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REPORT No. 31/16
PETITION 326-03
REPORT ON ADMISSIBILITY

ARISTIDES SOTO SOTO AND FAMILY
HONDURAS

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I. SUMMARY

1. On May 8, 2003, the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission,” “Commission,” or “IACHR”) received a petition originally lodged by Ana Lourdes Laffite—who was subsequently replaced by Aristides Soto Alcerro and Dolores Soto Cervantes¹—(hereinafter, “the petitioners”) against the Republic of Honduras (hereinafter, “Honduras” or the “Honduran State”). The petition claims that State bears international responsibility for violation of rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”) to the detriment of the journalist Aristides Soto Soto and his family (hereinafter, “the alleged victims”).

2. The petitioners claim that the competent authorities acted with negligence, both in the murder inquiry, and in the trial and punishment of those responsible for the homicide of Aristides Soto Soto; which also affected his family. In addition, they claim that their access to the judicial record was obstructed; and that there was unwarranted delay in the application of justice, for which reasons they consider that the exception to the requirement of prior exhaustion of domestic remedies envisaged in Article 46(2)(c) of the American Convention on Human Rights applies. For its part, the State contends that all appropriate steps were taken to investigate and prosecute those responsible and that the length of time taken was due to the complexity of the case. It also argues that there has not been any delay in the administration of justice given that remedies under domestic law have yet to be exhausted; therefore that the petition should be declared inadmissible under Article 46(1)(a) of the American Convention.

3. Having examined the positions of the parties and compliance with the requirements set out in Articles 46 and 47 of the American Convention, and without prejudging the merits of the complaint, the Commission has decided to declare the petition admissible for the purposes of examination of the submissions concerning alleged violations of rights enshrined in Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention taken in conjunction with Article 1(1) of thereof. The Commission has further decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on May 8, 2003, and forwarded a copy of the pertinent portions to the State on July 18, 2003, giving it two months to submit observations, in accordance with Article 30(3) of its Rules of Procedure then in force. On September 10, 2003, the State sought a 30-day extension to submit its reply, which was granted on October 14, 2003. The Commission received the State's reply on October 17, 2003, and duly forwarded it to the petitioners on November 4, 2003.

5. The petitioners presented additional information on February 4, July 19, and December 13, 2004; June 23 and November 1, 2005; November 28 and December 7, 2006; and January 9 and 25 and November 2, 2007. For its part, the State presented additional comments on March 4 and October 1, 2004; March 7, August 5, and September 8, 2005; November 14 and December 7 and 21, 2006; and April 2 and November 2, 2007. Those communications were duly forwarded to the opposing party.

¹ On January 5, 2004, the IACHR received a communication from the petitioner advising that thereafter Aristides Soto Alcerro and Dolores Soto Cervantes, the father and mother of Aristides Soto Soto, would replace her as petitioner.

6. Furthermore, in the course of the proceedings, the IACHR requested updated information on the progress of the proceedings at the domestic level from both parties by means of notes dated January 14, 2008, and April 1, 2010, and specifically from the petitioners on February 9, 2011 and May 6, 2013. In accordance with Article 42(2) of its Rules of Procedure then in force. The petitioners replied to those requests in communications dated February 26, 2008, April 30, 2010, June 25, 2013, and June 25, 2015. The State responded in communications dated January 14, 2008 and August 27, 2013.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioners allege that at around 11:30 p.m. on October 6, 2001, the journalist Aristides Soto Soto disappeared from the premises of the Hotel Holiday Inn in San Pedro Sula, where he was staying with his brother and some colleagues in order to cover an international soccer event. After a day had passed without news of Mr. Soto Soto, his companions decided to alert the authorities, who, after a thorough search, found his body on October 9, 2001, in a service shaft where the elevator electricity cables were housed.

8. The petitioners state that the autopsy recorded the cause of Mr. Soto Soto's death as homicide, which prompted the Office of the Prosecutor General *ex officio* to initiate a murder investigation that very day, October 9, 2001. The petitioners say that as part of the investigations, criminalistics studies (luminol tests) were carried out, which were completed in December that year and revealed a trail of blood that ran from the place where Aristides Soto Soto's body was found to the room occupied by Edgardo Zuñiga and Walter Urbina, two colleagues of the alleged victim who were staying at the same hotel at the time of the events.

9. They also say that statements were taken from hotel staff and Mr. Soto Soto's colleagues. They notice that in spite of the fact that the statements given by Tania Padgett, a friend of Mr. Edgardo Zuñiga, were inconsistent with her communications with Mr. Zuñiga on the day of the homicide and on the day following it, the judge in charge of the investigation chose not to summon her to provide further testimony. According to the petitioners, that fact was of great significance to the investigation given that, according to witness testimony and the luminol test, Edgardo Zuñiga was apparently one of the last people who was with Aristides Soto Soto on the day he died.

10. The petitioners claim that although the search for Mr. Soto Soto was carried out promptly, the investigations were deficient and not conducted with due diligence. In that regard they argue in first place that the official report on the autopsy carried out on October 9, 2001, was not forwarded to the court until November 28, 2001. Second, with respect to the DNA samples, in spite of the fact that they were obtained in October 2001, they were not sent to the laboratory until May 30, 2002. Furthermore, they say that due to the lack of care in collecting the evidence, the results of the DNA tests were not conclusive because, according to the laboratory report the samples arrived contaminated or covered with mold.

11. The petitioners also say that their access to the judicial record was restricted on several occasions, because the prosecutor's office considered the file of the case to be confidential. They argue that as a result, they were sidelined from the investigation for more than a year. They say that the media, including Walter Urbina and Edgardo Zuñiga, did have access to the record.

12. The petitioners say that no steps were taken to prevent the absconding of the suspects, and that arrest warrants were only issued for Walter Urbina, Edgardo Zuñiga, and Tania Padgett on August 25, 2003, by which time the last of the three had already fled the country. Petitioners say that the argument proffered by the authorities to justify the delay in the arrests—that they were awaiting the results of the DNA tests—was inaccurate given that, upon formally ordering the arrest of the aforementioned suspects, the judge did not cite that evidence, but that which had been available since the early stages of the investigation; that is, the luminol test, the witness statements, and the record of telephone calls between Edgardo Zuñiga and Tania Padgett.

13. According to petitioners, Walter Urbina and Edgardo Zuñiga, the only persons arrested and prosecuted for the homicide of Aristides Soto Soto were acquitted by a court ruling of April 18, 2005. In that ruling, the judge referred that the negligent way in which the evidence was handled precluded clarification of the facts and the uncovering the truth. According to information supplied by the petitioners, the acquittal was challenged both by them and by the prosecutor's office through appeals lodged on November 18 and October 13, 2005, respectively. They say that those appeals were decided by San Pedro Sula Court of Appeals on November 14, 2007, that is, two years after they were filed.

14. The petitioners account that San Pedro Sula Court of Appeals overturned the ruling of April 18, 2005, found Edgardo Zuñiga and Walter Urbina guilty of the crime of homicide, and sentenced them to 16 years' imprisonment on November 14, 2007. They say that Edgardo Zuñiga and Walter Urbina filed a cassation appeal, which was rejected, making the conviction final. In a communication dated June 25, 2013, the petitioners reported that in 2011 a judgment was handed down on Messrs. Zuñiga and Urbina (although they provide no details in that regard) that has not been complied with. On June 25, 2015, the petitioners reiterated that 13 years and six months had elapsed since the homicide and yet justice had still not been served. In spite of the fact that there are two individuals convicted, there is still nobody detained. They also sent a copy of a page of La Tribuna newspaper dated April 22, 2015, in which there is a photograph of Mr. Zuñiga at a television network event, with a caption that reads, "In attendance were [...] and respected journalist Edgardo Zuñiga Junior." The petitioners do not say if any recourse was taken against the judgments handed down in 2011.

15. In addition, the petitioners state Tania Padgett was arrested in the United States with the aim of extraditing her to Honduras, in order to be subject to the murder investigation. However, they do not provide any information regarding the possible extradition of Tania Padgett.

16. In conclusion, the petitioners argue that the mere existence of a criminal proceeding does not make amends for the violation of their rights as victims, and that the ineffectiveness of the domestic remedies engages the international responsibility of the State. Invoking the exception provided in Article 46(2)(c) of the American Convention, the petitioners hold that there has been an unwarranted delay of justice and assert that the State of Honduras violated the rights recognized in Articles 8 and 25 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Aristides Soto Soto and his family.

B. Position of the State

17. The State holds that it has acted diligently in this case, given that, according to it, from the outset all the necessary steps were taken to establish the truth of the events and bring those responsible to justice. It argues that in the days following the finding of Mr. Soto Soto's corpse five people were detained as suspects, but that they were released because there was insufficient evidence to incriminate them. It also holds that criminalistics tests were carried out, but that the small number of samples and the effects of the luminol gave rise to technical difficulties, causing a delay in the release of the results of the DNA tests carried out at specialized laboratories in Costa Rica. Technicians from the Public Prosecution Service's Criminalistics Unit reputedly traveled to Costa Rica on a number of occasions to coordinate the aforementioned tests.

18. As regards the confidentiality of the investigations, the State says that it was ordered in the interests of protecting the investigation. However, it says that the petitioners had unfettered access at all times to officials at the Public Prosecution Service, who met with the father of the alleged victim on several occasions, and that if the petitioners had difficulties accessing the record they were probably augmented by the fact that neither the petitioners, nor their defense counsels resided in the city where the proceeding was taking place. With respect to the alleged refusal of the judge to show the attorney the record, the State says that the latter could have appealed against the decision before a higher authority by filing an application to vacate (*recurso de nulidad*); however, he did not do so.

19. As for the delay in arresting Edgardo Zuñiga and Walter Urbina, the State says that was due to the technical difficulties encountered by the Costa Rican experts consulted by the Honduran authorities with a view to linking Messrs. Zuñiga and Urbina to the scene of the crime. In that respect, the State said that

an arrest warrant cannot be requested without having the necessary elements to afford the judge the certainty that the suspects are indeed criminally responsible. Therefore, to have acted otherwise—that is, precipitously and without the necessary evidence—would have increased the likelihood of the case going unpunished and its probable dismissal with prejudice; therefore, the State acted with due diligence. In spite of the foregoing, the State says that if the petitioners had appeared as plaintiffs in the proceeding they could have hastened execution of the arrest warrants through their lawyer desition.

20. According to the State, after the San Pedro Sula Lower Court for Criminal Matters ordered the acquittal of Edgardo Zuñiga and Walter Urbina on April 18, 2005, the Public Prosecution Service presented its statement of grievances on October 13, 2005, requesting that the acquittal be annulled. Likewise, the attorneys representing Mr. Soto Soto's family filed a statement of grievances on November 18, 2005, also requesting the acquittal's annulment.

21. The Court of Appeals rendered a decisiton on the appeals filed by both the petitioners and the Public Prosecution Service on November 14, 2007, and sentenced Edgardo Zuñiga and Walter Urbina to 16 years' imprisonment for the homicide of Mr. Soto Soto. The State says that the judgment was handed down within a reasonable time, thus ruling out the existence of any malicious interest on the part of the State in delaying the criminal proceeding. It says that the accused filed a cassation appeal against that decision, which was rejected.

22. Finally, in a communication received by the IACHR on August 26, 2013, the State reported that the proceeding remained pending owing to the appeals filed by the attorney of Edgardo Zuñiga and Walter Urbina against the ruling of November 14, 2007, and that the admission was being awaited of an appeal for review (*recurso de revisión*) before the Court of Appeals of San Pedro Sula Judicial Section.

23. In conclusion, the State requests that the petition be declared inadmissible on the grounds that that all appropriate steps were taken to investigate and prosecute those responsible and that the length of time taken by the proceeding was due to the complexity of the case and the fact that the trial was conducted under the old Code of Criminal Procedure. Likewise, it says that there was no unwarranted delay in the administration of justice and that it has ensured the rights of the parties in the criminal proceeding throughout.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

24. The petitioners have standing under Article 44 of the American Convention to lodge petitions before the Commission. The petition names as alleged victims individuals on whose behalf the State of Honduras undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Honduras has been a State party to the American Convention since September 8, 1977, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that would have occurred within Honduran territory.

25. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that in order for a petition to be admitted by the Commission, it will be required that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve the situation before it is taken up in an international proceeding. For their part, Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (a) domestic law 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; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

27. In this case, the petitioners say that the exception to the rule of prior exhaustion of domestic remedies envisaged in Article 46(2)(c) is applicable on account of the unwarranted delay in the investigation, prosecution, and punishment of those responsible for Mr. Soto Soto's homicide. For its part, the State argues that from the outset all appropriate steps were taken to investigate, prosecute, and punish those responsible and that the length of time taken has been due to the complexity of the case, the inactivity of the petitioners, the application of a now-repealed Code of Criminal Procedure, and the existence of appeals pending decisions.

28. Based on the positions expressed by the parties and information contained in the record, the Commission finds that Mr. Soto Soto's corpse was discovered on October 9, 2001, three days after his disappearance, and that the State initiated criminal proceedings *ex officio* before the Third Lower Court for Criminal Matters in and for San Pedro Sula. On November 14, 2007, San Pedro Sula Court of Appeals convicted Edgardo Zuñiga and Walter Urbina for the crime of homicide and sentenced them to 16 years' imprisonment. The cassation appeal that they filed was rejected, making the conviction final. According to the State's last communication, the convicted men filed an appeal for review with the Court of Appeals of San Pedro Sula Judicial Section, which, as of August 26, 2013, was awaiting admission. In their last brief, received by the IACHR on June 25, 2015, the petitioners said that 13 years and six months had elapsed since Mr. Soto Soto's homicide and yet justice had still not been served since the convicted individuals had still not been detained. Therefore, from the information furnished by the parties, the Commission finds that apparently the proceeding is still ongoing and that the persons allegedly responsible are at liberty.

29. The Inter-American Commission notes that whenever a crime subject to prosecution at the initiative of the authorities is committed, the State has the obligation to promote and give impetus to the criminal proceeding, and that in those cases that is the suitable way to clarify the facts, prosecute those responsible, and establishing the corresponding convictions.² Furthermore, the Commission notes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation.³

30. In light of the foregoing, the Commission finds that in the instant case 14 years have passed since Mr. Soto Soto's homicide without punishing those responsible, which provides grounds for applying the exception to the rule of prior exhaustion of domestic remedies envisaged in Article 46(2)(c) of the American Convention.

31. Finally, the Commission considers it important to clarify with respect to the exceptions to the rule of prior exhaustion of domestic remedies recognized in Article 46(2), that that provision, by its nature and purpose, is a self-contained norm *vis á vis* the substantive provisions contained in the

² IACHR, Report No. 56/14, Admissibility, Petition 8886-04, Honduras, Ronal Jared Martínez Velásquez and Family and Marlón Fabricio Hernández Fúnez, July 21, 2014, par. 20.

³ IACHR, Report N^o 51/10, Admissibility, Petition 1166-05, Honduras, Tibú Massacre, Colombia, March 18, 2010, par. 110.

Convention. Therefore, the determination as to whether the exceptions to the rule on the exhaustion of domestic remedies stipulated in that provision apply in this case should be made separately, and prior to the examination on the merits, since it depends upon a standard of judgment distinct from that used to determine the violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.⁴

2. Timeliness of the petition

32. Article 46(1)(b) of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment. In the complaint under review the IACHR has determined that the exception to the rule of exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention is applicable. In that regard, Article 32(2) of the Commission's Rules of Procedure establishes that in cases in which the exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time, in the judgment of the Commission. For this purpose, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances in each case.

33. The IACHR received the petition on May 8, 2003, while the alleged facts on the petition began to occur on October 6, 2001, and reportedly continue at present. Therefore, in light of the context and characteristics of this case, the Commission considers that the petition was lodged within a reasonable time for the purposes of determining compliance with Article 46(1)(b) of the Convention.

3 Duplication of procedures and international *res judicata*

34. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by this or any other international organization. Therefore, the causes for inadmissibility set down in Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable Claim

35. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order." The standard by which admissibility is assessed is different from the one needed to decide the merits of a petition since the Commission must perform a *prima facie* evaluation to determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the American Convention. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits of the matter.

36. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

37. In the instant case, the petitioners hold that the Honduran State violated the right of the alleged victims to a fair trial and judicial protection on account of the alleged unwarranted delay in the criminal proceeding in connection with Mr. Soto Soto's homicide, and of the lack of a meaningful, prompt, and effective investigation to clarify the circumstances of his death and identify those responsible. The State, for

⁴ IACHR, Report No. 48/15, (Admissibility, Petition 79-06, Pueblo Yaqui, Mexico, July 28, 2015, par. 56.

its part, argues that it was diligent, given that from the outset all the necessary steps were taken to establish the truth of the events and bring those responsible to justice.

38. The available information in the record suggests, *inter alia*, that the investigation initiated by the prosecutor's office was conducted in secrecy, purportedly preventing the petitioners from having knowledge of it; and despite the fact that those convicted are still free. Furthermore, both parties refer to shortcomings committed during the first stages of the investigation, when the evidence was collected, such as, the small number of samples collected, which purportedly had an impact on how the criminal proceeding unfolded.

39. In light of the factual and legal arguments presented by the petitioners and the nature of the matter before it, the IACHR finds that, if proven, the allegations could characterize possible violations of rights protected in Articles 8 and 25 of the American Convention, taking in conjunction with Article 1(1) thereof. In the merits stage the Commission will also consider if the allegations concerning a purported denial of justice would amount to a violation of the alleged victims' right to humane treatment under Article 5 of the Convention.

V. CONCLUSIONS

40. Based on the arguments of fact and law set forth above, the Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to the alleged violations of Articles 8 and 25 of the American Convention, in conjunction with the obligations contained in Article 1(1) thereof, to the detriment of Aristides Soto Soto and his family.

2. To notify the parties of this decision.

3. To proceed with its analysis of merits in the matter.

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 22nd day of the month of July, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.