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REPORT No. 4/18
PETITION 1519-08
REPORT ON ADMISSIBILITY

JUAN CARLOS ENCINAS MARIACA AND FAMILY
BOLIVIA

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 4/18, Petition 1519-08. Admissibility. Juan Carlos Encinas Mariaca and family. Bolivia. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Inter-American Press Association
Alleged victim:	Juan Carlos Encinas Mariaca and family
State denounced:	Bolivia
Rights invoked:	Articles 4 (right to life), 8 (right to a Fair Trial), 13 (freedom of thought and expression), and 25 (right to Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	December 19, 2008
Notification of the petition to the State:	May 28, 2013
State's first response:	September 3, 2013
Additional observations from the petitioner:	July 6, 2016
Additional observations from the State:	October 28, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes, American Convention on Human Rights (deposit of instrument made on July 19, 1979)
Competence <i>Ratione materiae</i>:	Yes, American Convention

IV. 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 (Right to Humane Treatment), 8 (right to a Fair Trial), 13 (freedom of thought and expression), and 25 (right to Judicial Protection) in relation to 1.1 (obligation to respect rights) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception of article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. According to the petitioner, Juan Carlos Encinas Mariaca was an independent journalist (freelance), collaborator of television news programs and a radio program in Catavi, province of Los Andes, department of La Paz. The petitioner indicates that on July 29, 2001, Encinas Mariaca went, with a camera or photographic camera and a portable recorder to cover a conflict between members of two cooperatives engaged in the exploitation of limestone in Catavi. In the conflict there was firing of firearms and the journalist was seriously wounded. The petitioner indicates that he was taken to the health post in the town,

¹ Hereinafter "Convention" or "American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

but because he could not be treated, they wanted to transfer him in a van to a hospital in La Paz, but the aggressors prevented the passage and the journalist died of internal bleeding. It indicates that "around him were nine capsules served, caliber 9 millimeters, which the police picked up" and that "another shot hit the arm of [a] neighbor of the place." The petitioner explains that during the conflict "Encinas was on the side of the residents of Catavi. His wife was part of the Cooperativa Multiactiva."

2. According to the information presented by the petitioner, a group of at least fifty members of the Community Marbleware Cooperative Ltd. had moved with firearms, in the morning of July 29 to the city of El Alto, community of Catavi, with the purpose of occupying the limestone deposits and found resistance of the cooperative and community associates of that locality, who threw dynamite and other explosives. The petitioner indicates that the mining conflict would take three years and that the National Institute of Cooperatives, under the Ministry of Labor, would be mediating between the parties of the conflict.

3. According to the information presented by the petitioner, the investigation of the facts would have begun on the same day of the murder of Encinas Mariaca. On November 1, 2002, the Sentencing Court of the Omasuyos-Achacachi Province of the Judicial District of La Paz issued judgment No. 009-2002, condemning an individual to six years in prison as direct perpetrator of the homicide and other six people to three and two months in prison as accomplices of the crime. According to the information provided by the petitioner, the direct perpetrator of the crime has not served his sentence and is a fugitive from justice, as well as two other accomplices in the crime. It alleges that the arrest warrants issued by the courts against these three persons would not have been executed. According to the information presented by the petitioner, the State has not taken effective measures to ensure the capture of these persons, which would have ensured impunity in the case, in the sense of not having applied effective sanctions in practice.

4. For its part, the State notes that on April 9, 2002, the Public Prosecutor formalized the public criminal accusation after having initiated and concluded the process of investigating the facts. It notes that on November 1, 2002, the conviction was pronounced against seven people responsible for the events. It notes that between 2003 and 2012, 4 people convicted as accomplices in the crime were arrested, and served their sentence. It indicates that two of them would have been formally arrested in 2002 and in 2004 the other 2 individuals would have been captured. Regarding the other convicts, their whereabouts would be unknown and their escape would lead to the non-execution of the formal detention orders. It indicates that it would continue making the necessary efforts to capture them. Additionally, it alleges that the domestic remedies were not exhausted, and that if the victims considered their rights violated, the Constitutional Writ of Amparo would be available in the country.

5. The State claims that the persons allegedly responsible for the death of the alleged victim would be individuals "in no case linked to agents of the State." In addition, it indicates that the facts of the present case would have been a consequence of a conflict between groups of mining cooperative members. Next, it would not have foreseen such a conflict because of the unexpectedness of the actions, in addition to the facts allegedly taking place on the morning of July 29, 2001, in a remote community. It indicates that once the Police and the Prosecutor's Office knew about the fact, they would have intervened in an "effective and timely manner in accordance with the national regulations." The State also informs that during the proceedings, the next of kin of the alleged victim would have made use of the ordinary remedies provided for in the Law. In this way, it indicates that none of the facts would characterize a violation to article 8 of the ACHR.

6. With regards to the alleged violation of the right to freedom of thought and expression, the State claims that the death of Encinas Mariaca would not be directly related to his job as a journalist, or that the act was aimed at "intimidating" other journalists. It affirms that the shot would have been made in the middle of a conflict, and the projectile of the weapon would have wounded him "by coincidence". It also states that no action or omission of state agents would have restricted his right to freedom of expression. In addition, it indicates that during the criminal proceedings it would not have been established that his death had occurred due to his status of journalist.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner states that the unjustified delay of justice in this case continues and that the petition must be admitted in accordance with Article 46.2.c of the American Convention. It alleges that while those responsible for the murder as direct perpetrator and accomplices were identified and convicted in 2002, only four of them actually served their sentence. It alleges that after 16 years of the alleged events, both the direct perpetrator and two accomplices of the crime would remain fugitives from justice and the State has not adopted the necessary measures to ensure their capture. For its part, the State maintains that the judicial remedies would not have been exhausted; if the victims considered their rights violated, the Constitutional Writ of Amparo would be in force in the country to protect them.

8. The Commission observes that, in situations such as the one presented which includes the accusation of violations of the right to life, the domestic remedies that must be taken into account for the purposes of admissibility of the petition are those related to the investigation and criminal sanction of those responsible, which translates into domestic legislation into crimes prosecuted ex officio. In the present case, according to the record, on November 1, 2002, the Sentencing Court of the Omasuyos-Achacachi Province of the Judicial District of La Paz issued sentence No. 009-2002, condemning the direct perpetrator of the journalist homicide to six years in prison and six of his accomplices to three and two months in prison. This decision was not appealed and remained firm. Since then, only four of the convicts have effectively served their prison sentences imposed. The direct perpetrator of the crime would be fugitive from justice, as well as two of his accomplices, given the alleged lack of effectiveness of the state measures to locate and capture them.

9. Given the above, the IACHR concludes that in the present case the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies, under the condition that the causes and effects that have prevented the exhaustion of domestic remedies in the present case will be analyzed, as pertinent, in the report adopted by the Commission on the merits of the controversy, in order to verify whether they actually constitute violations of the ACHR. On the other hand, the IACHR considers that the petition was filed within a reasonable period of time, and that the admissibility requirement regarding the deadline for submission was satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the petitioner's allegations could characterize violations of the rights protected in the articles 5 (personal integrity), 8 (Fair Trial) and 25 (judicial protection) of the American Convention, to the detriment of the next of kin of the alleged victim. The Commission will analyze the possible violation of these provisions in light of the general obligations enshrined in Article 1.1 of the Convention.

11. In addition, the Commission will analyze the possible applicability of articles 4, 5 and 13 of the ACHR at the merits stage of the present case with respect to the alleged victim. As the IACHR has expressed, when it comes to violence against journalists and media workers, the failure to comply with the obligation to protect journalists at special risk, as well as the investigation and criminal punishment of those responsible for the events also imply a breach of the obligation to guarantee the victim's right to life and freedom of expression.³

³ IACHR. Report No. 21/15. Case No. 12.462 Nelson Carvajal Carvajal and family (Colombia). March 26, 2015. Para. 120; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11,740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 13 and 25 in accordance with Article 1.1 of the American Convention;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.