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REPORT No. 88/17
PETITION 1286-06
REPORT ON ADMISSIBILITY

RIVAS FAMILY
EL SALVADOR

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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I. INFORMATION ABOUT THE PETITION

Petitioner:	Fidelina Rivas
Alleged victims:	José Humberto Rivas Morán, Félix Humberto Rivas Morán, and Fidelina Rivas
State denounced:	El Salvador
Rights invoked:	Article 4 (right to life) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	November 21, 2006
Date on which the petition was transmitted to the State:	April 12, 2010
Date of the State's first response:	November 12, 2012
Additional observations from the petitioner:	December 29, 2010, February 22, 2013, and September 17, 2014
Additional observations from the State:	June 2, 2014

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on June 23, 1978)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (right to life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in accordance with Article 1(1) (obligation to respect rights) thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms stipulated in Section VI
Timeliness of the petition:	Yes, under the terms stipulated in Section VI

¹ Hereinafter, "the American Convention" or "Convention."

² All observations were duly forwarded to the opposing party.

V. ALLEGED FACTS

1 Mrs. Fidelina Rivas (hereinafter, “the petitioner”) states that on July 29, 2005, Humberto Rivas Morán and Félix Humberto Rivas Morán (hereinafter, “the alleged victims”) left their home and headed toward the *Mayoreo La Tiendona* market in order to collect US\$6,000 from Henry Orellana for a job they had done. When they were unable to collect the money, the alleged victims returned home where they received a call from Aída Portillo Martínez and Wilfredo Portillo Martínez instructing them to go to the Monserrat neighborhood to collect the money. The petitioner confirms that since that day, she has had no knowledge of her sons’ whereabouts.

2 The petitioner notes that she currently resides in the United States and therefore granted power of attorney to a third party so he could file the corresponding report with the Office of the Prosecutor in Apopa. The Office of the Prosecutor informed him that they did not conduct this type of investigation and so he went to the *Instituto sobre Secuestros y Robos de El Salvador* [Salvadoran Institute on Kidnappings and Robberies] on August 8, 2005, where, in the petitioner’s opinion, the investigation was on the right path as the Institute had linked the disappearance of the alleged victims to the fact that they were witnesses in a trial being prosecuted against Aída Portillo Martínez and Wilfredo Portillo Martínez. The foregoing notwithstanding, the petitioner states that the authorities repeatedly suggested that the alleged victims were also involved in illegal activities, thereby distorting the sense of an impartial investigation.

3 The petitioner indicates that after a number of months had passed, the investigation was referred to the Central Prosecutors’ Office, which informed her that ten bodies had been found in a clandestine grave located behind the *Mayoreo La Tiendona* market, wherein a t-shirt that one of her sons had been wearing the day he disappeared was discovered and that therefore, some of the remains might be those of her sons. Despite this, the petitioner asserts that no scientific studies—such as DNA tests—were performed and she thus believes it has never been confirmed that the bodies unearthed included those of her sons.

4 The petitioner believes Aída Portillo Martínez, Wilfredo Portillo Martínez and their friends Henry Orellana and Arcenio Torres are responsible for the disappearance of her sons since, in her opinion, they allegedly made a deal with members of a gang known as *Mara Salvatrucha* to make her sons disappear. The petitioner contends that the investigation has been deficient inasmuch as the authorities have not investigated all possible suspects; they have not, for example, taken into account evidence of the Portillo’s involvement. She notes that she brought information related to other actors’ involvement in the reported disappearance of the alleged victims to the attention of the authorities.

5 The State, for its part, claims that the case was heard by the Fourth Trial Court of San Salvador, which held a public trial on September 13, 2007 against 13 members of the *Mara Salvatrucha Clica Iberia Locos Salvatruchos* gang who had been charged with the murder of Humberto Rivas Morán and Félix Humberto Rivas Morán. Once the evidence had been presented, 8 of the 13 gang members were found guilty and were sentenced to 35 years in prison.

6 The petitioner likewise states that on June 11 and 12, 2008, the Fourth Trial Court of San Salvador held a public trial against another defendant—also a gang member—who was found guilty *in absentia* by the Court of the murders of the alleged victims and sentenced to 64 years in prison.

7 To sum up, the petitioner is asserting that even though the State has indicated that it located her sons’ remains, it has not taken even the slightest measures to properly identify the bodies found, leaving the family in a state of uncertainty. She alleges partial impunity inasmuch as the State has not investigated all the alleged perpetrators and masterminds and she decries the undue delays in the investigation, which has still not delivered complete and thorough results. The petitioner thus concludes that the State violated, to the detriment of the alleged victims, the right to life enshrined in Article 4 of the Convention.

8 The State affirms that the institutions responsible for prosecution of the crime conducted the appropriate investigations and proceedings, making it possible to demonstrate and establish who had committed the crime being alleged by the petitioner. The State underscores that at first, the investigation

focused on confirming or disproving the hypothesis having to do with the link between Aída Portillo Martínez and Wilfredo Portillo Martínez and the murder of the alleged victims, but that as the investigation unfolded, it pointed toward the gang known as *Mara Salvatrucha Clica Iberia Locos Salvatruchos* as the perpetrator.

9 According to the State, the appropriate investigations and proceedings were conducted to determine who the perpetrators of the crime alleged by the petitioner were. With respect thereto, the State believes that the motive behind and circumstances under which the Rivas Morán brothers died have been legally established in the competent courts.

10 In conclusion, the State maintains that the investigations and proceedings were properly executed in strict adherence to the law and hence the petition should be considered inadmissible and therefore requests that the IACHR declare it as such.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11 In the instant case, the petitioner claims she reported the incident and followed the case via other persons who she had designated for such purpose. She maintains that measures were not taken to confirm the identity of the remains of those individuals whose deaths were being investigated internally by the legal authorities. The petitioner alleges that, as a result, the disappearance of her sons remains unpunished. That is to say she did everything in her power and the State has delayed or failed to take the necessary measures. The State, for its part, is not alleging failure to meet the exhaustion of domestic remedies requirement.

12 The Commission observes that the information furnished by the State reveals that a criminal investigation of the deaths of the alleged victims was conducted and that between 2007 and 2008, nine individuals associated with the *Mara Salvatrucha* gang were convicted and sentenced to between 35 and 64 years in prison.

13 Accordingly, bearing in mind that a criminal prosecution was pursued—which is relevant in cases in which serious *ex officio* prosecutable offenses are being alleged—and in accordance with its consistent position that when a State does not call into question the exhaustion of domestic remedies by the petitioner, its tacit decision to not avail itself of this line of defense established for its benefit³ is presumed, the Commission concludes that, theoretically, this petition meets the requirement stipulated under Article 46(1)(a) of the American Convention.

14 In the case at hand, the Inter-American Commission believes that, in principle, domestic remedies were exhausted with the criminal punishment imposed in 2007 and 2008 on those individuals found guilty of the murder of the alleged victims. In this regard, the IACHR observes that the petition was filed in 2006, that is, prior to the conclusion of these criminal prosecutions. The Commission thus concludes that this petition does meet the requirement set forth in Article 46(1)(b) of the Convention.

VII. COLORABLE CLAIMS

15 The petitioner holds that the State failed to properly investigate the circumstances surrounding the disappearance and subsequent death of her sons and that there were other individuals involved in the murder of her sons who were never convicted. She further contends that there is no certainty that the bodies found by the police were those of her sons. The petitioner is therefore denouncing the partial immunity that remains in this case, owing to the lack of an adequate investigation thereof, as a fundamental issue of access to justice. For its part, the State asserts that at the outset a line of investigation was pursued

³ See for example: IACHR, Report No. 26/08, Admissibility, Petition 270-02, César Alberto Mendoza et al., Argentina, March 14, 2008, paragraph 74; IACHR, Report No. 10/05, Admissibility, Petition 380/03, Rafael Ignacio Cuesta Caputi, Ecuador, February 23, 2005, paragraph 45; IACHR, Report No. 2/05, Admissibility, Petition 11.618, Carlos Alberto Mohamed, Argentina, February 22, 2005, paragraph 26.

that took into account those individuals the petitioner believes were also involved, but that the investigation concluded that the perpetrators were members of the *Mara Salvatrucha* gang. The State further points out the punishment imposed on those found guilty of the murder of the alleged victims.

16 With these considerations in mind, and following a thorough analysis of the information available, the IACHR observes that the legal authorities conducted a criminal investigation of the facts reported by the petitioner and that, two years after the alleged disappearances, 13 individuals were put on trial for the murder of the alleged victims. In addition, the information available reveals that eight of these individuals were sentenced to 35 years in prison, and in 2008 another defendant was convicted *in absentia* and sentenced to 64 years in prison.

17 In view of the considerations of fact and law presented by the parties as well as the nature of the matter brought to its attention, the IACHR believes that, if proven, the facts alleged with respect to the failure to identify the bodies of the alleged victims, and hence the lack of an effective investigation of their disappearance and deaths, could characterize violations of the rights protected under Articles 4 (right to life), 8 (fair trial), and 25 (judicial protection) of the American Convention, in accordance with Article 1(1) thereof, to the detriment of José H. Rivas Morán and Félix H. Rivas Morán, as well as of Articles 5 (humane treatment), 8, and 25 to the detriment of their mother, Mrs. Fidelina Rivas, also in connection with Article 1(1) of the American Convention.

VIII. DECISION

1. To find the present petition admissible in relation to Articles 4, 5, 8, and 25 of the American Convention in connection with the duties set forth in Article 1(1) thereof;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
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 in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.