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**REPORT No. 56/14**  
**PETITION 886-04**  
REPORT ON ADMISSIBILITY

RONAL JARED MARTÍNEZ AND FAMILY AND MARLÓN  
FABRICIO HERNÁNDEZ FÚNEZ  
HONDURAS

Approved by the Commission at its session No. 1991 held on July 21<sup>st</sup>, 2014  
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**REPORT No. 56/14**  
**PETITION 886-04**  
ADMISSIBILITY  
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**I. SUMMARY**

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Jorge Roberto Martínez (hereinafter “the petitioner”) on September 15, 2004, alleging the international responsibility of the State of Honduras (hereinafter “Honduras,” “the State,” or “the Honduran State”) to the detriment of Ronal Jared Martínez Velásquez and Marlón Fabricio Hernández Fúnez (hereinafter “the alleged victims”) all of them minors at the time of the events, for alleged violations of rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) stemming from the alleged excessive use of force by members of the Army and National Police, as well as the subsequent failure to investigate and punish the persons purportedly responsible.

2. In particular, the petitioner claims that due to the alleged “abuse of authority” (“*abuso de poder*”) by police agents and officers of the National Army, the child Ronal Jared Martínez had acquired a physical disability (irreversible paraplegia). In addition, it is noted that even though the very agents of the State of Honduras are said to have been directly responsible for this wrongdoing, the case continues to be in impunity.

3. The State has not responded to the facts alleged by the petitioner, nor has it called into question the admissibility of the petition under consideration.

4. Without prejudging on the merits, after analyzing the parties’ positions and satisfying the requirements set forth at Articles 46 and 47 of the Convention, the Commission decided to find the claim admissible for purposes of examining the alleged violation of Articles 5, 8, 19, and 25 of the Convention, in conjunction with its Article 1(1). Finally, it decided to notify the parties and order the report published in its annual report to the General Assembly of the OAS.

**II. PROCESSING BY THE COMMISSION**

5. On September 15, 2004, the Commission received the complaint from the petitioner and assigned it number 886-04. On September 2, 2010, the IACHR forwarded the petition to the Honduran State, and asked that it respond within two months from the receipt of the communication, in keeping with Article 30(3) of its Rules of Procedure. On January 30, 2012, the request to Honduras to submit its response was reiterated. As of the date of the consideration of this report, the State had not provided any information related to the petition.

**III. THE PARTIES’ POSITIONS**

**A. The petitioner’s position**

6. The petitioner states that due to the alleged “abuse of authority” (“*abuso de poder*”) by police agents and members of the National Army, his youngest son Ronald Jared Martínez Velásquez was left paraplegic for life. As regards the incident said to have caused this permanent physical disability, it appears in the documents produced by the petitioner that on July 20, 2002, the petitioner was driving a car in which his son Ronald Jared Martínez Velásquez and a neighbor’s child, Marlón Fabricio Hernández Fúnez, ages 10 and 5 years respectively, were accompanying him. Since the petitioner drove his vehicle the wrong way, members of a patrol squad purportedly made up of one agent of the National Police and five Army officers (Jorge Joel Cubías Irías, Ángel Gabriel Padilla, Marvin Israel Amaya S., Harin Noel Martínez, and Alcidez Rafael

Rodríguez) are said to have fired six shots, with five 5.56 millimeter caliber projectiles towards the rear of the vehicle and one projectile of the same caliber in the small window of the right-side door.

7. According to information provided by the petitioner, he was detained and taken to the police station in Jutiapa. Due to the lesions suffered by the alleged victims, they are said to have been transferred to the Hospital Atlántida Integrado. Ronal Jared Martínez was “gravely wounded by a projectile that lacerated his colon, right kidney, lumbar vertebrae [...] and affected his spinal cord [...] which cause[d] the permanent disability”; and the child Marlón Fabricio Hernández Fúnez was said to have “been wounded in the abdomen, by a projectile, causing him a temporary disability for 21 days.” It also appears in the information provided by the petitioners that a complaint was filed against army officer Jorge Joel Cubías Irías.

8. In addition, as regards the exhaustion of domestic remedies, the petitioner alleges that even though the State agents were responsible for having fired against the alleged victims, they are still free.

9. The petitioner also mentions that from the date on which the facts alleged occurred, in addition to the permanent disability of his son, he had been caused extremely high expenditures and economic losses to his family, yet the State had not given his family any type of monetary aid, except for a donation of 15,000 lempiras by the First Lady. In addition, the petitioner indicates that one of his greatest challenges has been not being able to send his son to school since they do not have the resources needed to be able to take him there.

#### **B. The State**

10. The State did not present any response to the facts alleged by the petitioner, nor has it questioned the admissibility of the petition under consideration.

### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

#### **A. Preliminary considerations**

11. The IACHR observes that at no time has the State responded to the petitioner’s allegations nor has it questioned the admissibility of the petition. The IACHR recalls that Honduras is responsible for its international obligations assumed in keeping with the terms of the American Convention. Article 48(1)(a) of the Convention is especially relevant as it establishes the procedures that should be followed when a petition or communication is submitted to the Commission. The IACHR “shall request information from the government of the state indicated as being responsible for the alleged violations” and “[t]his information shall be submitted within a reasonable period [...]” The provisions of Article 48(1)(e) stipulate that the Commission “may request the states concerned to furnish any pertinent information.” This requires that states party to the Convention give the Commission the information it needs to analyze the individual petitions<sup>1</sup>.

#### **B. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci***

12. In principle the petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition identifies as the alleged victims individual persons with respect to whom 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, the date on which 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 take cognizance of the petition, insofar as it alleges violations of rights protected by the American Convention said to have taken place in the territory of Honduras, a state party to that treaty.

<sup>1</sup> IACHR, Admissibility Report No. 65/06, P 81-06, *Jimmy Charles*, Haiti, July 20, 2006, para. 23.

13. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date on which the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

14. Furthermore, the IACHR might whether the Honduran State's international responsibility was triggered under the American Convention, other instruments that are part of the *corpus juris* on the rights of children and adolescents in relation to the situation of Ronal Jared Martínez Velásquez and Marlón Fabricio Hernández Fúnez, and in relation to the rights of persons with disabilities, as regards Ronal Jared Martínez Velásquez.

### **C. Admissibility requirements**

#### **1. Exhaustion of domestic remedies**

15. Article 46(1)(a) of the American Convention provides that in order for a complaint lodged with the Inter-American Commission in keeping with Article 44 of the Convention to be admissible, one must have pursued and exhausted domestic remedies, in keeping with generally recognize principles of international law. The purpose of this requirement is to enable the national authorities to learn of the alleged violation of a protected right and, if appropriate, to solve it before it is heard by an international body. Article 46(2) of the Convention establishes three situations in which the rule of exhaustion of domestic remedies does not apply: (a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These situations do refer not merely to the formal existence of such remedies, for they must also be suitable and effective.

16. As regards the exhaustion of domestic remedies, the petitioner alleges that even though the state agents were the ones responsible for having caused his son to suffer irreversible paraplegia, no one has been criminally prosecuted, and so they continue to be free. The State has not taken a position on exhaustion of domestic remedies.

17. It appears in the judicial evidence that the Criminal Court of La Ceiba (Tribunal de Sentencia de la Ceiba), by judgment of March 26, 2003, took a position on the case in which it made allegations against five Army officers identified by the petitioners as responsible for the damages inflicted to the alleged victims, and of abuse of authority to the detriment of the Public Administration<sup>2</sup>. In that judgment the court of first instance acquitted the five persons responsible "due to the lack of evidence for reach certainty and be able to find [their] guilt" based on the impossibility of establishing to which of the Army officers the projectiles found in the body of the child Ronal Jared Martínez belonged.

18. In the face of this decision of acquittal, on April 30, 2003, the office of the Prosecutor filed a motion for cassation on grounds of a procedural violation (No. 1491-2003) before the Supreme Court of Justice, based on the consideration that the court of first instance did not weigh the evidence in keeping with the rules of sound legal reasoning (*la sana crítica*). Indeed, said investigative body mentioned that this decision left in impunity an act "serious in nature committed by state agents."

19. According to the information produced by the petitioner, on March 11, 2004, the motion for cassation was found admissible by the Chamber for Criminal Matters of the Supreme Court of Justice, which remanded the matter to the court of first instance for it to amend the judgment. In the face of this remand, on February 22, 2005, the Criminal Court (Tribunal de Sentencia) of La Ceiba handed down a judgment of

<sup>2</sup> Criminal Proceeding– Court of First Instance, La Ceiba, Atlántida. Case No. 49-2002

acquittal only with respect to member of the military Jorge Joel Cubías Irías. Its decision of acquittal was based on there being “no nexus between the bullets that penetrated the vehicle [...] and the firearm borne by Jorge Joel Cubías Irías,” since the day of the events the accused was bearing “a firearm that was a 9 mm pistol,”<sup>3</sup> and the vehicle was hit by “six projectiles caliber 5.56 x 45 mm.”

20. The facts in the instant case involve the alleged violation of rights that translates – according to the Code of Criminal Procedure of Honduras – into possible crimes subject to prosecution at the initiative of the criminal justice authorities. In this regard, the precedents established by the Commission indicate 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, in addition to making possible other forms of reparation pecuniary in nature.<sup>4</sup> In addition, the Commission has emphasized this obligation, on indicating that “since the crimes in question here are public crimes--that is to say, subject to ex officio prosecution [i.e. at the initiative of the prosecutorial authorities]--the State has the legal obligation to investigate them, and that is an obligation that may not be delegated or renounced.”<sup>5</sup> Based on the foregoing, the Commission considers that it is this criminal proceeding, promoted by the State, that should be considered for the purposes of determining the admissibility of the claim.

21. In addition, the IACHR notes that it appears in the judicial evidence that the Criminal Court of La Ceiba only ruled on one of the five state agents who are said to have fired on the petitioner’s vehicle. Indeed, the judicial file indicates that even though by order of October 14, 2004 of the Supreme Court of Justice, the General Directorate for Criminal Investigation (DGIC) ordered “the immediate arrest of the five alleged perpetrators,”<sup>6</sup> only Mr. Jorge Joel Cubías was arrested; his arrest occurred November 22, 2004. Accordingly, only one of the persons allegedly responsible was prosecuted, and then he was released. For this reason, considering that more than 12 years after the facts it has not been possible to establish the circumstances that gave rise to them, nor have all of those allegedly responsible been prosecuted – in addition to which the State has not provided information on the remedies available in relation to the instant case – the IACHR concludes that there is an unwarranted delay in carrying out the investigations, and therefore the exception enshrined at Article 46(2)(c) of the American Convention is applicable.

22. It only remains to note that invoking exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), given its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, to determine whether the exceptions to the rule of prior exhaustion set forth in that provision are applicable to the case in question, one must perform a prior and separate analysis of the merits, since it depends on a different standard of appreciation from that used to determine the violation of Articles 8 and 25 of the Convention.

#### **D. Time for submitting the petition**

23. According to Article 46(1)(b) of the Convention, in order for a petition to be admitted it must be filed within six months of the date on which the party alleging a violation was notified of the final decision handed down by the domestic courts. In the claim under analysis, the IACHR has established that the

<sup>3</sup> It should be noted that this element was only added in the 2005 judgment.

<sup>4</sup> IACHR, *Nam Qom Indigenous Community of the Qom (Toba) People*, Argentina, Admissibility Report No. 273-05, March 19, 2013, para. 33; IACHR, *Alex Edmundo Lemún Saavedra et al.*, Chile, Admissibility Report No. 404-06, November 8, 2012, para. 35; IACHR, *Residents of the Village of Chichupac and Xeabaj Halmlet of the Municipality of Rabinal*, Guatemala, Petition 1579-07, November 1, 2010, para. 50; IACHR, Admissibility Report No. 99/09, Petition 12,335, *Gustavo Giraldo Villamizar Durán*, Colombia, October 29, 2009, para. 33; IACHR, Admissibility Report No. 52/97, *Arges Sequeira Mangas*, Nicaragua, 1997 Annual Report of the IACHR, paras. 96 and 97, and IACHR, Admissibility Report No. 55/97, *Abella et al.*, Argentina, November 18, 1997, para. 392.

<sup>5</sup> Admissibility Report No 61/01, Case 11,771, *Samuel Alfonso Catalán Lincoleo v. Chile*, April 16, 2001, para. 62.

<sup>6</sup> This measure by the Supreme Court of Justice was issued at the request of the Public Ministry on September 22, 2004.

exception to the exhaustion of domestic remedies as per Article 46(2)(c) of the Convention applies in the instant case. In this respect, Article 32 of the IACHR's Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition must be filed within a time that the Commission considers reasonable. For that purpose the Commission should consider the date on which the alleged violation of rights occurred and the circumstances of each case.

24. Therefore, in view of the context and characteristics of the instant case, for considering whether it was filed in a reasonable time, given the circumstances, the IACHR takes into account that the petition was filed on September 15, 2004, that alleged the facts began on July 20, 2002 when Jared Martínez Velásquez and Marlón Fabricio Hernández Fúnez were said to have been injured occurred, and that the alleged effects of that incident, in terms of the administration of justice, extend to the present day. Based on the foregoing, the IACHR concludes that the petition was submitted within a reasonable time, in the terms of Article 32 of its Rules of Procedure, and that it should be deemed to have satisfied the admissibility requirements regarding the time of filing.

#### **E. Duplication of procedures and international *res judicata***

25. Article 46(1)(c) of the Convention provides that the admissibility of petitions is subject to the requirement that the subject matter "is not pending in another international proceeding for settlement" and at Article 47(d) the Convention stipulates that the Commission shall not admit a petition that substantially reproduces another petition or communication already examined by the Commission or other international body. In the instant case the parties have not argued the existence of either of those two circumstances, nor can they be deduced from the record.

#### **2. Characterization of the facts alleged**

26. For purposes of admissibility, the IACHR must decide whether the arguments state facts that tend to establish a violation of the American Convention, as stipulated in its Article 47(b) and whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c).

27. In addition, neither the American Convention nor the Rules of Procedure of the IACHR requires the petitioner to identify the specific rights allegedly violated by the state in a matter submitted to the Commission, although 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 what provision or provisions of the relevant inter-American instruments apply and whose violation could be established if the facts alleged are proven by sufficient evidence.

28. The petitioner indicates that due to the alleged "abuse of authority" ("*abuso de poder*") brought to bear by police agents and members of the National Army, his minor child Ronald Jared Martínez Velásquez was rendered paraplegic for life. In addition, he argues that even though the State of Honduras is directly responsible for what happened to his son –due to the fact that it was its agents who caused his son's permanent disability– the Honduran courts acquitted one of the persons purportedly responsible. The State did not submit any observations or information on the violations alleged by the petitioner.

29. Having reviewed the information submitted by the petitioner, the Commission finds that his claims are not "manifestly groundless" or "obviously out of order" and that, if proven true, might constitute violations of Articles 5, 8, 19, and 25 of the American Convention in relation to Article 1(1) of the same international instrument. In addition, the Commission will examine the facts alleged in light of Article 19 of the American Convention, specifically in relation to the special duty of protection that states have, in keeping with the principle of the best interests of the child and the existing *corpus juris* on the rights of children and adolescents.

30. In particular, the Commission observes that the allegations in the instant petition are related fundamentally to the alleged international responsibility of Honduras stemming from the actions of Honduran state agents, which are said to have resulted in an excessive use of force against Ronald Jared

Martínez Velásquez, Jorge Roberto Martínez, and Marlon Fabricio Hernández, acts which could be found, in the merits phase, to constitute violations of Article 5 in relation to Article 1(1) of the American Convention.

31. In addition, if the claims with respect to the lack of due diligence as regards the investigation, punishment, and prosecution of the persons purportedly responsible are proven, they could constitute violations of Articles 8 and 25 of the American Convention in relation to Article 1(1), to the detriment of Ronal Jared Martínez Velásquez and his family, and of Marlon Fabricio Hernández.

32. In addition, the IACHR considers that the effects suffered by the family members of the child Ronal Jared Martínez as a result of his having acquired a permanent physical disability and of the alleged denial of justice might amount to a violation of Article 5 of the American Convention, in conjunction with Article 1(1).

33. In view of all the foregoing, the Commission considers that the requirements established in Article 47(b) and (c) of the Convention have been met.

## **V. CONCLUSIONS**

34. Given the foregoing considerations of fact and law,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To find the instant case admissible in relation to the alleged violations of the rights established at Articles 5, 8, 19, and 25 of the American Convention, in connection with Article 1(1) of that instrument.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 21<sup>st</sup> day of the month of July, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.