REPORT No. 19/12
PETITION 1127-05
ADMISSIBILITY
FAMILY OF SERGIO ARTURO CANALES GALVEZ
HONDURAS
March 20, 2012

I. SUMMARY

1. On October 12, 2005, the Inter-American Commission on Human Rights (hereinafter, "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by Yadira Gálvez de Canales and Sergio Canales Murguía (hereinafter, "petitioners" or "alleged victims") against the State of Honduras (hereinafter, "Honduras," "Honduran State," or "State"), which claimed that the State had international responsibility due to the alleged lack of diligence in the investigation of the murder of the petitioners' son, Sergio Arturo Canales Gálvez, which occurred on September 20, 2002, in Colonia Loarque de Comayaguela, in Honduras. More specifically, the petitioners allege that they have not had access to justice, due to the authorities' negligence and the lack of an effective investigation.

2. The petitioners allege that the State has incurred in international responsibility over the purported denial of justice and related violation of the rights established in Articles 1(1), 8(1), and 25 of the American Convention on Human Rights (hereinafter, "the Convention" or "the inter-American Convention"). As to prior exhaustion of domestic remedies, the petitioners allege that the exceptions established under the Convention *vis-à-vis* that rule are applicable in this case.

3. For its part, the State maintains that the petition should be declared inadmissible, alleging that the remedies available under domestic law have not been exhausted and that there has been no unwarranted delay in the investigation, given that this is a complex case.

4. Without prejudging the merits of the complaint, after analyzing the parties' positions and in keeping with the requirements established in Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights established in Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) of the treaty. The Commission has also decided to notify the parties of the decision and to publish the decision and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMMISSION

5. On October 12, 2005, the Commission received the petition and assigned it the number 1127-05. On August 2, 2006, the Commission forwarded the relevant parts of the petition to the State, asking that it submit its response within a two-month period, in accordance with the provisions established in Article 30(3) of the IACHR Rules of Procedure in effect at that time. On November 1, 2006, the State requested an extension to submit its response; a 30-day extension was granted by the IACHR on November 15, 2006. The State's response was received on December 14, 2006. That communication was duly forwarded to the petitioners.

6. In addition, the IACHR received information from the petitioners in communications dated June 25, 2007; November 10, 2008; July 6, 2010; and September 2, 2011. These communications were duly forwarded to the State. The Commission also received information from the State in notes dated June 18, 2008, August 27, 2010; and February 10, 2012; these communications were duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners allege that on September 20, 2002, their son Sergio Arturo Canales Gálvez, who was 24 years old and studying civil engineering at the Central American Technological University (Universidad Tecnológica Centroaméricana, UNITEC), was killed on the main street of Colonia Loarque de Comayagüela. He was in an automobile outside his girlfriend's house around 9:30 p.m. and was assaulted by several individuals who shot him. The petitioners add that the assailants were driving a "green Blazer," which hours earlier had been stolen from a person who at the time of the murder was inside the vehicle. The petitioners indicate that their son was taken to the Barrio "La Granja" Medical Center Hospital, where it was confirmed that he had arrived with no vital signs; therefore, the hospital authorities called the Department of Forensic Medicine at the Public Prosecutor's Office (Ministerio Público) and the General Office of Criminal Investigation so they could carry out the appropriate procedures and an investigation could begin.

8. The petitioners report that the crime of murder or homicide is a crime against the public, and it is up to the Public Prosecutor's Office to act on its own initiative and conduct the necessary investigations to clarify what happened. They indicate that the Criminal Procedural Code states that members of the General Office of Criminal Investigation (DGIC) and the General Office of the Prevention Police may act to investigate crimes. However, they allege that in this case, no prosecutor in the Public Prosecutor's Office was heading the investigations, but rather that the DGIC was handling the case through its Department of Crimes against Life, and that therefore there had been a breach of domestic law.

9. The petitioners argue that due to the lack of seriousness with which the DGIC has acted in the investigation, they had to turn to other national authorities, such as the National Human Rights Commission and the President of the National Congress at that time, Porfirio Lobo Sosa. They indicate that the National Congress issued a motion asking the Regular Security Commission of the National Congress to contact the DGIC and the Office of the Public Prosecutor of the Nation to inquire as to the status of the investigations into the death of Sergio Arturo Canales Gálvez. They allege that as a result of that motion, two years after the murder the DGIC finally took statements from two key witnesses, a step the petitioners say should have been taken at the outset. They add that the witness testimony was gathered as a mere formality, since the questions that were asked were superficial.

10. With respect to a statement mentioned by the State, which apparently was taken from a key witness on September 23, 2002, the petitioners allege that this referred only to the facts surrounding the theft of the vehicle used to commit the murder and that it was not for the purpose of obtaining information about the death of Sergio Arturo Canales Gálvez. According to the petitioners, this assertion is confirmed by the fact that the statement has been added to the investigation file of the DGIC Vehicular Theft Section and was not attached to the murder file. They argue that the vehicle driven by the assailants was returned without first being examined as part of an investigation into the murder. They maintain that the vehicle was a critical piece of the murder investigation because the authorities would have been able to obtain evidence to identify the culprits (fingerprints, hairs, firearms, bullet shells, gunpowder residue, or any other piece of information that could provide indications or evidence as to who participated in the crime), and that the case file did not include an inspection record that would establish that in fact this type of investigation was done. They reiterate that it was essential to take such a step to determine the identity of those responsible for the crime, and that since this was not done in a timely manner, the evidence is "unrecoverable," as the vehicle was returned to its owner without having been examined properly.

11. Specifically, the petitioners argue that the investigation does not include an inspection report on the vehicle the perpetrators were driving and that there was no evidence collected at the crime scene, no chain of custody, and no ballistics report on the alleged shells which could help determine the weapon used in the crime; nor was there any motive, theory, or investigative study that could explain why Sergio Arturo Canales Gálvez was killed and who killed him. Therefore, the petitioners indicate that the justice system did not act responsibly and diligently to shed light on the facts of the case and prosecute those responsible.

12. Based on the foregoing, the petitioners allege that the rights recognized in Articles 1(1), 8(1), and 25 of the Convention have been violated. As to the violation of Article 8(1), the petitioners allege that the preliminary investigation of the facts has lasted beyond a reasonable period—some nine years as of the submission of their last communication in September 2011—and that no judicial proceeding has been initiated. They allege that the State's argument that this case involves a complex investigation does not justify the fact that effective investigative procedures were not carried out and that, in particular, the initial examinations necessary to clarify what happened were not performed. In addition, they allege that they do not have judicial protection because they have not had access to an effective remedy and that the few and ineffective investigative procedures carried out to date indicate that the case is headed for impunity.

13. In terms of exhaustion of domestic remedies, the petitioners allege that the fact that the investigation has gone on for nine years without any indications of charges being brought, shows that there has been unwarranted delay in the investigation, and thus they are claiming the exceptions established in Article 46(2)(b) and (c) of the Convention to request that this petition be considered admissible.

B. The State

14. The State does not dispute that the young man Sergio Arturo Canales Gálvez was violently killed on September 20, 2002, in the circumstances indicated by the petitioners, by unknown individuals who approached the vehicle he was in and fired gunshots at him.

15. As to the investigation into the facts, in its initial response to the petition the State reports that "at the outset, the Public Prosecutor's Office and the General Office of Criminal Investigation (DGIC) arrive at the crime scene and proceed to take the body away" and to inspect the vehicle in which the young Canales Gálvez had been traveling; a projectile was recovered at that time. The State adds that the Public Prosecutor's Office ordered the DGIC to identify the alleged perpetrators of the crime and take witness statements, among other investigative procedures.

16. As to the alleged two-year delay in taking the statement of the purported key witness, the State maintains that it does not agree with that assertion. It notes that an investigation file was opened by the "DGIC Vehicular Theft Section," which includes a September 26 report which mentions that on September 23, 2002, a statement was taken from the aforesaid witness; it also states that investigative procedures were carried out to conduct a preliminary inspection of the vehicle that was apparently stolen from that witness and that later turned up abandoned. It specifies that in his statement, the witness said that he was the target of vehicle theft; that he was driven in the vehicle along the Boulevard Fuerzas Armadas, in the direction of leaving the city of Tegucigalpa and heading toward the department of Olancho; and that he was left abandoned around the Cerro Grande neighborhood, his hands tied up with his shoelaces. The State indicates that the witness stated that he did not remember the features of the individuals responsible for the theft of his vehicle.

17. The State contends that on October 9, 2004, another statement was taken from the aforementioned witness, who confirmed his prior statement, adding that he had been in the vehicle for forty minutes before being abandoned. With respect to that statement, the State indicates that no clear evidence had surfaced to establish the identity of the alleged perpetrators of the murder of the young Canales Gálvez. In addition, the State maintains that the investigation file shows that both the automobile in which the young Canales Gálvez was found and the one the killers were in had been inspected as part of the investigation.

18. In addition, the State indicates that another eyewitness had been located, who said he could not identify the alleged culprits because when the events occurred there was little light and he was

at a distance from the location,[1] but that there apparently is a witness who allegedly claimed to know the identity of the perpetrators of the crime and that instructions had been issued to take his statement.

19. The State alleges that in the case at hand a criminal investigation has been initiated into the crime of the murder of Sergio Arturo Canales Gálvez in order to identify, prosecute, and punish the perpetrators. It indicates that this is a complex case, mainly because of the eyewitnesses' failure to identify the alleged perpetrators and because of their limited collaboration for fear of reprisals. However, the State indicates that possible suspects have been identified and firearms were confiscated from them, and that these were sent to ballistics laboratories for comparison with the shells collected at the crime scene, with the aim of obtaining scientific evidence and drawing conclusions with regard to relevant criminal liability.

20. The State notes that a report prepared in 2010, signed by the official investigator in the case, indicates that priority has been given to the investigation. The State adds that the head of the Homicide Department has been asked to take the following steps, among others: (a) report on whether new witnesses have emerged; (b) carry out ballistics tests comparing the shells with the weapons confiscated from certain possible suspects; and (c) determine whether potential suspects are still living and their whereabouts.

21. In this regard, the State asserts that is does not deny that the process has been protracted and slow, but states that the reasons for that have been indicated and therefore the delay cannot be characterized as unwarranted. It adds that these types of crimes characterized as highly injurious and those for which the most severe penalties are imposed are actively prosecuted by the State, which does not exclude relatives from participating in all stages of the proceedings. It indicates that the State has not imposed obstacles for the relatives' participation. As to alleged shortcomings in the investigation, the State notes that these must be specified by the petitioners to spell out what they are and what relevance they have to the alleged failure of the process.

22. In short, the State indicates that its domestic law contemplates the effective, appropriate, and necessary remedies to resolve the case. It maintains that there is still time for public prosecution of the case and therefore the State can still protect the victims through domestic mechanisms; thus it believes that the petition should be declared inadmissible because the remedies available under domestic law have not been exhausted. The State emphasizes that it continues to conduct investigations to punish the perpetrators as well as the masterminds.

23. On February 10, 2012, the State reported that they had conducted new investigation diligences and identified possible suspects in the murder of Sergio Arturo Canales Galvez.

IV. ANALYSIS OF JURSIDICTION AND ADMISSIBILITY

A. Commission's jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

24. Under Article 44 of the American Convention, the petitioners may lodge petitions with the IACHR. The petition identifies the alleged victims as individual persons with respect to whom the Honduran State has made a commitment to respect and guarantee the rights established in the American Convention and in other international instruments. Therefore, the IACHR has jurisdiction *ratione personae* to consider the petition.

25. The Commission has jurisdiction *ratione loci* to consider the petition, as the petition alleges violations of rights protected by the American Convention, violations which allegedly took place within the territory of a State party to that treaty.

[1] The State adds that the investigation file includes a series of photographs of individuals who allegedly belong to illegal associations, but that there is apparently no evidence tying these individuals to the death of the young Sergio Arturo Canales Gálvez, and it recounts a series of investigative steps.

26. The Commission has jurisdiction *ratione temporis*, as the facts in question are said to have taken place when the obligation to respect and guarantee the rights established in the American Convention were already in effect for Honduras, a State that deposited the respective instruments of ratification on September 8, 1977. Finally, the Commission has jurisdiction *ratione materiae*, because the petition claims violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention provides that, in order for a petition lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, it is necessary to have pursued and exhausted domestic remedies, in accordance with generally recognized principles of international law. The prior exhaustion requirement applies when the national system provides effectively available remedies that are appropriate and effective to redress the alleged violation. In this regard, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process of law for the protection of the right in question; or when the alleged victim did not have access to the remedies under domestic law; or when there has been unwarranted delay in rendering a final judgment under said remedies. As Article 31 of the Commission's Rules of Procedure indicates, when the petitioner alleges one of these exceptions, it is up to the State to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

28. The petitioners allege that the investigation of the facts has not been conducted with due diligence, and therefore they have been unable to gain access to justice and to clarification of the case. For its part, the State alleges that domestic remedies have not been exhausted, as the criminal investigation into the facts has not been concluded.

29. In that regard, the Commission finds it relevant to note that the facts regarding the homicide of Sergio Arturo Canales Gálvez translate, under domestic law, into crimes that the State must prosecute on its own initiative. Along these lines, case law of the Commission recognizes that whenever a crime is committed that the State must prosecute on its own initiative, the State has the obligation to promote and give impetus to the criminal process,[2] and that in such cases, this is the suitable way to clarify the facts, prosecute those responsible, and establish the appropriate criminal sanctions, as well as to pave the way for other forms of reparation of a financial nature.

30. In that respect, the IACHR observes that according to the information provided by the parties, the authorities carried out procedures to investigate the murder of Sergio Arturo Canales Gálvez; however, according to the petitioners, a series of basic evidentiary procedures were not carried out in a timely manner. With more than nine years having passed, the investigation is apparently in a preliminary stage, with no reports of those responsible for the crimes having been accused or charged, or of a criminal case having been opened, and with the State not having explained the apparent lapses of time in which there has been no procedural activity.

31. Along these lines, as a general rule, a criminal investigation must be carried out expeditiously to protect the interests of the victims, preserve evidence, and even safeguard the rights of anyone who may be considered a suspect in the context of the investigation. As the Inter-American Court has indicated, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies must never lead to a halt or delay that would render international action in support of the victims ineffective.[3]

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[2] Report No. 52/97, Case 11.218, Arges Sequeira Mangas, 1997 Annual Report of the IACHR, paras. 96-97. See also Report No. 55/97, para. 392. Report 57/100, La Granja, Ituango, 2000 Annual Report of the IACHR, para. 40.

[3] I/A Court H.R. Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 93.

32. As a result, the Inter-American Commission establishes—for admissibility purposes—that there has been an unwarranted delay on the part of the Honduran jurisdictional authorities with respect to the facts that have been reported, and applies to this matter the exception to the exhaustion of the remedies under domestic law provided for in Article 46(2)(c) of the American Convention.

33. It is worth noting that invoking exceptions to the rule of exhaustion of domestic remedies established in Article 46(2) of the Convention is closely linked to determining potential violations to certain rights enshrined therein, such as guarantees of access to justice. However, Article 46(2), due to its nature and purpose, is a provision whose content is autonomous vis-à-vis the Convention's substantive provisions. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies established in subparagraphs (a), (b), and (c) of that provision apply to the case in question should be established beforehand and separately from the analysis of the merits of the case, since this relies on a different standard of evaluation than that used to determine the violation of Articles 8 and 25 of the Convention. It is important to clarify that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report the IACHR adopts on the merits of the dispute, in order to verify whether there have been violations of the American Convention.

C. Deadline for lodging the petition

34. Article 46(b) of the American Convention establishes that for a petition to be admissible to the Commission, it must be lodged within a period of six months from the date on which the alleged victim is notified of the final judgment. In the claim being analyzed, the IACHR has established that the exception to exhaustion of domestic remedies applies, pursuant to Article 46(2)(c) of the American Convention. In that regard, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

35. In the case at hand, the petition was received on October 12, 2005. The murder of Sergio Arturo Canales Gálvez was on September 20, 2002, and as of the preparation of this report, the criminal investigation is in a preliminary stage. As a result, the Commission finds that the petition was lodged within a reasonable period of time and that the admissibility requirement related to the deadline for lodging the petition has been met.

D. Duplication of Proceedings and International *Res Judicata*

36. There is no indication in the record that the subject of this petition is pending settlement in another international proceeding or that the petition substantially duplicates one previously examined by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

E. Characterization of the alleged facts

37. The Commission is of the view that it is not appropriate, at this stage of the proceedings, to determine whether or not the alleged violations took place to the detriment of the alleged victims. For purposes of admissibility, the IACHR must decide at this time only if facts have been laid out which, if proved, could be characterized as violations of the American Convention, as stipulated in Article 47(b) of the Convention, and if the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of the same article. 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 American Convention, but not to establish the existence of such violation.[4] At this stage the Commission must make a summary analysis which does not imply any prejudgment or advance opinion on the merits of the case. The Inter-American Commission's own Rules of Procedure, in establishing one stage for admissibility and another for the merits, reflects this distinction between the evaluation the Inter-American Commission must carry out in order to declare a petition admissible and that required to establish whether a violation attributable to the State has been committed.[5]

38. Neither the American Convention nor the IACHR Rules of Procedure require that the petitioner identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the system's case law, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and could be established to have been violated if the facts being alleged are established through sufficient evidence.

39. In this case, the petitioners maintain that the lack of due diligence in the criminal investigation of the facts being alleged prevented their access to justice and paved the way for impunity. The State, for its part, declares that the investigation is still underway and that this is a complex case, and therefore it cannot be deemed that there has been an unwarranted delay in the investigation.

40. Specifically, the petitioners argue that the investigation does not include an inspection report on the vehicle the perpetrators were driving and that there was no evidence collected at the crime scene, no chain of custody, and no ballistics report on the alleged shells which could help determine the weapon used in the crime; nor was there any motive, theory, or investigative study that could explain why Sergio Arturo Canales Gálvez was killed and who killed him. Therefore, the petitioners indicate that the justice system did not act responsibly and diligently to shed light on the facts and prosecute those responsible. In short, they allege that because of the lack of an effective investigation, they have not had access to justice, under the standards of due diligence.

41. In this regard, the IACHR deems that the facts alleged by the petitioners could constitute violations of the rights established in Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) of that instrument, with respect to the family members of Sergio Arturo Canales Gálvez.

V. CONCLUSIONS

42. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that the petition meets the admissibility requirements laid out in Articles 46 and 47 of the American Convention, and thus

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with regard to the alleged violations of rights established in Articles 8(1) and 25 of the Convention, in conjunction with Article 1(1) of that treaty, with respect to the relatives of Sergio Arturo Canales Gálvez.

2. To notify the parties of this decision.

3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

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

[5] 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; and Petition 581-05, *Víctor Manuel Ancalaf Llaupe* (Chile), May 2, 2007, para. 46.

Done and signed in the city of Washington, D.C.,on the 20th day of the month of March 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.