

**REPORT N° 28/06**  
**PETITION 721-00**  
**ADMISSIBILITY**  
**RIGOBERTO CACHO REYES**  
**HONDURAS**  
March 14, 2006

**I. SUMMARY**

1. On November 30, 2001, Mr. José Antonio Ávila (hereinafter "the petitioner") lodged a complaint to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Honduras (hereinafter "the State of Honduras", "the State" or "Honduras") on the alleged violation against Mr. Rigoberto Cacho Reyes, a Honduran citizen and member of the Garifuna ethnic group (hereinafter "the victim"), of the following rights: the duty of the State to adopt domestic legal measures (Article 2); the right to juridical personality (Article 3), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), freedom from *ex post facto* laws (Article 9), compensation for miscarriage of justice (Article 10), protection of honor and dignity (Article 11), rights of the family (Article 17), rights of the child (Article 19), property (Article 21), equal protection (Article 24) and judicial protection (Article 25), pursuant to Article 1.1 (obligation to respect rights) protected by the American Convention on Human Rights (hereinafter "the Convention", the American Convention or "the ACHR").

2. These violations, the petitioner alleges, were committed by the State when Mr. Cacho Reyes was deprived of his freedom for a period of 8 years, 8 months and 18 days, without proof of the charges being made against him with respect to "the illicit trafficking of narcotics to the detriment of the health of the population of Honduras". The petitioner alleged that the petition complied with the requirements for admissibility established in the American Convention. The petitioner thus claimed to have exhausted domestic remedies through an appeal for annulment due to a breach of the law, lodged before the Supreme Court of Justice of Honduras which, on June 14, 2001, declared "there are no grounds for admission of the appeal for annulment."

3. The State of Honduras requested that the petition be declared inadmissible and argued that it has never denied that Mr. Cacho Reyes had been imprisoned, nor that he is deserving of compensation. The State argues that Mr. Cacho Reyes did not pursue the proper channels in claiming recognition of his rights, since he did not fulfill the relevant formalities demanded by legal procedure.

4. Having analyzed the positions of the parties, the Commission concludes in this report that it is competent to adjudicate on the complaint presented by the alleged victim, and that the case is admissible in light of Article 46 of the American Convention. As a consequence, the Commission decides to notify the parties and to publish the present Admissibility Report and include it in its Annual Report. Accordingly, the Commission decides to notify the decision to the parties and to continue with the analysis of the merits relative to the alleged violation of Articles 7, 8, and 25 of the American Convention, pursuant to Article 1.1 of the same international instrument.

**II. PROCESSING BY THE COMMISSION**

5. On December 12, 2001, the Commission received a complaint dated November 30 of that year. Following due prior consideration, the complaint was admitted for processing and was transmitted to the State on January 9, 2004, giving a two-month deadline in which to respond. The State requested of the Commission a 30-day extension of the deadline to present its response. On March 1, 2004, the Commission authorized the postponement requested by the State. On

March 29, 2004, the State answered the complaint. This information was transmitted to the petitioner on April 21, 2004, giving him 30 days in which to formulate his observations. On May 21, 2004, the petitioner filed his observations on the response by the State. On August 25, 2004, the State responded to the observations of the petitioner. On December 8, 2004, the Commission acknowledged receipt of the information provided by the State and transmitted it expediently to the petitioner, giving him a month in which to present observations.

6. The petitioner filed additional information on December 27, 2004. On January 14, 2005, the Commission sent the information provided by the petitioner to the Government of Honduras, giving it a month from that date to provide its observations. On February 8, 2005, the State requested a 30-day extension in the period for presenting its observations, and this the Commission agreed to on February 25, 2005. On March 16, 2005, the Commission received the observations filed by the State on the last communication by the petitioner. On May 9, 2005, the Commission transmitted to the petitioner additional information provided by the State of Honduras, giving him a 30-day deadline to make comments on this, and this he did on June 9, 2005. The Commission transmitted this information to the State on June 22, 2005, giving it one month deadline for presenting any observations it might consider pertinent.

7. On July 21, 2005, the State of Honduras requested the Commission an extension of the deadline given for presenting observations, and this was given on August 8 of the same year for 15 days. Finally, on August 18, the State presented its observations on what the petitioner had submitted.

### **III. THE POSITIONS OF THE PARTIES**

#### **A. Position of the petitioner**

8. The petitioner claimed that the alleged victim was wrongly accused of the crime of illicit trafficking of narcotics. He claimed that he had been deprived of his liberty for eight years, eight months and 18 days, as of December 23, 1989, by order of the First Judge-Attorney for Criminal Matters of the Department of Francisco Morazán, without any proof of the accusation being offered.

9. That for this reason, Mr. Cacho Reyes was absolved by means of a ruling on March 27, 1998 by the First Judge-Attorney for Criminal Matters of the Department of Francisco Morazán. The ruling was upheld and was remitted for consultation before the Court of Appeal. The First Court of Appeal of Tegucigalpa, Municipality of the Central District, confirmed the acquittal verdict and the definitive dismissal of charges in favor of Mr. Cacho Reyes, extracting from the ruling the pertinent section: *"the dismissal of charges is decreed...when a person is indicted on the basis of suspicion or circumstantial evidence, these were dismissed in such a way that his innocence is proven"*. For this reason, he was given his freedom on September 11, 1998.

10. According to the petitioner, during the eight and a half years that the alleged victim was in prison, his family broke up because, over this period, his partner, his father and his brother died. He was not allowed to be with his partner on her deathbed, or to be present at the funerals of other family members. His children and grandchildren had been left abandoned. He makes it clear that his own economic situation prior to his detention was one of a prosperous trader. He concludes that the imprisonment of the victim caused him serious psychological and family damage, as well as loss of his livelihood and his material possessions.

11. Similarly, he insisted that in its response to the claim, the State recognized that it was in breach and accepted that Mr. Rigoberto Cacho Reyes' term of prison exceeded the limits contemplated in the norms applied.

12. In this situation, the alleged victim says that he initiated legal actions for compensation through petitions to both the Attorney-General of the Republic and the Secretary of State in the Office of Public Security. Both institutions turned down the petitions presented. The Attorney-General rejected the action, on the following grounds "*Declare it groundless because this institution is not the administrative entity competent to resolve what has been petitioned*"<sup>1</sup>. On the other hand, the Secretary of State refused to allow the petition alleging that it was not competent to deal with the matter because it had no links to the now defunct National Bureau of Investigation (Dirección Nacional de Investigaciones) which was the official entity that made the accusation that led to his detention, and told him that "*his eight years of imprisonment had been due to delays in the administration of justice*".<sup>2</sup>

13. On the basis of these decisions, Mr. Rigoberto Cacho Reyes considered exhausted the avenues for an administrative solution, and it was for this reason that he lodged a judicial action against the State for loss and damages before the Court of First Instance for Administrative Litigation. He points out that once the action was lodged and before being ruled admissible, by means of a judicial decree, the judge requested the litigant to comply with certain formal requirements for it to be made admissible, and that these were then fulfilled in the period allowed. In view of the fact that Mr. Cacho Reyes had remedied these formal defects, the judge ruled the action admissible in a legal pronouncement dated July 22, 1999.

14. Following this, the petitioner alleges that the notification of the action was sent to the State which, through the Attorney-General of the Republic, responded on August 24, 1999. In his reply, the Attorney-General refused the claims for compensation and maintained that the Attorney-General's office was not answerable for compensation, since the entity that had denounced Mr. Rigoberto Cacho Reyes for the crime of narcotics trafficking was the defunct National Bureau of Investigation.

15. The petitioner argues that the Lower Court Judge gave his ruling on January 24, 2000, declaring the claim to be groundless because it suffered from defects in the form it was presented.<sup>3</sup> The arguments for this ruling are based mainly on the following considerations: (7) "*that the litigant party...makes no pretension to annul the impugned act, nor does he seek recognition of a specific legally protected interest, or the adoption of remedies for the full restoration of the same*" (8); "*that the jurisdiction to review the final decisions of administrative bodies and courts will judge within the limit of the pretensions of the parties...*" (9); "*the complaint suffers from formal defects that prevent any pronouncement on the merits of the matter*" and "*since the sentencing tribunal must necessarily decide on the claim, and only the claim...otherwise the question arises of the incongruity of the ruling, so that the said defect prevents the tribunal from passing judgment on the merits of the case*". In the light of these considerations, it makes a ruling that states textually "*To declare the action inadmissible, because the way in which the demand is written suffers from formal defects that prevent a ruling being given on the merits of the case.*"

16. The petitioner emphasizes that this ruling by the lower court that turned down the action because it suffered from formal defects is contradictory to the ruling of the judge to admit the claim, a ruling that was upheld after he himself had complied with the judicial order by which he was requested to correct the formal defects of the action.

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<sup>1</sup> See the Certification of Resolution by the secretary to the office of Attorney-General of the Republic of Honduras (December 11, 1998), folio N° 19 of petition 721-00 before the IACHR.

<sup>2</sup> See Opinion 055-99 SEDS-AL of the Secretary of State in the Office of Public Security.

<sup>3</sup> See the definitive ruling of the Tribunal of Contentious Administrative Matters, case N° 013-99.

17. He appealed the ruling by the lower court on January 24, 2000 and that the Court of Appeal, in its judgment of June 2 of that year, upheld the ruling, considering that the lower court judge acted in conformity with the law by making his ruling based on the formal defects of the action.

18. The petitioner points out that on July 17, 2000, the alleged victim lodged a writ for annulment for breach of the law before the Supreme Court of Justice. The Supreme Court ruled on June 14, 2001, on the basis of an opinion expressed by the government attorney (*Fiscal de Despacho*), with whose views he agreed. On this he stated that: *"when the writ for annulment was formulated, the technical requirements for annulment were not complied with. The appellant invokes cause for annulment for breach of the law or legal doctrine without making clear the substantive norms violated, rather he submits pleadings related to the Constitution, as well to the current legal code, without specifying the provision supporting his claim, thereby failing to meet the clarity and precision that this appeal demands"*. He adds that for this reason the appeal can not go ahead and declares that *"there are no grounds for [its] admissibility"*.<sup>4</sup> The State alleges that a new appeal should be lodged but that the period for doing so has expired.

19. On the basis of these legal proceedings, the petitioner sustains that Mr. Rigoberto Cacho Reyes was a victim of a violation by agents of the State of human rights protected under the Convention, and since the State is responsible for their actions or omissions, it cannot deny its responsibility, as did the Attorney-General. Moreover, he claims that the rejection of the appeals in all instances on the argument that they suffered formal defects, is contrary to domestic law and to the Convention.

## **B. Position of the State**

20. The State recognizes that the detention in prison of Mr. Rigoberto Cacho Reyes exceeded all the terms envisaged by current legal norms and that, in principle, this constitutes a clear breach of the law. It also recognizes that the delay constitutes a violation of rights, and is consequently responsibility of the State, in accordance with Article 324 of the Constitution of the Republic.<sup>5</sup>

21. However, Honduras alleges that determination of responsibility needs to be undertaken under domestic jurisdiction, and that it is this that should establish whether the delay was a consequence of culpable actions on the part of agents of the state, or unnecessary delays caused by the parties. According to the State, the difficulties encountered in the trial proceedings were due, partly, to different versions that arose in the investigation into the accused and, partly, to continuous changes in the lawyers involved.<sup>6</sup>

22. On top of this, Honduras alleges that the previous Penal Code (that of 1984) contained the inherent shortcomings of an inquisitorial system that allows for excessive procedural delays, a situation that was reformed with the promulgation of a new Penal Code (in 2000). According to Honduras, this reform sought to change the previous system by the current accusatory system, to the benefit of the accused in penal proceedings.

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<sup>4</sup> See the certification of the ruling of June 14, 2001 (folio N° 305 of the petition P721-00 before the IACHR).

<sup>5</sup> Article 324 of the Constitution of the Republic of Honduras establishes that *"If a public servant in the exercise of his duties breaches the law to the detriment of individuals, he will be responsible in civil law and jointly and severally along with the state institution in the service of which he works, without prejudice to the lawsuit for return of goods that these may exercise against the servant responsible, in cases of blame or fraud. Civil responsibility does not exclude inference of administrative or penal responsibility against the guilty party"*.

<sup>6</sup> See observations by the State of Honduras, March 16, 2005.

23. The State requested the inadmissibility of the petition on the basis that four years had passed since the last ruling, considering this to be only that given by the lower court. It also argued that, in view of the above, the Commission be asked to "*reject the claim of the petitioner, to ratify the arguments expounded in previous writs and, that remedies under domestic jurisdiction should not be considered to be exhausted.*"<sup>7</sup>

24. However, notwithstanding this, in the last observations it presented, Honduras maintains that the domestic tribunals had already made themselves clear on the matter.

25. In its last observation to the Commission, Honduras states that the action for compensation brought by Rigoberto Cacho Reyes against the Attorney-General of the Republic –as such the legal representative of the State of Honduras–, was declared inadmissible by the Tribunal of Administrative Litigation in its ruling of January 24, 2000. This enabled Mr. Cacho Reyes to make use of the appeals procedure to the Court of Appeals for Administrative Litigation and to annulment before the Supreme Court of Justice, both of which turned down the appeals in rulings on May 18, 2000 and June 14, 2001 respectively.<sup>8</sup>

26. Moreover, it argues that it is relevant to mention that Honduras has never denied that Mr. Cacho Reyes was imprisoned or that he did not deserve compensation. The problem resides in the way his action was formulated. Consequently, the State requests that the petition be declared inadmissible due to the fact that the petitioner should lodge a new action so that the domestic tribunals can consider the merits of the case.<sup>9</sup>

27. The State considers that the conduct of the private lawyers of the alleged victim lacked the proper judicial consistency to make the petition effective, and that the State is not guilty of any violation since Mr. Rigoberto Cacho Reyes was given the proper protection of the due process of law, and that he was given access to the courts to present his complaints in the proper form. These he could not substantiate, judging by the records in the files.

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

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

28. The petitioner is authorized by Article 44 of the American Convention to lodge complaints before the Commission. The petition indicates as the alleged victim Rigoberto Cacho Reyes, to whom Honduras has undertaken to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission observes that Honduras is a state party to the American Convention since September 8, 1977, the date on which it deposited its instrument of ratification. Accordingly, the Commission is competent *ratione personae* to examine the petition.

29. The Commission is competent *ratione loci* to take cognizance of the petition, as it alleges violations of rights protected in the American Convention within the territory of a state party to the said treaty.

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<sup>7</sup> See observations by the State of Honduras, August 18, 2005.

<sup>8</sup> See observations by the State of Honduras, August 18, 2005.

<sup>9</sup> See observations by the State of Honduras, March 16, 2005.

30. 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 on the date on which the deeds alleged in the petition took place.

31. Finally the Commission is competent *ratione materiae*, because the petition claims violations to human rights protected by the American Convention.

## **B. Requirements for admissibility**

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

32. Article 46.1 of the American Convention establishes as a requirement for admissibility of a claim that the remedies available in the domestic jurisdiction of the State must have been exhausted.

33. The petitioner alleged that he had pursued and exhausted the domestic remedies available under Honduran legislation. On this point, he attached a copy of the Supreme Court ruling of June 14, 2001, pointing out that as a result of this further discussion in domestic law was precluded.

34. The State, for its part, alleged that the tribunals on administrative litigation did not pronounce on whether the claim for compensation made by the alleged victim was valid. This was because the action of the petitioner was declared inadmissible since "*the written version of the action suffered from formal defects that prevented a judgment being given on the merits of the case*", and consequently he has the possibility of initiating his claims once again.

35. However, in the last presentation of observations by the State, Honduras changes its stance, arguing that the domestic tribunals had already pronounced on the matter in question. The action for compensation lodged by Rigoberto Cacho Reyes against the State was declared inadmissible by the tribunal for Administrative Litigation in Tegucigalpa. This ruling enabled the alleged victim to make use of remedies before the Appeal Court for Administrative Litigation (the remedy of appeal) and before the Supreme Court of Justice (the remedy of annulment) respectively. Neither remedy was allowed and should be considered *res judicata*.<sup>10</sup>

36. Because of the aforementioned, the Commission considers fulfilled the requirement for exhaustion of domestic remedies in accordance with Article 46.1 of the American Convention.

### **2. Time period for submission of the petition**

37. Article 46.1.b of the Convention establishes that any petition should be presented within six months from the time the petitioner is notified of the final decision that domestic remedies are exhausted. The petitioner and the State agree that the final ruling of the domestic jurisdiction was given on June 14, 2001.

38. The petitioner lodged his complaint before the Commission on November 30, 2001, in other words five months and 16 days after the final decision in domestic law. For this reason, the Commission concludes that the petition was presented within the six-month period established in Article 46.1.b of the Convention.

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<sup>10</sup> "*...the resolution of inadmissibility of the appeal for damages given by the judge for Administrative Litigation is res judicata, which precludes returning to discuss a matter for which a final judgment has been handed down*". Observations by the State of Honduras, August 18, 2005.

### 3. Duplication of procedure and international *res judicata*

39. The petitioner alleges that the claim lodged before the Commission was not presented to the UNO Human Rights Committee or other such organism.<sup>11</sup> Similarly, he alleges that it does not arise from the proceedings that the subject matter of the petition is pending settlement before any other international organization, nor does it reproduce a petition already examined by this or any other international organization. Therefore, the requirements established in Article 46.1.c are satisfied.

### 4. Characteristics of the facts alleged

40. The Commission considers that it is not appropriate at this stage of the proceedings to establish whether or not there is a violation of the American Convention. For the purposes of admissibility, the Commission must decide if the facts of the matter constitute a violation, as stipulated in Article 47.b of the American Convention, and if the petition is “manifestly groundless” or “obviously out of order” in accordance with subparagraph (c) of that Article.

41. The standard for evaluating these factual requirements is different from that required for ruling on the merits of the petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right protected by the Convention, and not to establish the existence of a violation. This determination involves a summary analysis which does not imply a prejudgment or an advance opinion on the substance of the matter. The Commission’s own regulations, by establishing two clear stages of admissibility and the substance of the petition, reflects this distinction between the evaluation that the Commission must conduct in order to declare a petition admissible and that required to establish a violation.

42. As the Commission has made clear on other opportunities,<sup>12</sup> the extensive argument of the State about the penal lawsuit and the civil law bodies to which the alleged victim appealed shows for itself that the petition is not “manifestly groundless”, that it is not “obviously out of order”, or that it does [not] constitute a presumed violation. On the contrary, the very response of the State merits a more careful examination of the petition during the stage involving the merits. Meanwhile, the IACHR considers that, *prima facie*, the petitioner has met the factual requirements stipulated in Article 47.b and 47.c.

43. The Commission finds that the facts of the case present important matters of controversy that should be determined on the basis of the evidence. Special emphasis should be given to the possibility that, in penal procedure, the victim may have been denied the right to be heard and judged within a reasonable period of time or otherwise set free; and in procedure for matters of administrative contention, the possibility that the victim may have been prevented from exercising his right to justice by means of an effective appeal backed up by the guarantee of due process of law, as contemplated by the Convention, when his appeal was declared inadmissible because of formal defects without entering into consideration of its merits. Accordingly, the Commission, without prejudging the substance of the matter, finds that the issue under consideration, if the alleged facts are proven, could constitute violations to Articles 7 (right to personal liberty), 8 (right to a fair trial) and 25 (judicial protection), pursuant to Article 1.1 of the American Convention. The Commission considers the petition inadmissible with respect to the alleged violations of Articles 3, 5, 9, 10, 11, 17, 19, 21 and 24, because the petitioner has not presented a strong enough case to sustain the alleged violations.

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<sup>11</sup> See claim made before the IACHR on November 30, 2001, p. 13.

<sup>12</sup> IACHR, Report N° 128/01, case 12.367; Mauricio Ulloa-Diario La Nación, December 2001.

**V. CONCLUSIONS**

44. The Commission concludes that it has competence to hear the claim lodged by the petitioner and that the petition is admissible in conformity with the requirements laid down in Article 46 of the treaty.

45. Based on the arguments of fact and law set out above and without prejudice to the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,****DECIDES:**

1. To declare the case under consideration admissible with respect to Articles 8, 10 and 25 of the American Convention, in accordance with Article 1.1 of the same instrument.
2. To notify this decision to the State of Honduras and to the petitioner.
3. To initiate proceedings with respect to the merits.
4. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14<sup>th</sup> day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.