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REPORT No. 83/18
PETITION 455-13
REPORT ON ADMISSIBILITY

JOSÉ ANTONIO GUTIÉRREZ NAVAS *ET AL*
HONDURAS

Approved electronically by the Commission on July 17, 2018.

Cite as: IACHR, Report No. 83/18. Petition 455-13 Admissibility. José Antonio Gutiérrez Navas *et al.* Honduras July 17, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, Gustavo Enrique Bustillo Palma, <i>Centro Latinoamericano de Derechos Humanos</i> ¹
Alleged victims:	José Antonio Gutiérrez Navas <i>et al.</i> ²
Respondent State:	Honduras
Rights invoked:	Articles 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws), 11 (Privacy), 23 (Participation in Government) and 25 (Judicial Protection) of the American Convention on Human Rights ³ , in connection with Article 1.1 thereof

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	February 5, 2013
Additional information received at the stage of initial review:	July 8, September 30, December 26, 2013; February 21, July 24, November 28, December 1 and 29, 2014; January 8, October 22, 2015; September 13, 2016
Notification of the petition to the State:	January 9, 2017
State's first response:	April 21, 2017
Additional observations from the petitioner:	July 18, September 22, 2017; January 8 and June 20, 2018
Additional observations from the State:	December 18, 2017; May 7, 2018

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 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 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws), 23 (Participation in Government), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention on Human Rights, in connection with Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI

¹ On July 6, 2018 Mrs. Clovis Treviño informed the IACHR that she would no longer continue as a petitioner.

² Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel and Gustavo Enrique Bustillo Palma.

³ Hereinafter "Convention" or "American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

Timeliness of the petition:

Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners claim that José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel and Gustavo Enrique Bustillo Palma (hereinafter “the alleged victims”) were arbitrarily and wrongfully removed from office as Justices of the Constitutional Chamber of the Supreme Court of Justice, in political retaliation from the Honduran National Congress.

2. They indicate that the National Congress passed the Special Law to Purge the Police Force of Corruption, by Decree No. 89-2012, effective as of May 25, 2012. They claim that many citizens appealed this law through a constitutional complaint before the Constitutional Chamber, since these believed that it infringed the Honduran Constitution. They submit that after the legal proceedings were done, on November 27, 2012, the Constitutional Chamber voted on the constitutional complaint, and that said draft legislation did not get the unanimous vote needed for its passing. They explain that the four alleged victims voted to declare the unconstitutionality of said law, and that only one judge voted to declare its constitutionality. Therefore, based on the established procedure, the complaint was submitted to the Plenary of the Supreme Court of Justice for its decision.

3. They allege that in retaliation for the abovementioned events, on December 10, 2012 the Congress appointed a Committee, made up of representatives of the ruling party with the mandate to investigate the administrative conduct of the Judiciary. In the evening of December 11, 2012 said Committee presented its report to the Congress, establishing that there had been administrative irregularities in the processing of the constitutional complaint filed against the Special Law to Purge the Police Force of Corruption. They claim that the report indicated that the Constitutional Chamber’s resolution on said law was in disagreement with the security policy adopted by the Executive and Legislative Branches, and that this seriously harmed the State. They remark that this congressional session was held with the building surrounded by members of the Army. They claim that at four in the morning of December 12, 2012 the Congress voted in favor of dismissing four of the five magistrates of the Constitutional Chamber (those who voted for the unconstitutionality of the Special Law to Purge the Police Force of Corruption), and appointed four replacements.

4. They argue that the alleged victims were unable to defend their rights, and that their dismissal was wrongful, since the Congress was not entitled to do so and there were no legal procedures enabling the prosecution of the highest authorities of the Supreme Court of Justice. They allege that under the Honduran legal system the purported administrative irregularities were not a legal cause for the removal of judges. They indicate that it was not the dismissed magistrates but the President of the Supreme Court of Justice that had administrative functions, by order of the Congress itself, through Decrees No. 282-2010 and 5-2011. They add that in an act of obedience and submission, the Supreme Court’s President swore in the new magistrates the morning of December 12, 2012, committing thus a political blow to the judicial institutions.

5. They claim that given that there were no legal procedures to remove magistrates of the Supreme Court of Justice, the investigation undertaken by the Representatives Committee and the subsequent motion filed by the Congress were illegal and arbitrary mechanisms used as a legal cause for dismissing the alleged victims. They affirm that said dismissal was in retaliation for proceedings inherent to the alleged victims’ judicial office, which they undertook within the boundaries of their legal and constitutional powers. In addition, they indicate that the then President of the Congress justified the illegal actions of the Congress, declaring that it had been found that the Justices of the Constitutional Chamber conspired against decisions of the Congress.

6. They indicate that, in view of this, the alleged victims lodged a constitutional appeal on December 12, 2012, including objections to the then newly-appointed magistrates and the magistrate that was not removed from office, in the belief that these would have a direct interest on the case if they happened

to hear it. Moreover, the "Bar of Anti-Corruption Lawyers" civil organization (*Barra de Abogados Hondureños Anticorrupción*) presented on the same date another constitutional appeal that was joined with that filed by the alleged victims, for a joint resolution. They claim that the new Constitutional Chamber refrained from hearing the case, and that the Supreme Court's President then proceeded to appoint a Second Special Chamber, made up of other Magistrates of the Supreme Court. They submit that the new Chamber also refrained from hearing the case, and that as a result, the Supreme Court's President created a Third Special Chamber.

7. They report that on January 29, 2013 the Special Chamber, by a majority of votes (four to one) plainly refused to grant constitutional protection, arguing that the actions of the Congress were beyond this Chamber's jurisdiction. It established that deputies of the Congress have only legislative functions, and that they are not state officials, whose actions can be the object of constitutional appeals. The petitioners indicate that the provisions of the Law on Constitutional Justice establish that when the jurisdictional body alleges lack of competence to hear a constitutional appeal, the case must be transmitted to the competent body within the following 24 hours. They claim that the Special Chamber, however, refrained from transmitting the case file to other authorities. They submit that the arbitrary interpretation of the Constitution violated the alleged victims' right of access to justice.

8. They claim that in view of the fact that the abovementioned judgment was not unanimous, the Plenary of the Supreme Court of Justice analyzed the constitutional appeal filed by the alleged victims, and that on February 6, 2013 it ruled to dismiss it (by 13 votes in favor and 2 votes against), arguing that it was not entitled to hear or resolve it. The petitioners indicate that the decision simply reiterated the arguments of the judgment of January 29, 2013. They submit that this demonstrates the ineffectiveness of domestic remedies, the distorted interpretation of basic rights and the lack of judicial independence of the Supreme Court of Justice.

9. The petitioners claim that they filed an appeal for review against that decision, but that the Plenary of the Supreme Court of Justice dismissed it (again by 13 votes in favor and 2 votes against) on February 18, 2013 on the grounds that judgments, once signed, cannot be changed. They allege that this confirmed the fact that domestic remedies are merely useless and ineffective formalities, for they led to the full denial of justice to the alleged victims. They also indicate that having been illegally and wrongfully dismissed, the alleged victims have been deprived of their right to remain in office and the opportunity of being reelected, which violated thus their right to work.

10. They allege that since the four justices were removed, the Constitutional Chamber is made up of illegally appointed replacements. They indicate that this demonstrates the Judiciary's submission to the Legislative and Executive Branches. Moreover, they claim that the alleged victims, since their dismissal, are constantly threatened and harassed by state agents and unidentified persons. They submit that these incidents have been reported to the Public Prosecutor's Office and brought to the attention of the Commissioner of Human Rights in Honduras and the National Committee of Relatives of the Disappeared in Honduras, but that state authorities have failed to take actions or measures to investigate or afford protection. Furthermore, they claim that both the President of the Republic and the President and deputies of the Congress have lodged frivolous and malicious accusations against the alleged victims, which harm the dignity and honor of the alleged victims themselves and their families.

11. For its part, the State argues that the procedure adopted by the Congress ensured the alleged victims' right of due process. It claims that on December 10, 2012 the Congress created a special Committee that investigated the administrative conduct of the justices of the Supreme Court, particularly of those part of the Constitutional Chamber. It points out that the investigation concerned "their administrative conduct in matters of public security, by way of complementing the efforts made by the Congress in reforming the Constitution and issuing specific laws to afford more security to the citizens." It submits that the Committee's report established that the constitutional complaint filed against the Special Law to Purge the Police Force of Corruption was resolved on November 27, 2012, when said law was no longer in force. In this regard, it remarks that Decree 89-2012 concerning the Special Law to Purge the Police Force of Corruption was effective from May 25, 2012 to November 25, 2012. Therefore, the Committee considered that the

Constitutional Chamber's resolution was incoherent with the security policy implemented by the Executive and Legislative Branches, and that it entailed serious damages for the State for it meant a setback in the progress achieved in the fight against crime and thus put at risk the security of people and their property.

12. It claims that several representatives believed that the conduct of the justices of the Constitutional Chamber was manifestly contrary to the State's public interest, and that, as a result, they lodged a motion requesting that these be immediately removed from office. It submits that afterward the judicial vacancies were filled pursuant to the domestic rules.

13. Lastly, the State affirms that the processing and the resolution of the constitutional appeal and the appeal for review were done in full observation of the rights of access to justice and due process, without any limitations on the alleged victims.

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

14. The petitioners indicate that domestic legal remedies were exhausted through the Supreme Court's resolution of February 18, 2013, by which the appeal for review was settled. For its part, the State did not submit any observation on the exhaustion of domestic remedies or contested the petitioners' claim on that respect.

15. The requirement of exhaustion of domestic remedies, set forth in Article 46.1.a of the American Convention, establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obliged to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.⁵

16. The Commission takes into account that article 183 of the Political Constitution of Honduras recognizes the right to file constitutional appeals as a constitutional safeguard for the restoration of rights.⁶ Moreover, under article 42 of the Law on Constitutional Justice, a constitutional appeal is applicable against resolutions, actions and decisions issued by any of the State Branches. And pursuant to article 120 of said instrument decisions unanimously adopted by the Constitutional Chamber or the Plenary of the Supreme Court of Justice can only be challenged through appeals for review.

17. In the instant case, the alleged victims filed a constitutional appeal on December 12, 2012 to challenge the dismissals ordered by the Congress, and on February 6, 2013 the Plenary of the Supreme Court of Justice rejected it. Then they presented an appeal for review that the same authorities dismissed on February 18, 2013. Accordingly, the Commission believes that the remedies filed by the petitioners were appropriate to resolve the reported situation. Therefore, the Commission considers that domestic remedies were exhausted, and that the petition meets that requirement established in Article 46.1.a of the Convention.

18. The Commission observes that domestic remedies were exhausted on February 18, 2013 through the judgment issued by the Plenary of the Supreme Court of Justice, and that the petition was filed on February 5, 2013. Domestic remedies were exhausted at a time when the case was under study for

⁵ IACHR, Report No. 67/12 (Admissibility), Petition 728-04, Rogelio Morales Martínez, Mexico, July 17, 2012, par.34. IACHR, Report No. 16/18. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12.

⁶ Article 183. The State recognizes the guarantee of constitutional protection. Therefore, any person or anyone on behalf of him or her has the right to file a constitutional appeal:

1. For the preservation or the restoration of the rights and safeguards established in the Constitution; and
2. For establishing, in specific cases, that a law, resolution or decision issued by the State does not oblige an appellant or is applicable in view of its violation, restriction or distortion of any of the rights recognized in this Constitution.

admissibility. Based on the Commission's doctrine, the analysis on the requirements foreseen in Articles 46 and 47 of the American Convention must be carried out in the light of the situation existing at the time when the admissibility or inadmissibility of the claim is determined.⁷ Consequently, the IACHR declares that this petition meets the requirement established in Article 46.1.b of the Convention.

19. In regard to the alleged threats and harassment against the alleged victims, the Commission takes note of the fact that these incidents were allegedly reported to the Public Prosecutor and that the Commissioner on Human Rights requested the issue of measures of protection for them. However, based on the information submitted by the parties, there is nothing to indicate that the State has undertaken the applicable investigation procedures to date. Therefore, the IACHR concludes that the exception regarding the exhaustion of domestic remedies is applicable in the instant case, in accordance with Article 46.2.c of the Convention. Additionally, given the context and the characteristics of the instant case, the Commission believes that the petition was lodged within a reasonable time and the admissibility requirement concerning timeliness must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

20. Considering the elements of fact and law filed by the parties, and the nature of the matter brought to its attention, the Commission establishes that, if proven, the alleged victims' purported arbitrary removal from office as justices of the Constitutional Chamber of the Honduran Supreme Court of Justice, through an allegedly politically-biased procedure unforeseen in the Constitution and the domestic laws; the alleged threats and harassment; and the lack of subsequent judicial protection all could establish possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), 23 (Participation in Government), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention, in connection with Articles 1.1. (Obligation to Respect Rights) and 2 (Domestic Legal Effects), to the detriment of the alleged victims.

21. As for the claim concerning the alleged violation of Article 11 (Privacy) of the American Convention, the Commission observes that the allegations filed by the petitioners are not sufficient for considering *prima facie* its violation.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 9, 23, 25 and 26 of the American Convention, in relation to Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in relation to Article 11 of the American Convention; and

3. 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.

Approved by the Inter-American Commission on Human Rights on the 17th day of the month of July, 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.

⁷ IACHR, Report No. 15/15, Petition 374-05. Admissibility. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, par. 39. IACHR, Report No. 4/15, Admissibility, Petition 582/01, Raúl Rolando Romero Feris, Argentina, January 29, 2015, par. 40.