government of Chihuahua were in collusion with the perpetrators and masterminds of the crime. They note that this situation is particularly relevant when you take into account that the alleged victim's sister, and her attorneys, are under the protection of precautionary measures issued by the IACHR (MC No. 147-08), due to the harassment and threats to which they have been subjected recently in their capacity as women's human rights defenders in Ciudad Juarez.

13. According to the petitioners, the authorities open lines of investigation that are not thoroughly followed up on. They add that even though the Office of the Public Prosecutor has pursued actions requested by the family, these actions have been carried out in such a careless way that it verges on the absurd, leaving the family with no recourse in light of the lack of due diligence. The petitioners contend that when the family members attempt to aid the investigators and inquire about the course of the investigation, they are confronted with a surly attitude.

14. As for the context of violence, the petitioners allege that the homicide of Lilia Alejandra Garcia was one of a string of murders and disappearances of women and young girls that have been plaguing Ciudad Juarez since 1993 and have been regarded as classic cases of discrimination. Moreover, Ciudad Juarez has come to be known as a place where sexist crimes are committed and are marked by a lack of effective judicial response in punishing the perpetrators thus fueling a climate of impunity.

15. Regarding prior exhaustion of domestic remedies, the petitioners note that it has been several years since Lilia Alejandra Garcia Andrade was murdered and the case is still in the investigation stage. They also claim that in light of the negligence or omissions displayed during the investigation, no domestic remedies are available to them. Additionally, they contend that no remedies are available to them either to step up the pace of this part of the criminal investigation so a body of the judiciary can hear the case.

B. The State

16. The State alleges that the petition should not be admitted because the case is in the investigation stage. It also claims that it has been fully responsive to the complaints of the victim's family members.

17. According to the State, on February 21, 2001, a dead body, which was subsequently identified as that of Lilia Alejandra Garcia Andrade, was found in an open field located across from Plaza Juarez Mall. That same day, preliminary inquiry 4324/01-150 was opened. From the onset of the inquiry, several attempts were made to locate the persons who were likely responsible.

18. These efforts included, among other things, serving summons and subpoenas on individuals with whom the alleged victim dealt, interviews of co-workers from the plant where she worked, polygraph tests, following up on lines of investigation provided in writing or through anonymous telephone tips, telephone call toll records investigations, crime scene investigation where the body was found, examination of her belongings, investigation of vehicles and the registered owners thereof and locating individuals identified as probable culprits.

19. The State claims that several tests were conducted, including toxicological and blood-type tests. As a result of the tests, a genetic profile of the probable assailant has been created and it does not match up with any of the biological samples taken from the individuals identified as probably responsible for the crime. Additionally, several samples that were taken from the body, showed that she had been raped. It was also determined that the cause of death was strangulation.

20. The State notes that one of the main complaints of victims' family members – including in this case – is the mistreatment they receive from the public officials who take part in the investigation. In this regard, it is claimed that the State is showing its willingness to relieve of their duties and/or suspend those individuals who acted negligently. It indicates that out of the 33 public servants who were involved

with the instant case, two of them have been identified as possibly being criminally liable and seven of them, as administratively liable. It further indicates that the mother of the alleged victim has been granted access to all of the records in the case file that were requested by her.

21. According to the State, the investigation of the case is still open and efforts are still being made to locate the likely perpetrators. It notes that even though the investigation of cases of violence against women in Ciudad Juarez have been slow in developing, a great deal of resources have been invested in the Office of the Attorney General of Republic for the State of Chihuahua in order to expedite investigations.

22. The State claims that the homicide of women in Ciudad Juarez is the result of a complex, multifaceted, multi-factored social phenomenon that cannot be addressed from a single perspective of criminal investigation and administration of justice. These homicides are the result of a disintegrated globalized society, where emerging issues such as drug trafficking, drug use and migration, deepen a subculture of discrimination against women. Furthermore, eradication of this problem has been made a priority and resources have not been spared in efforts to eradicate this phenomenon. For this purpose, the State mentions several overarching efforts of prevention, prosecution and administration of justice to address these issues.

IV. ANALYSIS OF ADMISSIBILITY

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

23. The petitioners are entitled, in principle, under Article 44 of the Convention, to lodge petitions before the Commission. The petition identifies as alleged victims individuals, for whom the State of Mexico committed to respect and ensure the rights enshrined in the American Declaration. As to the State, the Commission notes that Mexico has been a State party to the American Convention since March 24, 1981, when it deposited the instrument of ratification. Mexico also ratified the Convention of Belem do Para on November 12, 1998. Therefore, the Commission is competent *ratione personae* to examine the petition. Additionally, the Commission is competent *ratione loci* to entertain the petition, inasmuch as violations of rights protected in the American Convention and the Convention of Belem do Para are alleged to have taken place within the territory of Mexico, a State Party to said conventions.

24. The Commission is competent *ratione temporis*, being that the obligation to respect and ensure the rights protected in the American Convention and the Convention of Belem do Para was already in effect for the State on the date when the facts alleged in the petition presumably occurred. Lastly, the Commission is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Convention and the Convention of Belem do Para.

B. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

25. Article 46.1.a) of the American Convention provides that for a petition filed with the Commission to be admissible in keeping with Article 44 of the Convention, it is necessary for domestic remedies to be pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to make it possible for national authorities to hear cases on alleged violations of a protected right and, when appropriate, have the opportunity to resolve them before they are heard by an international body. However, Article 46.2 of the Convention stipulates that the requirement for prior exhaustion of domestic remedies does 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. These instances do

not only refer to the formal existence of such remedies, but also to such remedies being adequate and effective.

26. In the instant case, the State maintains that the investigation of the crimes is pending. Whereas the petitioners argue that an exception to the rule of prior exhaustion of domestic remedies is applicable because there has been unwarranted delay.

27. Without examining the arguments put forth by the parties with regard to the alleged violation of the right to a fair trial and judicial protection, the Commission notes that it has been eleven years since Lilia Alejandra Garcia Andrade was found dead, and as of the date of the drafting of this report, the representatives of the State have not provided any concrete information on the findings of the process or on measures taken to move beyond the initial stage of investigation. The State has not informed the Commission either about recent efforts undertaken by it or any progress that would lead to clarify the facts and punish those responsible.

28. Consequently, the Inter-American Commission establishes –for purposes of admissibility– that there has indeed been an unwarranted delay by the Mexican judicial bodies with regard to the alleged facts. Therefore, the IACHR applies to the instant matter the exception to the requirement of prior exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention.

29. It must also be noted that application of the exceptions to the rule of prior exhaustion of domestic remedies set forth in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, due to its nature and purpose, Article 46.2 is a norm of autonomous content, as opposed to the substantive norms of the Convention. Therefore, the determination as to whether or not the exceptions to the rule of prior exhaustion of domestic remedies set forth in said provision are applicable to the case in question, must be made prior to and separately from examination of the merits of the matter, inasmuch as the merits examination is governed by a different standard of evaluation from the one used to determine violation of Article 8 and 25 of the Convention. It should be clarified that the causes and effects preventing exhaustion of domestic remedies in the instant case shall be examined, as pertinent, in the report on the merits of the controversy adopted by the Commission, in order to establish whether they actually constitute violations of the Convention.

2. Timeliness of the Petition

30. With regard to the requirement set forth in Article 46.1.b of the Convention, according to which the petition must be lodged within a period of six months from the date on which the victim was notified of the final judgment exhausting domestic remedies, the Commission finds that such a time period is not applicable either, inasmuch as the petition was lodged within a reasonable period of time as mentioned in Article 32.2 of its Rules of Procedure for instances in which final judgment has not been handed down prior to the lodging of the petition.

3. Duplication of International Proceedings and *res judicata*

31. The case file contains no evidence that the subject matter of this petition is pending in another proceeding before an international adjudicatory body, or that the petition is substantially the same as any petition previously examined by the IACHR or any other international body. Therefore, the requirements set forth in Article in Article 46.1(c) and 47 (d) of the Convention have been met.

4. Colorable Claim

32. The Commission finds that it is not appropriate, during this stage of the proceedings, to decide whether or not the alleged violations to the detriment of the alleged victims occurred. For purposes of admissibility, the IACHR must rule at this point in time only as to whether the facts laid out in the petition, if proven, would tend to establish violations of the American Convention, as stipulated in Article 47.b thereof, and whether the petition is “manifestly groundless” or it is “obviously out of order,” as provided in subparagraph (c) of the same article.

33. The standard for evaluating these factual requirements is different from the requirement for deciding on the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation.³ At this stage, it should perform a summary analysis that does not involve any prejudgment or advance opinion on the merits. The IACHR Rules of Procedure themselves, by establishing an admissibility phase and a merits phase, reflects this distinction between the evaluation that the Inter-American Commission must carry out to declare a petition admissible and that required to establish whether a violation attributable to the State has been committed.⁴

34. Furthermore, neither the American Convention nor the IACHR Rules of Procedure require the petitioner to identify the specific rights that are allegedly violated by the State in the matter submitted to the Commission, even though the petitioners may do so. It is the job of the Commission, based on the legal precedents of the system, to determine in its admissibility reports, what provision of the relevant Inter-American instruments is applicable and could tend to establish a violation thereof if the alleged facts are proven by means of sufficient evidence.

35. Accordingly, the IACHR finds that the alleged facts regarding Lilia Alejandra Garcia Andrade, should they be proven, would tend to establish possible violations of rights guaranteed in Article 5 and 19 of the American Convention, in connection with Article 1.1 and 2 of said international instrument.

36. Additionally, the IACHR finds that the facts in the petition could tend to establish a violation of Article 4 of the American Convention in connection with Article 1.1 and 2 of said international

³ See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the Daily Newspaper “La Nación”* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, para. 54.

⁴ See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate et al* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, para. 46.

instrument, with respect to States' duties of prevention and protection, and in light of the general obligations to ensure the rights enshrined in the American Convention and the Convention of Belem do Para. As for this article, given the context of violence of Ciudad Juarez about which the State is aware, where young girls and women are deprived of their liberty and then murdered, the alleged failure of the authorities to take reasonable action to put an end to the deprivation of liberty of the alleged victim from the time it learned of her disappearance, could tend to establish a possible application of Article 7 of the American Convention in connection with Article 1.1 and 2 of said international instrument, which will require a more in-depth analysis during the merits stage.

37. Moreover, the IACHR considers that the facts alleged in the petition would tend to establish possible violations of Article 7 of the Convention of Belem do Para, in connection with Article 24 of the American Convention.

38. The IACHR also finds the case admissible with regard to the alleged violation of the rights enshrined in Article 5.1, 8.1, 25 and in conjunction with Article 1.1 and 2 of said instrument with regard to Norma Esther Andrade (mother), Jose Garcia Pineda (father), Jade Garcia Andrade (daughter), Jose Kaleb Garcia Andrade (son) and Maria Luisa Garcia Andrade (sister).

V. CONCLUSIONS

39. The Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in accordance with Article 46 and 47 of the American Convention and decides to proceed with the analysis of the merits regarding the alleged violation of Article 4, 5, 7, 19 and 24 of the American Convention, in connection with Article 1.1 and 2 of said international instrument, as well as Article 7 of the Convention of Belem do Para with respect to Lilia Alejandra Garcia Andrade. The IACHR also finds the case admissible with regard to the alleged violation of the rights enshrined in Article 5.1, 8.1 and 25, in conjunction with Article 1.1 and 2 of said instrument with respect to Norma Esther Andrade (mother), Jose Garcia Pineda (father), Jade Garcia Andrade (daughter), Jose Kaleb Garcia Andrade (son) and Maria Luisa Garcia Andrade (sister).

40. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the petition under consideration admissible as for the alleged violations of Article 4, 5, 7, 19 and 24 of the American Convention, in conjunction with Article 1.1 and 2 of said instrument, as well as Article 7 of the Convention of Belem do Para, with regard to Lilia Alejandra Garcia Andrade.

2. To find the petition under consideration admissible as for the alleged violations of the rights recognized in Article 5.1, 8.1, 25 of the American Convention, in conjunction with Article 1.1 and 2 of said instrument, with respect to Norma Esther Andrade (mother), Jose Garcia Pineda (father), Jade Garcia Andrade (daughter), Jose Kaleb Garcia Andrade (son) and Maria Luisa Garcia Andrade (sister).

3. To notify the parties of this decision.

2. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 19th day of the month of March 2012.
(Signed): Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.