



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

December 5, 2016

Mr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, DC 20006

Re: Salas et al., Case No. 10.573
Observations on Letter Announcing Time Allocation
and Other Procedural Issues

Dear Mr. Abrão:

The Government of the United States provides the following observations to the Inter-American Commission on Human Rights (“IACHR” or “Commission”) related to your office’s December 2, 2016 letter informing the parties in the above-referenced matter of the allocation of time for the hearing taking place on December 9. We request that the present letter be expeditiously forwarded to the Petitioners.

First, we wish to inform the IACHR that we may choose not to question the two witnesses. In such an eventuality, we will instead reserve those 20 minutes for our longer presentation following the witnesses’ testimony and Petitioners’ 15-minute presentations, which would bring the United States’ full remarks to 35 minutes. We will make a decision at the conclusion of each witness’s testimony about whether to question the witness or reserve our time, and will inform the Commissioners at that time.

Second, the United States also notes a number of concerns about the process leading up to this hearing. We hope the IACHR will share our concerns with the Petitioners prior to the hearing on December 9, and that the IACHR will improve its practices going forward. To begin, this case has been dormant for over 20 years.

As such, the United States has requested on at least two occasions that it be archived.¹

On November 9, precisely one month before the hearing date, we received a hearing notice pursuant to Article 64(4) of the Rules of Procedure (“Rules”), but no accompanying documentation related to the purpose of the hearing or any indication of the focus and scope of the hearing or whether witnesses would testify. At the request of the United States, on November 18, your staff kindly forwarded us the Petitioners’ original hearing request of October 9, in the Spanish language. This request explains that the Petitioners’ representative “will be inviting” members of Panama’s December 20 Commission to testify. But the request makes no mention of any fact witnesses nor does it give any indication of the scope and content of any particular witness’s anticipated testimony.

On November 21, well outside the one-month notice period in Article 64(4) of the Rules, your office transmitted to us a written submission from the Petitioners, in the English language, with some information as to what the Petitioners intend to present at the hearing. In this submission, the Petitioners state they will present testimony of alleged victims. Yet they do not identify these witnesses by name nor give any indication as to the content or scope of the witnesses’ anticipated testimony. It thus came as a surprise to us in the late afternoon of December 2—less than one week before the hearing—when we received the letter from your office informing us that two witnesses, Yolanda Cortés and Edilsa Alarcón, would be called to testify and that the United States would be given ten minutes in which to question each witness. This is the first indication we had of the witnesses’ identity, and to date we still have not received witness statements nor any other information about the subject matter of the witnesses’ anticipated testimony.

The IACHR is, admittedly, not a court or judicial body. The Commission’s rules and practices regarding evidence are sparse.² There are no explicit rules or guidelines on giving the other party advance notice of the identity of witnesses or the anticipated content of their testimony, other than Article 65(5)’s terse directive

¹ See Melissa L. et al., Petition No. P-1515-06, and 15 Other Matters, Letter from Michael J. Fitzpatrick, Interim Permanent Representative, to Emilio Alvarez Icaza, IACHR Executive Secretary, July 22, 2015, at 4 (discussing *Salas et al.*); Elliott v. United States, Case No. 12.466, and Three Other Matters, Further Request to Archive or Close Certain Matters and Cases, July 22, 2016, at 1 n.1. It is unclear to us whether either of these letters was ever forwarded to the Petitioners. The IACHR Individual Petition System Portal contains no indication that either letter was forwarded.

² See Rules, art. 65; IACHR, “Practices in Hearings with Witnesses.” A copy of the latter publication was appended to the IACHR’s December 2 notice.

that “[w]hen one party offers witness and expert testimony, the Commission shall notify the other party to that effect.” However, it should be obvious to any objective observer that no party can meaningfully prepare to question witnesses without any idea of the subject matter of the witnesses’ testimony or sufficient advance notice. We would invite the IACHR to seriously consider adopting detailed guidelines related to advance notice to the other party about the identity of witnesses and the subject matter of their testimony. Unfortunately, such procedural problems are not new, and indeed in this very case we have objected several times in the past about procedural decisions that unfairly disadvantaged the United States.³

Third, in the correspondence transmitted to us on November 21, the Petitioners complain about the hearing being held in the United States and not Panama, and assert that the United States requested that the hearing be held in Washington, D.C. We wish to state for the record that the United States did not request that the hearing be held in Washington. The decision to hold this hearing in Washington was one made solely and independently by the IACHR, which the United States learned about only on November 9.

More generally, as concerns the Petitioners’ assertion in the November 21 correspondence that the circumstances surrounding the December 9 hearing constitute “a condition of unequal access to justice,” we would recall that the Petitioners have already benefited from abundant opportunities to present their case to the IACHR, including through more than 25 written submissions filed by the Petitioners from 1990 to 1996, totaling many hundreds of pages, and four hearings held during that time period.

As the IACHR knows, the United States has great respect for the IACHR’s critically important role in protecting and promoting human rights across the Hemisphere. As the Hemisphere’s foremost human rights forum, the IACHR serves as an example to the domestic systems of the 35 Organization of American States member States and to States all around the world. Fairness and procedural protections must apply to all parties in IACHR cases, both governments and alleged victims. Our proposal regarding guidelines relating to advance notice of witness testimony seeks to ensure such fairness in the procedures applicable to

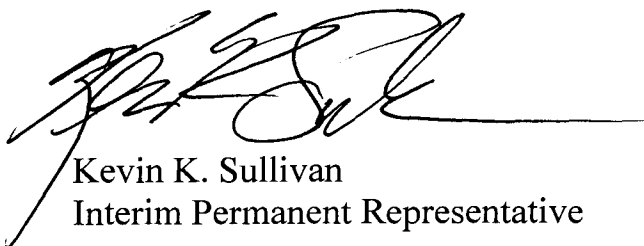
³ See, e.g., Letter from Amb. Harriet C. Babbitt to Amb. Edith Márquez Rodríguez, IACHR Executive Secretary, Jan. 31, 1995, at 2 (lamenting that inadequate hearing notice “can only undermine the credibility of the Commission as an institution dedicated to conducting objective and even-handed inquiries into allegations of human rights abuses on the basis of due process”); Letter from Philip B. Taylor, Alternative Representative, to Amb. Edith Márquez Rodríguez, IACHR Executive Secretary, Sept. 1, 1995 (expressing similar concerns).

hearings before the Commission. As always, we stand ready to continue a constructive dialogue with the IACHR about how the relevant procedures and practices can be made fairer and more effective.

We trust this information will be considered by the IACHR and that the Commission understands the substantial difficulty in preparing for a hearing on this extraordinarily complex, 26-year-old case without sufficient notice.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Sullivan', with a long horizontal line extending to the right.

Kevin K. Sullivan
Interim Permanent Representative