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**REPORT No. 128/17**  
**PETITION 278-07**  
REPORT ON ADMISSIBILITY

PILAR NORIEGA GARCÍA, LEONEL RIVERO RODRÍGUEZ AND  
FAMILY  
MEXICO

Approved electronically by the Commission on October 11, 2017

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**REPORT No. 128/17<sup>1</sup>**  
**PETITION P-278-07**  
 REPORT ON ADMISSIBILITY  
 PILAR NORIEGA GARCÍA, LEONEL RIVERO RODRÍGUEZ AND FAMILY  
 MEXICO  
 OCTOBER 11, 2017

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Pilar Noriega García, Leonel Rivero Rodríguez and the Civil Association Abogadas/os para la Justicia y los Derechos Humanos
<b>Alleged victims:</b>	Pilar Noriega García, Leonel Rivero Rodríguez and family
<b>State denounced:</b>	Mexico
<b>Rights invoked:</b>	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>2</sup> in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects); Article 7 paragraph (b) of the Protocol of San Salvador; Article XIV of the American Declaration of the Rights and Duties of Man, and other international instruments <sup>3</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Date on which the petition was received:</b>	March 8, 2007
<b>Date on which the petition was transmitted to the State:</b>	December 13, 2007
<b>Date of the State's first response:</b>	February 21, 2008
<b>Additional observations from the petitioning party:</b>	June 23 and December 30, 2008; June 11, 2009; March 5 and December 21, 2010
<b>Additional observations from the State:</b>	September 22, 2008; April 16 and 20, June 1 and July 28, 2009; May 11 and July 19, 2010
<b>Date on which the petitioner was notified of the possible archiving of the petition:</b>	March 30, 2016
<b>Date on which the petitioner responded to the notification regarding the possible archiving of the petition:</b>	May 5, 2016
<b>Precautionary measure granted:</b>	Pilar Noriega García: October 25, 2001 (lifted on February 6, 2008) Leonel Rivero Rodríguez and family: October 25, 2001 (lifted on November 25, 2008)

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> Articles 5, 8, 9 and 12 of the United Nations Declaration on Human Rights Defenders.

<sup>4</sup> The observations presented by each party were duly transmitted to the opposing party.

### 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 (deposit of ratification instrument: March 24, 1981)

### 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 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

### V. ALLEGED FACTS

1. The petitioning party alleges that effective measures of protection were not provided and that justice was denied in the face of cycles of threats suffered by the alleged victims in retaliation for their professional work as human rights defenders. It also claims that that alleged victims worked in legal defense along with Digna Ochoa y Plácido,<sup>5</sup> who died on October 19, 2001 in circumstances yet to be cleared. Based on the foregoing, on October 22, 2001, the Commission filed a request for provisional measures to the Inter-American Court on Human Rights, in favor of Pilar Noriega Garcia and Leonel Rivero Rodríguez in order that the State adopt effective measures of protection and investigate the threats they had received, punishing the persons responsible. On October 25, 2001, said measures were granted by the Court's President, and were subsequently ratified by the Court<sup>6</sup> and extended to Leonel Rivero Rodríguez's family members: those in favor of Pilar Noriega were in force until February 2008, and those concerning Leonel Rivero and family, until November 2008.

2. The petitioning party asserts that the State is liable for the lack of appropriate investigation into the death threats received by Pilar Noriega, who on August 12, 1996, along with Digna Ochoa, reported the threats that they received, as a result of which Preliminary Investigation 50/AC/1282/96-08 was filed. Pilar Noriega claims that she constantly requested information on the State of the investigation to the authorities, who, in the framework of the Provisional Measures granted by the Inter-American Court, submitted that the case had been included in the Preliminary Investigation filed on Digna Ochoa. The petitioners assert, however, that on April 5, 2006 the Unit for the Promotion and Defense of Human Rights indicated that on January 13, 1998 the Attorney General's Office of Mexico City had archived the investigation for lack of legal interest; and that the causal link between the threats and Digna Ochoa's death was subsequently dismissed. In this regard, petitioner Pilar Noriega denounces that she was never legally notified of the lack of connection between the investigations or of the archiving of the investigation, a resolution made without previously undertaking thorough procedures, thus ensuring impunity for the persons responsible and perpetuating the alleged victims' situation of risk.

<sup>5</sup> The case of Digna Ochoa y Plácido was admitted by the IACHR on July 16, 2013 by Report No. 57/13 and is currently in the merits stage.

<sup>6</sup> I/A Court H.R., Matter of Miguel Agustín Pro Juárez Human Rights Center *et al.* regarding Mexico. Provisional Measures. Order of the Inter-American Court of Human Rights of November 30, 2001.

3. Moreover, the petitioning party denounces the lack of appropriate investigation into the repeated attacks and harassments suffered by Leonel Rivero Rodriquez and family between April 16, 2001 and November 8, 2006. The petition indicates pursuits, telephone threats, that the lawyer and his wife were run over, that the officers in charge of their safety were attacked and that one of their former bodyguards was killed. The petitioning party claims that the following four investigations filed were unsuccessful: (1) attack on bodyguards (PGR/ECA/107/2002-1): it was archived on July 29, 2008; (2) telephone threats and pursuits (CUH-6T2/321/03-02): on October 4, 2005, it was ruled that criminal proceedings would not be filed; then, a constitutional appeal was rejected and the case, dismissed; (3) injuries (criminal case 277/04): the only suspect escaped upon release by the Public Prosecutor's Office; it was dismissed on June 26, 2007 on the grounds of statute of limitations; and (4) telephone threats (CUH-6T2/403/05-03): the dismissal of criminal proceedings was confirmed on January 17, 2008 and the subsequent appeals for legal protection and review were turned down; the closing of the procedure was notified on March 11, 2009. In addition, the petitioning party asserts that several harassments were denounced before the Unit for the Promotion and Defense of Human Rights but no protection measures were taken.

4. In view of the foregoing, the petitioning party alleges lack of a legal framework establishing adequate mechanisms for the protection of those who defend human rights in Mexico, and regulating the acts of the authorities in charge of ensuring their work. It indicates that the investigations still remain in the preliminary stage of Preliminary Investigations and that the persons responsible are yet to be identified and prosecuted. It also asserts that the Public Prosecutor's Office, failing to observe its rules of procedures (Agreement A/004/90), undertook groundless orders to archive and not to investigate, sometimes before expert opinions were made or alleging the claimants' lack of interest. It denounces the lack of mechanisms to impugn the inaction or delay on the part of the Public Prosecutor's Office, the single authority in charge of furthering procedures. In this regard, the petitioner submits that judicial protection has been denied to them, thus they have been left in a risk situation of unknown dimensions and nature, damaging their personal integrity as well as their families and all defenders' personal integrity.

5. The State, for its part, claims that the alleged victims were able to resort to several protection mechanisms provided by the State in the framework of the provisional measures granted by the I/A Court H.R., in which the same facts denounced here were discussed. It asserts that the purported threats were investigated in the Preliminary Investigation procedures and that the acts did not remain unpunished, as the evidence found allowed to attribute responsibilities; and that it is therefore evident that there exist speedy and simple remedies. Furthermore, it submits that the unsatisfactory result for the alleged victims does not mean that the State failed to act with due diligence. In this regard, it indicates that the claimants failed to duly cooperate in the cases, claiming that when threats are investigated the claimant's procedural activity is vital for the success of the investigation. Finally, the State requests the Inter-American Commission to find this petition inadmissible; otherwise, the Commission would become a fourth instance, as the domestic legal rulings were duly justified and the authorities acted in full compliance with human rights law.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

6. According to the information available from the case file, the alleged victims timely denounced the alleged facts before the judicial authorities and filed preliminary investigations. Likewise, the Commission notes that the Mexican Public Prosecutor's Office's decisions, such as the archiving of the investigations, the denial to pursue criminal proceedings and the non-accusatory resolutions, like those issued on this case, cannot be appealed against before the courts,<sup>7</sup> and the State did not deny the existence of adequate remedies that were not filed. Therefore, the Commission concludes that the existing remedies were inappropriate; thus, for the purpose of their exhaustion, it rules the applicability of the exception set forth in Article 46.2.a of the American Convention.

<sup>7</sup> IACHR, Report on the Situation of Human Rights in Mexico, September 24, 1998, par. 370.

7. As to the requirement of timeliness, the Commission notes that the petition was presented on March 8, 2007 and that the archiving of the investigations was notified to the alleged victims on April 5, 2006 and March 11, 2009. As a result, the Commission concludes that this petition meets the requirement of timely presentation.

## **VII. COLORABLE CLAIM**

8. In view of the elements of fact and law presented by the petitioners and the nature of the matter brought to its attention, the IACHR believes that the allegations are not manifestly groundless and that, if proved, they may establish violations of the rights protected by Articles 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects).

9. With respect to the claim about the purported violation of Article 4 (Life) of the Convention and the right to work enshrined in Article XIV of the American Declaration of the Rights and Duties of Man, the Commission notes that the grounds submitted by the petitioners are insufficient to *prima facie* consider its possible violation. Likewise, as to the claims concerning Article 7 of the Protocol of San Salvador, the IACHR notes that, in Article 19.6 of said treaty, the Commission's competence to participate in an individual case is limited to Articles 8 and 13 thereof. Concerning said article and those invoked from UN Declaration on Human Rights Defenders, the Commission can consider them to interpret and apply the American Convention, under Article 29 of the Convention.

10. Lastly, as to the State's claim of the establishment of a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. In fact, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victims' right of access to justice under the terms of the American Convention.

## **VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 5, 8 and 25 of the American Convention, in relation to its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Article 4 of the American Convention and Article XIV of the American Declaration of the Rights and Duties of Man;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

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

Approved electronically by the Commission on the 11th day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.