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**REPORT No. 321/22**

**PETITION 45-13**

REPORT ON INADMISSIBILITY

VILMA MENJIVAR AND JULIO MARTIN BALTODANO  
HONDURAS

Electronically approved by the Commission on November 26, 2022

**Cite as** IACHR, Report No. 321/2022. Petition 45-13. Inadmissibility. Vilma Menjivar and Julio Martin Baltodano. Honduras. November 26, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Vilma Menjivar
<b>Alleged victim:</b>	Vilma Menjivar and Julio Martin Baltodano
<b>Respondent State:</b>	Honduras
<b>Rights invoked:</b>	The petition does not refer to articles of the American Convention on Human Rights <sup>1</sup> nor to any other treaty over which the Inter-American Commission has competence.

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	January 13, 2013
<b>Additional information received during the stage of initial review:</b>	November 30, 2015
<b>Notification of the petition:</b>	June 13, 2019
<b>State's first response:</b>	September 23, 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and international res judicata:</b>	No
<b>Rights declared admissible:</b>	None
<b>Exhaustion or exception to the exhaustion of domestic remedies:</b>	No, in the terms of Section VI
<b>Timeliness of the petition:</b>	No, in the terms of Section VI

**V. POSITION OF THE PARTIES**

1. The petitioner alleges the international responsibility of Honduras for the failure to investigate and punish various crimes for which she filed complaints, including the kidnapping of her son Julio Martin Baltodano.

*Regarding the alleged kidnapping of Mister Julio Martin Baltodano*

2. The petitioner states that on November 13, 2008, her son, Julio Martin Baltodano, twenty-two years old and originally from the United States of America, was kidnapped along with two other persons in front of his house located in the municipality of Tela, department of Atlantida. The petitioner states that on November 18 of that same year, relatives of the other two individuals allegedly kidnapped filed a complaint with the General Directorate of Criminal Investigation of Tela, Atlantida for the alleged kidnapping of the three individuals (including Mr. Baltodano). This complaint was registered under the file 1509-08. Between April 28 and 29, 2010, the National Directorate of Criminal Investigation of Tela collected various testimonies, among

<sup>1</sup> Hereinafter the "the Convention" or the "American Convention".

<sup>2</sup> The observations of each party were duly notified to the opposing party. On October 13, 2019 and February 11, 2021, the petitioner expressed her interest in the processing of the petition.

which it was confirmed that on the day of the events the three disappeared subjects, including Mr. Baltodano, were outside a property owned by the petitioner located in the municipality of Tela, department of Atlantida; however, the precise moment of the kidnapping could not be determined due to the lack of information regarding these events.

3. In relation to the kidnapping of Mr. Baltodano, the petitioner went to the United States consulate in order to promote the investigation of the facts that led to his kidnapping and current disappearance. On February 24, 2011, the United States Consul General in Honduras reported that the Embassy of that country had taken various actions in relation to the alleged kidnapping of Mr. Baltodano. In particular, he stated that the Federal Bureau of Investigation ("FBI"), in support of the Honduran authorities, did not find elements to establish the kidnapping of Mr. Baltodano or his whereabouts. Subsequently, on April 11, 2012, the petitioner expanded her statement before the Public Prosecutor, alleging that her in-laws could be involved in the kidnapping.

#### *Other complaints*

4. Independently of the kidnapping of Mr. Baltodano, in communications subsequent to the initial petition, Ms. Menjivar mentions –in an unconnected manner– other alleged violations of her procedural guarantees derived from other criminal complaints filed by her, as follows:

i) On August 21, 2006, she filed a complaint with the General Directorate of Criminal Investigation of Tela for the crime of threats, damages and usurpation, recorded under criminal file 1028-2007. However, the Sectional Court of First Instance of Tela, Atlantida decided to definitively dismiss the complaint, considering that the petitioner's testimonies were "*incoherent, confusing and without direction, pointing to a series of unrelated incidents [...]*". Consequently, on June 7, 2007, the Public Prosecutor of the municipality of Tela, department of Atlantida ordered the closure and filing of the complaint filed. Dissatisfied with this, the petitioner filed an appeal; however, in a ruling dated February 27, 2008, the Court of Appeals of the city of La Ceiba confirmed the closure and filing of the complaint.

ii) On the other hand, on October 6, 2006, the petitioner filed a complaint for the crime of fraud against the National Electric Energy Company (ENEE) before the Regional Prosecutor's Office of La Ceiba, department of Atlantida, denouncing the excessive charge in her electrical energy consumption. However, on October 11, 2011, the Public Prosecutor determined the administrative closure of the case since the crime of fraud against the petitioner had not been proven.

iii) In addition, the petitioner filed various complaints between September and February 2007 before the General Directorate of Criminal Investigation of Tela for the theft of orchards on her spouse's private property. On October 14, 2006, the Public Prosecutor of the municipality of Tela, department of Atlantida decided to close and file the complaint, considering that the petitioner had not proven ownership of the farm and because there were no elements with which to verify reported thefts.

5. In short, the petitioner alleges the lack of diligent investigations by the Public Prosecutor both for the kidnapping of Julio Martin Baltodano, as well as for the reports of damages, threats; fraud; and theft, because she considers that the investigations carried out allegedly did not produce a timely result for the purposes of determining the authors of the reported crimes or punishing those responsible.

#### *Position of the State*

6. Regarding the kidnapping of Julio Martin Baltodano, the State explains that diligent measures were taken in order to clarify the facts, including, in the first place, receiving witness statements from the next of kin of the alleged victims of the kidnapping. However, it states that due to the scant information provided, it was not possible to determine the moment in which Mr. Baltodano was deprived of his liberty along with the other two individuals. In that same sense, it indicates that since there are no indications that state agents participated in the alleged kidnapping, the crime of forced disappearance could not be configured either. In

addition, it argues that since there was no ransom call for the relatives of the kidnapped victims, the crime of kidnapping could not be established and, therefore, the case remains under investigation.

7. Closely related to this, the State details that the Regional Delegate of the Atlantic Coast, in his capacity as Director of the Human Rights and International Litigation consultancy of the Office of the Attorney General, undertook, among others, the following procedures: i) accompanied the complainant and visited, together with the mothers of the disappeared, the facilities of a penal center, given the suspicion of one of them that her children could be there; ii) interviewed the prosecutor in charge of the municipality of Tela, Atlántida in order to learn about the development and progress in the kidnapping investigations and; iii) held meetings with relatives of the hostages. As a result of this, he concluded that: *"The case is still in the investigation phase of the National Directorate of Criminal Investigation of Tela, Atlántida, with suspects or the whereabouts of the three youths having been identified."*

8. On the other hand, regarding the complaint for fraud filed by the petitioner against the ENEE, the State indicates that the Public Prosecutor confirmed the administrative closure of the case on October 11, 2011, for which reason the petitioner's claim was not brought before the courts. It details that the charges and cuts made in the petitioner's home were due to her failure to make the payments corresponding to her electricity consumption. It also indicates that on August 5, 2015, the ENEE issued a report in which it determined that several meter changes had been made in the petitioner's home and that a payment agreement was offered to the petitioner. In this regard, the State alleges a failure to exhaust domestic remedies, because the petitioner did not challenge the administrative closure of her complaint, in violation of the provisions of Article 46.1.a) of the American Convention.

9. Regarding the complaint for threats, damages and usurpation, the State indicates that, in accordance with what was established by the Sectional Court of First Instance of Tela, Atlántida, the definitive dismissal of the complaint was decided because the petitioner's testimonies lacked coherence. Consequently, on June 7, 2007, the Public Prosecutor decided to close and file the complaint. This decision was confirmed on February 27, 2008 by the Court of Appeals of the City of La Ceiba, upon ruling on the appeal filed by the petitioner. Regarding the complaint for the crime of theft, the State points out that since the petitioner did not prove ownership of the property, and in the absence of elements that would allow the reported theft to be identified, on October 15, 2006, the Public Ministry determined to close and file the complaint. Regarding these two proceedings, the State indicates that the petitioner turned to the IACHR in an extemporaneous manner due to the fact that both were definitively closed in February 2008 and October 2006, respectively, and the petition was presented only in January, 2013. Likewise, the State argues that the petitioner did not challenge at the domestic level the definitive closing of the complaints, thus contravening the provisions of Article 46.1.a) and b) of the American Convention.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES, TIMELINESS OF THE PETITION AND COLORABLE CLAIM**

10. From the -intricate and disorganized- information sent by the petitioner, the IACHR interprets the following claims: (a) the lack of due investigation of the kidnapping of Mr. Julio Martin Baltodano; and (b) the lack of due investigation regarding the complaints filed by the petitioner for the crimes of threats, damages, and usurpation; fraud; and theft on private property. In this sense, the IACHR will separate, for purposes of analyzing the admissibility of this petition, these facts raised by the petitioner.

### *Complaint over the crime of kidnapping*

11. Regarding the alleged kidnapping of Mr. Julio Martin Baltodano, the Commission notes that the complaint was filed on November 18, 2008. Consequently, the Public Prosecutor initiated the investigations and established a case file. Subsequently, between April 28 and 29, 2010, the testimonies of the relatives of the other two kidnapped subjects were collected; however, due to the scant information provided by the witnesses and the fact that no ransom had been requested for Mr. Baltodano or for the other two persons with whom he was, the Public Prosecutor determined that it was impossible to continue with the investigations. However, investigation procedures have been carried out in a timely manner in order to clarify the facts. For its part, the

State has not disputed the lack of exhaustion of domestic remedies or the timeliness for filing regarding this aspect of the petition.

12. In this regard, the IACHR recalls its uniform position according to which in cases in which violations of the right to personal integrity are alleged, the appropriate remedy to be exhausted is criminal proceedings, through the informal and diligent conduct of investigations that identify those responsible for the violation and subject them to trial and punishment in accordance with the American Convention<sup>3</sup>. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them<sup>4</sup>. However, in this petition the IACHR observes that the State has demonstrated that the pertinent investigations into the kidnapping of Mr. Baltodano and two other persons have been carried out. Specifically, it is observed that the authorities accompanied the next of kin of the victims to carry out proceedings, appear in court, and present testimonies. Similarly, the IACHR notes that the complaints filed by the petitioner, referring to promoting the investigation of the kidnapping of her son, were processed and followed up on and that the crime of kidnapping was not established because no ransom was requested. For her part, the petitioner has not provided elements that are clear enough to establish, at least prima facie, the possible international responsibility of the State for its omission to investigate the facts of the complaint<sup>5</sup>.

13. Based on these considerations, the IACHR finds that this aspect of the petition is inadmissible under the terms of Article 47.b) of the American Convention.

*Complaints for threats, damages and usurpation; fraud; and theft*

14. Regarding the complaint filed by the petitioner for the crimes of threats, damages, and usurpation, the Commission observes that once said complaint was prosecuted, the Sectional Court of First Instance of Tela, Atlantida, dismissed it because the petitioner's own testimonies lacked coherence and, therefore, they did not provide information that tended to clarify the facts of the complaint. On February 7, 2008, the Court of Appeals of the City of Ceiba confirmed the administrative closure of the complaint by ruling on the appeal filed by the petitioner.

15. On the other hand, regarding the complaint filed for the crime of fraud against the ENEE, the Commission observes that on October 11, 2011, the Public Prosecutor decided the administrative closure of the case, because the crime denounced had not been proven by the petitioner and because it was her who did not comply with the timely payment of her electricity consumption to said state company; as well as by a payment agreement between the petitioner and the ENEE for the debt.

16. Finally, regarding the complaint over the crime of theft, the IACHR observes that said proceeding was filed on October 15, 2006, by the Public Prosecutor's Office, considering that the petitioner did not prove ownership of the farm where the thefts occurred and because it was not proven that the orchards contained in that property had in fact been stolen.

17. In relation to this aspect of the petition, the IACHR observes regarding the complaints filed by the petitioner for the crimes of threats, damages, and usurpation; theft; and fraud, that their closure and definitive filing were determined on February 7, 2008, October 15, 2006, and October 11, 2011, respectively. In addition, the information provided by the parties does not indicate the date of notification of the aforementioned resolutions, nor has this been disputed by the petitioner party. Therefore, considering that the

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<sup>3</sup> IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moises de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, para. 10. IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda Lopez Medina et al., Peru, September 7, 2017, paras. 3, 9-11.

<sup>4</sup> IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

<sup>5</sup> The IACHR has considered that petitioners have a minimum duty to argue the claims they submit to the IACHR. In this regard, see for example: IACHR, Report No. 40/06, Petition 11.214. Inadmissibility. Pedro Velasquez Ibarra. Argentina. March 15, 2006, para. 54; and IACHR, Report No. 14/18, Petition 1057-07. Admissibility. Thelmo Reyes Palacios. Mexico. February 24, 2018, para. 11.

petition was filed with the Executive Secretariat on January 13, 2013, the Commission concludes, that is, after the six-month period established in Article 46.1.b) of the American Convention.

**VII. DECISION**

1. To declare the present petition inadmissible; and
2. To notify the parties of this decision; 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 26th day of the month of November 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Roberta Clark, and Carlos Bernal Pulido, Commissioners.