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**REPORT No. 174/17**  
**PETITION 831-11**  
REPORT ON ADMISSIBILITY

HESTER SUZANNE VAN NIEROP AND FAMILY  
MEXICO

Approved by the Commission electronically on December 30, 2017.

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Mexico. December 30, 2017.

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**PETITION 831-11**  
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**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Center for Women's Human Rights ( <i>Centro de Derechos Humanos de las Mujeres</i> , CEDEHM), Justice for Our Daughters ( <i>Justicia para Nuestras Hijas</i> , JPNH) and Hester's Foundation
<b>Alleged victims:</b>	Hester Suzanne van Nierop and Family
<b>State denounced:</b>	Mexico
<b>Rights invoked:</b>	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, <sup>2</sup> in relation to its Articles 1.1 and 2; Articles 2, 4 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Torture against Women <sup>3</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Date on which the petition was received:</b>	May 31, 2011
<b>Additional information received at the stage of initial review:</b>	January 16 and October 31, 2013
<b>Date on which the petition was transmitted to the State:</b>	October 17, 2016
<b>Date of the State's first response:</b>	March 29, 2017
<b>Additional observations from the petitioning party:</b>	June 12, 2017
<b>Additional observations from the State:</b>	December 20, 2017

**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 ratification instrument on March 24, 1981) and Convention of Belém do Pará (deposit of ratification instrument on November 12, 1998)

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> Hereinafter "Convention of Belém do Pará."

<sup>4</sup> The observations presented by each party were duly transmitted to the opposing party.

**IV. ANALYSIS OF 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 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in relation to its Articles 1.1 and 2; and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception set forth in Article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

**V. ALLEGED FACTS**

1. The petitioners claim that in Ciudad Juárez, in a context of numerous murders and cases of forced disappearance of women in connection with a generalized situation of gender-based violence, Hester van Nierop (“the alleged victim”), a Dutch national then aged 28 years who was visiting this city, was murdered on September 19, 1998. Her body, which presented signs of strangulation, was found on September 20, 1998 under the bed of Room 121 of Hotel Plaza. They assert that the clues were disregarded even though some witnesses had identified the person responsible from the beginning of the investigation. A witness informed that the perpetrator, under whose name the hotel room had been registered, moved to Texas after the murder. The petitioners claim that the lines of investigation were ineffective and that the investigation was undertaken separately although the murder of other women revealed the same pattern, the bodies of whom were left under the bed of rooms of neighboring hotels. They assert that the long and unsuccessful criminal proceedings, which extended over 18 years, had multiple irregularities. They mention that there was no chain of custody for the evidence collected, that no toxicology screen or expert analyses of possible sexual assault were undertaken, that fingerprints were not collected and that the Prosecutor’s Office took five years to issue its planimetric report.

2. They indicate that despite the available information in regard to the alleged person responsible (name, description and identikit picture) only on November 19, 2003 did the authorities lodge criminal proceedings, as a result of which criminal case 554/03 was open and an arrest warrant was issued against Roberto Flores, also known as Ramiro Adame, on February 2, 2004. The petitioners complain that there were several acts of negligence concerning his arrest. In this regard, they allege that the State failed to adopt the necessary measures to undertake the arrest because the warrant was not executed for a considerable period of time, emphasizing the lack of investigation mechanisms that allow victims’ representatives to expedite the execution of this type of warrant.

3. Consequently, the petitioners denounce the State’s failure to comply with its duty to protect Hester van Nierop and claim that her murder was perpetrated in a context where female homicides remained unpunished and that 38 women were murdered in Ciudad Juárez in 1998. They also submit that the State failed to take diligent measures in response to this serious crime, and to ensure Hester van Nierop’s family access to justice, thus depriving them of seeing the murderer convicted, and of timely reparation. All of this took place to the detriment of women’s right to a life free of violence in the context of structural violence against women and impunity that persists in Ciudad Juárez.

4. In addition, they assert that inaction on the part of the police, prosecutors and courts along with such long delay in the criminal proceedings caused permanent damage and anxiety to Roeland and Arsene van Nierop, Hester van Nierop’s parents, seriously affecting their personal integrity. They indicate that on November 30, 2014 the perpetrator, after being found and extradited from the United States of America, was sentenced to 35 years in prison and that on February 9, 2017 a court of appeals convicted him to 37 years and six months in prison. However, they claim that waiting for so many years violates any

interpretation of the right of timely access to justice; that the judgment is not final because it is still possible that the convict file constitutional appeals that might benefit him; and that there is an ongoing situation of unwarranted delay in relation to full redress concerning the case, which shows the lack of due diligence and appropriate remedies both to expediting the prosecutor's investigation and to seeking full redress.

5. For its part, the State claims that several legislative, judicial and administrative decisions were made in Chihuahua that led to the creation of specialized and technical bodies for the investigation into the forced disappearance and murder of women. It moreover indicates that the State of Mexico ordered that a plaque bearing the alleged victim's name be placed in the *Campo Algodonero* memorial. It asserts that, after many years of searching for him, Roberto Flores, who used many aliases, was found in the United States of North America, serving a prison term for drug-trafficking, and that he was deported to Mexico on January 24, 2014. It submits that on November 30, 2014 he was sentenced to 35 years in prison for the murder of Hester van Nierop, a judgment which the First Regional Chamber of the Judiciary of Chihuahua confirmed on February 9, 2017, raising the punishment to 37 years and six months in prison.. The Mexican State also claims that it is not obliged to make reparations because its alleged international responsibility has not been proved.

6. The State concludes by asserting that despite the complexities of the case the perpetrator has been punished, as a result of which the petition is groundless and must be declared inadmissible. It indicates that, in this case, domestic remedies have not been exhausted, since the alleged victims did not resort to the internal body of control of the Attorney General's Office of Chihuahua, where they could have filed a complaint for the purported omissions in the execution of the arrest warrant. Finally, it asserts that an indirect amparo proceeding was also an appropriate remedy available to Hester van Nierop's family, but which was not pursued, thus proving that domestic remedies have not been exhausted.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

7. The petitioners assert that the sentence imposed on the perpetrator was issued almost two decades after Hester van Nierop's homicide occurred, which reveals judicial inaction and authorities' delay. For its part, the State alleges the non-exhaustion of domestic remedies on the grounds that the family members did not file proceedings on an indirect amparo proceeding, and did not resort to the internal body of control of the Attorney General's Office to present an administrative complaint for the delay in the execution of the warrant issued against the accused.

8. The Commission notes that in situations like the one described in the instant petition, in which crimes against life and physical integrity are alleged, the remedies that must be considered for the purpose of admissibility are those concerning the criminal investigation and prosecution of the persons responsible. In the instant case, the available information indicates that the criminal investigation extended over 18 years and, according to the State, on February 9, 2017, the accused was in second instance convicted as the perpetrator of the murder. Therefore, the Commission understands that in this case domestic remedies have been pursued and exhausted in accordance with Article 46.1.a of the American Convention. As to the requirement on the timeliness of the petition, the Commission believes that, since it was lodged on May 31, 2011, the requirement established in Article 46.1.b of the Convention is met.

## **VII. COLORABLE CLAIM**

9. In view of the elements of fact and law presented by the parties, the IACHR notes that the main reason of the matter brought to its attention is connected with alleged unwarranted delay in the access to justice, the purported serious omissions in the investigation and the negligent execution of the arrest warrant, all of which are situations that prevented the clarification of the facts and negatively affected the personal integrity of Hester van Nierop's family. The Commission believes that the perpetrator's punishment, imposed over 18 after the murder, does not render this petition groundless like the State claims, and that these facts, if proved, may establish possible violations of the rights protected through Articles 5 (Humane Treatment), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in accordance with its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects).

10. Likewise, the IACHR believes that the claims concerning the State's duty to ensure protection and prevention in relation to the rights to life and humane treatment of Hester van Nierop, who was murdered in a purported context of generalized violence against women in Ciudad Juárez, in an area where other similar homicides allegedly took place, must be analyzed in the merits stage, in the light of Articles 4 (Life) and 5 (Humane Treatment) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the same treaty.

11. Lastly, the IACHR believes that the facts presented here establish possible violations of Article 7 of the Convention of Belém do Pará. Regarding the claims about the violation of Articles 2 and 4 of the Convention of Belém do Pará, the IACHR notes that the competence foreseen in said convention's Article 12 in connection with ruling in the context of an individual case is limited to Article 7. With respect to the other articles invoked, Article 29 of the American Convention establishes that the Commission may consider them in order to interpret or apply the American Convention and other applicable instruments.

### **VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 24 and 25 the American Convention, in connection with its Articles 1.1 and 2, and Article 7 of the Convention of Belém do Pará;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. 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 30th day of the month of December, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.