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REPORT No. 203/22
PETITION 1881-14
REPORT ON ADMISSIBILITY

FRANCISCO PASCUAL LOPEZ
HONDURAS

Approved electronically by the Commission on August 8, 2022.

Cite as: IACHR, Report No. 203/22. Petition 1881-14. Admissibility. Francisco Pascual Lopez.
Honduras. August 8, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fundacion San Alonso Rodriguez (FSAR) and Observatorio Permanente de Derechos Humanos del Aguan (OPDHA)
Alleged victim	Francisco Pascual Lopez
Respondent State:	Honduras
Rights invoked	Articles 4 (life), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, ¹ in relation to its Article 1(1) (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR ²

Filing of the petition:	November 19, 2014
Additional information received at the stage of initial review:	November 20, 2020
Notification of the petition to the State:	November 17, 2021
State's first response:	February 16, 2022
Additional observations from the petitioner:	April 20 and May 18, 2022
Additional observations from the State:	February 22, April 5, and March 16, 2022
Notification of the possible archiving of the petition:	October 23, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	November 20, 2020

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 instrument of ratification made on September 8, 1977)

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 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception provided for in Article 46(2)(c) of the Convention
Timeliness of the petition:	Yes, in the terms of Section VI

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

² The observations of each party were duly forwarded to the opposing party. On July 14, 2020, the petitioner expressed its interest in the processing of the petition.

V. POSITION OF THE PARTIES

1. The petitioners allege the disappearance and murder of Francisco Pascual Lopez during the agrarian conflict in the Bajo Aguan Valley region, in a context of repression and violence suffered by the campesino communities; as well as impunity as a result of the failure to properly investigate and punish those responsible.

2. The petition describes how the facts took place in the context of the agrarian conflict that arose between campesinos and business owners as a result of regulations and public policies on agrarian matters adopted by the State beginning in the 1990s, producing a context of repression and violence against peasant communities and organizations in the region of Valle del Bajo Aguan, Colón department.

3. Specifically, the petitioners state that Mr. Pascual Lopez, 38 years old at the time of the facts, was a campesino belonging to the Movimiento Campesino de Rigores (MCR); on May 15, 2011, he was herding cattle near the edge of the farm known as Panamá when a private security guard, who was guarding the farm, approached him and shot him with a firearm. It states that a boy of approximately eight years old witnessed the events, and upon hearing the shots, a nearby campesino went to the scene, where the only thing he found were traces of blood.

4. On the same day of the facts, officials from the Tocoa police station, Colón department, went to the scene of the facts together with campesino members of the MCR. They found shell casings and bullet holes in the surrounding trees, as well as traces of blood at the site where Mr. Pascual Lopez had last been seen alive. On May 17, 2011, members of the MCR reported the disappearance and presumed murder of Mr. Pascual Lopez to the Office of the Public Prosecutor.

5. The petitioners allege that the Office of the Public Prosecutor and the National Bureau of Criminal Investigation (DNIC) did not visit the scene as quickly as was necessary, despite finding sufficient evidence to establish the facts that led to the disappearance of Mr. Pascual Lopez. The petitioners maintain that investigators failed to collect and evaluate evidence that they consider essential, such as bullet casings and traces of blood that likely belonged to the alleged victim; in addition, they indicate that no statement was taken from the child who witnessed the acts of violence that led to the disappearance of Mr. Pascual Lopez.

6. Additionally, they state that in April 2014 the Special Unit on Violent Deaths in Bajo Aguan (UMVIBA) was created, whose purpose is to investigate the deaths resulting from the agrarian conflict in the region. They indicate that on May 6, 2014, as a result of the failure of the Office of the Public Prosecutor to investigate the facts, the *Observatorio Permanente de Derechos Humanos del Aguan* (OPDHA)³ brought the facts before the UMVIBA. In this regard, they state that during the first meeting held with the UMVIBA Coordinator, they were informed that the alleged victim's file had been lost. Subsequently, in a second meeting held on May 26, 2014, again with the UMVIBA coordinator, he stated that he did have the file on Mr. Pascual Lopez. He indicated that on May 24, 2011, it was added to internal file 342-11, and complaint number DGIC-345/11 was assigned. However, the petitioners state that it contains only two actions: i) the complaint filed on May 17, 2011, by members of the MCR; and ii) the order requesting an investigation dated May 24, 2011, with no indication of further investigation.

7. On May 28, 2014, the alleged victim's sister-in-law filed a complaint with the National Human Rights Commissioner (CONADEH) for the unjustified delay in investigating the disappearance and presumed murder of Mr. Pascual Lopez. The complaint also stated that there was a private security guard who had witnessed the events and had information regarding the whereabouts of Mr. Pascual Lopez's remains. Likewise, the petitioners indicate that in the complaint, CONADEH was asked to investigate the status of the investigations into the facts alleged and intervene before the competent bodies to ensure a statement was taken from the aforementioned security guard.

³ The petitioning party states that the OPDHA is a coalition of grassroots campesino organizations, formed in 2011, whose mission is to monitor the agrarian conflict in the Bajo Aguan Valley region, as well as to investigate human rights violations.

8. The petitioners indicate that on July 11, 2014, members of the OPDHA once again held a meeting with the UMVIBA on the progress of the investigation. After the meeting, the members of the organization concluded that there had been no progress in the investigation into the disappearance and presumed murder of Mr. Pascual Lopez, among other reasons because the UMVIBA coordinator himself told them that, "if there is no body, a charge of murder cannot be pursued. As long as the campesino's body is missing, nothing can be done."

9. Additionally, the petitioners state that the facts of this case were described by the IACHR in its 2012 Annual Report, in which the Commission established as follows:

During 2012, the IACHR continued to receive information on the serious conflict in the area. According to a network of national and international organizations that are following this situation, between September 2009 and August 2012, 53 persons that either supported or were members of the Bajo Aguan peasant farmers organizations, and a journalist and his partner, were allegedly killed in the agrarian conflict in the region. Another peasant farmer has been missing since May 15, 2011. According to information provided by the Office of the Special Prosecutor for Human Rights, these crimes have not been properly investigated.⁴

10. They also state that the facts of this case appear in a February 2014 Human Rights Watch (HRW) report,⁵ which, in addition to the account of the events that led to the disappearance of Mr. Pascual Lopez, established that: "[...] Documents of the pending investigation are kept confidential and Human Rights Watch has been unable to ascertain if anyone working on the plantation was questioned or whether any other investigative steps were taken by police in this case [...]."

11. The petitioners report that on October 30, 2020, the mother and sisters of Mr. Pascual Lopez requested a copy of investigative file 324-11; however, in a resolution dated November 10, 2020, the Bajo Aguan Regional Prosecutor denied the request. Dissatisfied with this, the relatives of the alleged victim filed a request for reconsideration with the UMVIBA for the denial of access to a copy of Mr. Pascual Lopez's file. On November 25, 2020, the Bajo Aguan Regional Prosecutor's Office (UMVIBA) declared the request for reconsideration inadmissible, finding that although a photocopy of the file had not been turned over, the right to know certain aspects of the investigation had not been violated since timely support had been provided regarding the investigation into the disappearance of Mr. Pascual Lopez. The petitioners again indicates that on March 28, 2022, the relatives of the alleged victim requested access to internal investigative file 324-11, which was denied on March 31, 2022, by the UMVIBA.

12. For its part, the State argues that the petition is inadmissible for failure to exhaust domestic remedies. It indicates that, with the disappearance of the alleged victim, his relatives had the writ of *habeas corpus* available to them, calling it the appropriate control remedy for preventing a disappearance or a secret place of detention. Additionally, it indicates that starting from the date on which the facts took place, investigations were carried out to locate the alleged victim, as well as to clarify the facts and identify the persons involved in his disappearance and presumed death, including the collecting of statements from a protected eyewitness and from four relatives of the alleged victim.

13. Lastly, it argues that in this case, as established by the petitioning party, private security guards were the ones who shot Mr. Pascual Lopez, according to unofficial statements, and as the acts were committed by third parties who were not exercising public authority or acting on behalf of the State, responsibility cannot be attributed to the State. It also establishes that the corresponding authorities, in this particular case, were not aware of the risk faced by the alleged victim, for which reason the State argued it cannot be established that it violated the right to life of Mr. Pascual Lopez by failing to take the necessary measures because it had no knowledge of the imminent risk.

⁴ IACHR, Annual Report of the Inter-American Commission on Human Rights 2012, Chapter IV, Honduras, 2. Status in Bajo Aguan, para. 191.

⁵ Human Rights Watch, "After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras," December 21, 2010, <https://www.hrw.org/news/2010/12/20/honduras-prosecute-post-coup-abuses>.

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

14. The petitioners argue that the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention is applicable to this case, specifically due to the failure to investigate the facts that led to the disappearance of the alleged victim and his alleged murder, facts that have still not been resolved after 11 years. For its part, the State argues that the petition does not meet the requirement of exhaustion of domestic remedies because no writ of *habeas corpus* was filed in response to the disappearance of Mr. Pascual Lopez.

15. The IACHR has previously held in situations analogous to this one that involve crimes against life and personal integrity that the domestic remedies that must be taken into account for purposes of admissibility are the ones involving the criminal investigation and punishment of those responsible.⁶ Therefore, to assess whether this petition meets the requirements set forth in Article 46 of the American Convention, the Inter-American Commission will review the remedies related to the investigation and punishment of the persons who could be directly or indirectly responsible for the events of the May 15, 2011. Given that the most recent communications from the parties indicate that no progress has been made in the investigation, that the criminal proceeding has not concluded, and that more than eleven years have elapsed since the facts in question, the IACHR must analyze whether this petition falls under the exception provided for in Article 46(2)(c) of the American Convention.

16. In this regard, the State maintains that it has acted diligently and provides information regarding the progress made in the investigation that began in May 2011. However, the Inter-American Commission must note that there is no evidence of significant progress in the investigations 11 years after the facts took place. In fact, one of the main allegations of the petitioners—which should be analyzed in greater depth in the merits stage of this matter—is precisely the fact that the authorities did not act with due diligence in the early stages of the investigation, along with the objective fact—not refuted by the State—that the coordinator of the Special Unit for Violent Deaths in Bajo Aguan (UMVIBA) indicated that the mere fact of not knowing the whereabouts of the body of the alleged victim is an obstacle to the investigation moving forward. In the opinion of the Commission, this amounts to a concerning indication of a lack of interest in the authorities in the area of the country where the facts took place. Additionally, the evidence provided by the petitioners indicates that they have not been passive or inactive in response to inefficiency of the domestic investigation; on the contrary, they have been actively demanding that the investigations move forward.

17. For these reasons, the IACHR decides to apply to this petition the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention. Given that the harm alleged in the petition continues to date, it also concludes that this petition was filed within a reasonable period of time under the terms of Article 32(2) of its Rules of Procedure. The Inter-American Commission notes that these determinations do not amount to a prejudgment of the merits of the matter, and that it will examine the State's pleadings regarding the manner in which the investigations were conducted—as well as their complexity—at the merits stage.

VII. ANALYSIS OF COLORABLE CLAIM

18. The Commission observes that the allegations entail the disappearance and presumed murder of Francisco Pascual Lopez; a failure to conduct a timely search and investigation; and the lack of effective judicial protection in relation to the alleged facts. The State argues that the facts of this case are attributable to third parties who were not exercising government authority and who did not act on behalf of or with the acquiescence of the State.

⁶ IACHR Report No. 72/18, Petition 1131-08. Admissibility. Moises de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, para. 10

19. Closely related to this, the IACHR recalls that inter-American case law has found that there is an integral linkage between the State's response and the protection of the life and integrity of the person who is reported missing. The immediate and exhaustive nature of the State's response, as required under the Convention, is independent of whether the disappearance was perpetrated by private parties or by State agents. The Commission finds that, as in other cases where "there are reasonable reasons for suspecting that a person has been subjected to disappearance, it is indispensable for prosecution and judicial authorities to act quickly and immediately by ordering timely and necessary measures aimed at ascertaining the whereabouts of the victim or the place where he or she might be found deprived of liberty."⁷ In cases of deprivation of liberty by non-State actors, the same inter-American standard of protection is applicable, which follows from the nature of the rights involved.⁸

20. As regards the State's international responsibility, this Commission has indicated that an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention. Therefore, as a general rule, a criminal investigation should be carried out quickly in order to protect the interests of the victims, preserve the evidence, and even protect the rights of every individual who is considered a suspect in the context of the investigation.⁹

21. Thus, in view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, and the information available to the IACHR itself from the exercise of its monitoring functions in Honduras,¹⁰ it finds that the facts alleged by the petitioners regarding the fact that Mr. Pascual Lopez was disappeared and presumably murdered, and the fact that the State has not acted with due diligence or within a reasonable period of time to investigate and clarify the facts, are not manifestly groundless and could potentially amount to violations of articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Article 1(1) (obligation to respect rights), to the detriment of Francisco Pascual Lopez.

⁷ Inter-American Court. Case of the *Río Negro Massacres v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 4, 2012, para. 159.

⁸ IACHR. Report 152/19. Case 12,979. Merits. Tagaeri and Taromenane indigenous peoples (in voluntary isolation). Ecuador. September 28, 2019, para. 153.

⁹ IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. 11.

¹⁰ In this regard, in addition to the pronouncements already cited in the report, the 2015 IACHR Report on the Situation of Human Rights in Honduras also stands out, in which the IACHR indicated the following in its paragraphs 160 and 167:

In Bajo Aguan, Tocoa, there is a long-standing land dispute between peasants and businessmen recording an alarming number of deaths, threats, harassment and intimidation against the peasants engaged in defending their land, even including disappearances. The Commission was informed that since the June 28, 2009, coup d'état, there has been an increase in the number of deaths, threats and intimidation against farmers in the area; and the stigmatization and criminalization of the agrarian struggle continues, together with evictions. In April 2010, the National Government signed an agreement with peasant organizations in the area, aimed at resolving the problem. However, the violence has continued. [...]

[...]

The local organizations and members of the Panama community presented information on the close cooperation between the public authorities and the private farm owners in the area. In 2013, the United Nations Working Group on the use of mercenaries "expressed concern about the involvement in human rights violations of private security companies hired by landowners, including killings, disappearances, forced evictions and sexual violence against representatives of farmers' associations in the Bajo Aguan region" [...]

Likewise, it is relevant to highlight the hearing on the "Situation of Human Rights in Bajo Aguan, Honduras," held on October 24, 2011, during the 143rd Regular Period of Sessions of the IACHR, during which the examples of deaths of peasants in Bajo Aguan included what had happened to Mr. Francisco Pascual Lopez. The audio of this hearing is available at: <https://www.oas.org/es/cidh/sesiones/audiencias.asp?Year=2011&Country=HND&Topic=0>

VIII. DECISION

1. To declare this petition admissible with regard to articles 4, 5, 8, and 25 of the American Convention, in conjunction with its Article 1(1);

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

Approved by the Inter-American Commission on Human Rights on the 8th day of the month of August 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Roberta Clarke, and Carlos Bernal Pulido, Commissioners.