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REPORT No. 18/17
PETITION 267-07
ADMISSIBILITY REPORT

ANA LUISA ONTIVEROS LÓPEZ
MÉXICO

Approved by the Commission on January 27, 2017.

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 ANA LUISA ONTIVEROS LÓPEZ
 MEXICO
 JANUARY 27, 2017

I. BASIC INFORMATION ON THE PETITION

Petitioner:	Ana Luisa Ontiveros López
Alleged victim:	Ana Luisa Ontiveros López
State denounced:	Mexico
Rights invoked:	Articles 8 (judicial guarantees), 10 (right to compensation), 21 (right to private property) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	March 7, 2007
Additional information received during the initial stage:	January 19, 2012
Date on which the petition was transmitted to the State:	July 24, 2012
Date of the State's first response:	August 1, 2013
Additional observations from the petitioner:	September 17, 2012; November 21, 2013; February 5, 2015, and March 30, 2015
Additional observations from the State:	June 26, 2015

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 (deposited instrument on March 24, 1981)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedure and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 8 (judicial guarantees), 21 (right to private property), and 25 (judicial protection) of the American Convention in relation to its Article 1(1) (obligation to respect rights)

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the deliberations or decision concerning this matter.

² Hereinafter the "Convention" or "American Convention."

³ All observations were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception set forth in Article 46(2)(c) of the American Convention applies
Deadline for filing:	Yes, as set forth at Section VI

V. ALLEGED FACTS

1. The petitioner alleges that she was dispossessed of a property by the Government of the state of Baja California on May 28, 2004, without any prior expropriation proceeding and without having been paid fair compensation. She says that the property was invaded by government employees, who were building a highway that runs from the city of Tijuana to Playas de Rosarito. She states that she filed a writ of *amparo* arguing that the property she owned was illegally invaded; it was filed as case number 286/2004 and dismissed by the Eighth District Judge, based on Tijuana. The petitioner argues that she filed a motion for review (*recurso de revisión*) against this decision; that motion was resolved on February 16, 2006 by the Second Collegial Court of the 15th Circuit, which ruled in favor of the alleged victim, ordering the authority to respect the guarantee of hearing and, where appropriate, to provide for the corresponding compensation.

2. The petitioner argues that the authorities refused to comply with this judgment, and accordingly she pursued a number of judicial remedies with the aim of getting the authorities to abide by it. As of the date of the preparation of this report the matter is classified under Motion on Non-enforcement of Judgment 462/2013, and is pending before the Supreme Court of the Nation. In addition, she argues that she lodged a criminal complaint with the Office of the Attorney General of the Republic against the Governor of the state of Baja California, in response to his refusal to comply with the judgment. She argues that on August 27, 2012, she was summonsed to ratify the complaint; nonetheless, on arriving at the Office of the Attorney General facilities, she was detained, held incommunicado, and threatened by the authorities who were there, who took her, in handcuffs, to the state penitentiary. She says she was subsequently released on September 4, 2012.

3. The State argues that the case has undergone constant changes domestically due to the procedural impetus of the parties in the litigation. It indicates that the Government of Baja California began to build the highway Boulevard 2000 Tijuana Rosarito under agreements entered into with the estate of Raúl Escamilla Valdez and the company Arroyos Crystal S.A. de C.V., who at one point showed their ownership of the property. It states that on May 19, 2004 the petitioner, on her own behalf and in her capacity as executor of the estate of Pantaléon Ontiveros López, brought a writ of *amparo* against the Governor of the state of Baja California and other authorities, making a claim for the invasion and as a consequence of the dispossession of 40 hectares of land owned by the estate for the construction of the highway. On May 20, 2005 the Eighth District Judge ruled to dismiss the proceeding; the petitioner filed a motion for review challenging that judgment. On February 16, 2006 the Second Collegial Circuit Court ruled favorably on her writ of *amparo* to ensure respect for the guarantee of a hearing in relation to the property over which she indicated she had possessory rights and property rights. The State notes that on March 17, 2006 the petitioner was notified of the guarantee of a hearing but did not appear. It indicates that the petitioner pursued several appeals against the judgment of November 16, 2006 in which the federal judge found the *amparo* ruling had been carried out. On August 26, 2008 the Fourth Collegial Circuit Court ruled favorably on a complaint appeal (*recurso de queja*) filed by the petition, concluding that while the authorities responsible reported on the start-up of the administrative procedure, there had not yet been any ruling in that proceeding as to whether the estate that the petitioner represented had any right to compensation.

4. The State indicates that on October 16, 2008 the Fifth Collegial Circuit Court determined that the uncaptioned procedural motion for substitute performance (*incidente innominado de cumplimiento sustituto*) was in order given that the petitioner showed, before the constitutional review body, that she held the property rights and possessory rights over the property impacted. On June 12, 2009, the Eighth District Judge issued an interlocutory resolution determining that the Government of the state of Baja California should pay the sum of \$115,375,816 Mexican pesos (equivalent at the time to approximately US\$ 8,613,330) to the petitioner as compensation for the area impacted. Subsequently, after a series of appeals were filed, the *Amparo* Judge, on March 15, 2011, set the amount at \$126,021,935 Mexican pesos (equivalent at the time to

approximately US\$ 10,437,925). After a series of remedies pursued by the state authorities, on February 14, 2012, the First Collegial Circuit Court, in the context of the procedural motion on failure to enforce the judgment (*incidente de inejecución de sentencia*), determined that there was non-compliance by the Governor of the state of Baja California. The State indicates that on August 14, 2012, the Governor notes having carried out the requirement demanded by the First Collegial Court, since he had restored to the complainant the guarantee that had been violated, i.e. the guarantee of a hearing. Therefore, the Court ordered that the entire matter at issue in Indirect *Amparo* 286/2004 be referred to the Supreme Court of Justice of the Nation; that procedural motion was pending at the time of the last communication from the State.

5. According to the State, since the matter is currently under consideration by the Supreme Court of Justice of the Nation it is not possible to consider domestic remedies to have been exhausted. It asserts that the remedy pending resolution is determinant for this matter, since it could drastically change the facts under analysis and the position of the Mexican State with respect to it. It argues that the procedural motion for non-enforcement (*Incidente de Inejecución*) is the appropriate remedy that allows the State to solve the possible violation of the human rights of Ms. López, which is compatible with the complementary nature of the inter-American human rights system.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioner alleges that she has a judgment handed down in her favor by the Second Collegial Court of the 15th Circuit. Nonetheless, she argues that to date it has not been fully implemented, leading to several motions filed and remedies pursued due to the refusal of the authorities with responsibility to abide by that judgment, ending up with case 462/2013, pending resolution before the Supreme Court of Justice of the Nation.

7. The Commission observes that without prejudice to the procedural impetus by both parties to comply with the judgment, according to the petitioner it still has yet to be carried out more than 10 years after having been handed down. Given the circumstances of this petition, the Commission considers that the exception provided for at Article 46(2)(c) of the American Convention applies, with the caveat that the causes and effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report that the Commission adopts on the merits to determine whether in effect there have been violations of the Convention. As regards the alleged detention, incommunicado conditions, and threats suffered by the petitioner, it does not appear that any judicial remedy has been exhausted domestically, accordingly the Commission considers that on these facts one cannot consider the requirement at Article 46(1)(a) of the Convention to have been met.

8. In relation to the deadline for filing, Article 32(2) of the Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion requirement apply the petition should be filed within a time that the Commission considers reasonable. This petition was received on March 7, 2007; the facts that are the subject matter of the claim are said to have begun May 28, 2005; and their effects in terms of the alleged failure in the administration of justice extend to the present. Therefore, in view of the context and characteristics of this petition, the Commission considers that it was filed within a reasonable time and that the admissibility requirement referring to the deadline for filing should be deemed satisfied.

VII. COLORABLE CLAIM

9. In view of the elements of fact and law submitted by the parties and the nature of the matter put before it, the IACHR considers that the petitioner's arguments on unwarranted delay in the process of carrying out the judicial judgment that recognized her right to a hearing, and the corresponding compensation for dispossession of her property, tend to establish possible violations of the rights contained in Articles 8 (judicial guarantees), 21 (right to private property), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) of the same instrument. As for the petitioner's claim on the alleged violation of Article 10 (right to compensation) of the Convention, given that this provision refers to the right to compensation after a final judgment through a miscarriage of justice, the Commission does not find that claim admissible.

VIII. DECISION

1. To find the petition in this matter admissible in relation to Articles 8, 21, and 25 of the American Convention in conjunction with Article 1(1) of the same instrument in the terms of this report;
2. To find this petition inadmissible in relation to Article 10 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis of the merits; and,
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.