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File Number(s):	Report No. 36/93; Case No. 10.975
Session:	Eighty-Fourth Session (1 – 15 October 1993)
Title/Style of Cause:	Alejandro Piche Cuca v. Guatemala
Doc. Type:	Report
Decided by:	Chairman: Dr. Oscar Luján Fappiano; First Vice Chairman: Prof. Michael Reisman; Second Vice Chairman: Dr. Alvaro Tirado Mejía; Members: Mr. Oliver H. Jackman; Dr. Leo Valladares Lanza; Dr. Marco Tulio Bruni-Celli; Mr. Patrick L. Robinson
Dated:	06 October 1993
Citation:	Piche Cuca v. Guat., Case 10.975, Inter-Am. C.H.R., Report No. 36/93, OEA/Ser.L/V.85, doc. 9 rev. (1993)
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BACKGROUND:

1. On January 22, 1992, the Inter-American Commission on Human Rights received the following petition:

Alejandro Piche Cuca, a Guatemalan citizen, left his home in Santa Maria de Jesus, Department of Sacatepequez, Guatemala, on April 27th, 1991 headed for the Catholic Church's Pastoral Training Center in Santa Maria de Jesus where he was taking instruction as a "catechist".

At around 7:00 p.m., as Mr. Piche Cuca was talking with some other people in the Church atrium, he was taken by soldiers, who pushed him and other unidentified persons into a truck.

On May 6, 1991, Mr. Manuel Piche Tepaz, father of Alejandro Piche Cuca, went to the Human Rights Office of the Archbishopric of Guatemala City for help in filing a complaint about the irregular way in which his son had been recruited. That same day, May 6, the Human Rights Office of the Archbishopric of Guatemala City filed an application for a writ of habeas corpus with the courts, on behalf of Alejandro Piche Cuca.

On May 24, 1991, the Human Rights Office of the Archbishopric of Guatemala City, which was representing the family of Mr. Piche Cuca, was notified of the decision handed down on May 8 of that year by the lower court for the Department of Huehuetenango, declaring the application filed on behalf of Mr. Piche Cuca inadmissible. In the preamble to that resolution, the lower court based its decision on statements by Staff Infantry Colonel Sergio Arnaldo Camargo Muralles, Commander of the 19th military zone, who said that he was unaware of how Alejandro Piche Cuca was recruited. The judge stated that the procedure used to recruit Alejandro Piche Cuca was unknown.

On May 25, 1991, the Human Rights Office appealed that lower court ruling. Even though there is no express provision for appeal against court rulings that dismiss applications for a writ of habeas corpus, the Human Rights Office filed the appeal on the basis of Article 113 of the Law on Amparo, Habeas Corpus and Constitutionality, which provides that "whenever pertinent, the provisions relative to amparo shall apply as well to habeas corpus and to the good judgment and discretion of the courts." Article 61 of that

Law states that the following are subject to appeal: Rulings on applications for amparo; the orders that deny, grant or revoke provisional amparo; court decisions that order payment of costs and damages; and court orders that close the proceedings.

On July 23, 1991, Guatemala's Supreme Court ruled that habeas corpus remedies were not subject to appeal and declared the petition filed inadmissible.

From the time of his enforced recruitment, Alejandro Piche Cuca spent ten months in the Gregorio Solares Military Zone of Huehuetenango. He was then transferred to another military post and is still serving in the Guatemalan Army.

2. Appropriateness of the remedies filed. The petitioners argued that the remedy of habeas corpus was the proper means to settle the case of Mr. Piche Cuca, under the provisions of Article 82 of the Law on Amparo, Habeas Corpus and Constitutionality: "Anyone who has been unlawfully imprisoned, arrested, or had his personal liberty restricted, who has been threatened with the loss of said freedom or harassed, has the right -even when said imprisonment is done on legal grounds- to request that he be brought before the courts immediately, either to have his freedom restored or guaranteed or to have any harassment or coercion to which he may be subjected brought to a halt."

The petition adds that experience indicates that in Guatemala the petitions of habeas corpus to settle cases of enforced recruitment have been ineffective. The petition goes on to state that in this respect the instant case is similar to the Velasquez Rodriguez case, where the Inter-American Court of Human Rights stated that "a remedy must also be effective --i.e., capable of producing the results for which it was designed. Procedural requirements can make the remedy of habeas corpus ineffective: if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied". (Inter-American Court of Human Rights, Velasquez Rodriguez Case, Judgment of July 29, 1988. Series C, No. 4, paragraph 66).

3. Rights that have been violated but that are guaranteed by Guatemalan law. The petitioners point out that the unlawful detention of Alejandro Piche Cuca is a violation of rights upheld in Guatemala's Constitution: the right to personal liberty and the right to freedom of movement. The right to personal liberty is guaranteed in Article 6 of the Constitution, which states that "no one may be detained or arrested except for some crime or misdemeanor and by virtue of a warrant issued in accordance with the law by a competent court authority. Exceptions are made for those caught flagrante delicto or in the act of committing a misdemeanor."

Article 26 of the Constitution regulates freedom of movement as follows: "Every individual is free to enter, remain in, move about and leave the national territory and change domicile or residence, subject only to those restrictions established by law."

4. According to the petition filed with this Commission, the method used to recruit Mr. Piche Cuca was unlawful because none of the procedures established in Article 77 of the Statutes of the Guatemalan Army was observed. Those procedures are:

- 1) voluntary enlistment;
- 2) conscription; and
- 3) involuntary conscription when the draft notice is disobeyed.

The petition states that the purpose of these procedures in Guatemalan Law is to protect the personal liberty and freedom of movement of the citizenry, and to enable them to avail themselves of the exemptions from military service that the law allows. Those exemptions are governed under articles 71 to 75 of the Guatemalan Constitution, and include permanent exemptions as well as temporary exemptions.

As the petition states, the method of recruitment in Mr. Piche Cuca's specific case, makes it pointless to claim any exemption or considerably limits their efficacy, thereby making the law ineffective.

5. Rights guaranteed under the American Convention on Human Rights that were allegedly violated. According to the petition submitted to this Commission, in the case of Mr. Alejandro Piche Cuca the State of Guatemala allegedly violated its obligation to respect and guarantee the right to personal liberty (Article 7), the right to privacy (Article 11) and freedom of movement (Article 22), guaranteed under the American Convention on Human Rights by virtue of Article 1.1 thereof.

6. The petition ends with the following specific pleadings: that the Commission finds that the Government of Guatemala has violated the aforementioned rights upheld in the American Convention on Human Rights; that an investigation be conducted to ascertain the whereabouts and circumstances of Mr. Alejandro Piche Cuca so that he might be released and the violation of his rights cease; that the victim and his next-of-kin be paid fair compensation for the damages caused and any earnings lost; and finally, because Guatemala has recognized the binding jurisdiction of the Inter-American Court of Human Rights, that at the appropriate time this case be submitted to that Court.

7. The appendices attached to the petition included a copy of the application for a writ of habeas corpus, dated May 6, 1991; a copy of the lower court ruling dated May 6, 1991; a copy of the lower court ruling, dated May 8, 1991; a copy of the Supreme Court decision, dated May 28, 1991, and notified on July 23, 1991; a copy of Guatemala's Law on Amparo, Habeas Corpus, and Constitutionality; the Guatemalan Army Statutes; and a copy of the report of the independent expert, Mr. Christian Tomuschat, on the human rights situation in Guatemala, prepared pursuant to paragraph 14 of resolution 1990/80 of the Commission on Human Rights of the United Nations Economic and Social Council and published on January 11, 1991.

8. On February 4, 1992, the Commission forwarded the pertinent parts of the petition to the Government of Guatemala, asking that it supply the corresponding information, in accordance with Article 34 of the Commission's Regulations.

9. The Government's reply. In response to the Commission's request, in a note dated April 3, 1992, the Government of Guatemala confined itself to stating that on March 23 of this year, the Ministry of Defense sent Communication No. 3347, signed by Brigadier Jose Luis Quilo Ayuso, stating the following: "In this regard, I should inform you that since May 1, 1991, soldier ALEJANDRO PICHE CUCA has been in active service in Military Zone No. 19, stationed in Huehuetenango, and is performing his military service voluntarily."

10. Additional information from the petitioner. On April 21, 1992, the petitioner sent additional information on this case, providing background information on the practice of enforced recruitment used by the Guatemalan Army and probative evidence as to how widespread this practice is in Guatemala.

11. In a note dated May 12, 1992, the Commission forwarded to the Guatemalan Government the additional information supplied by the petitioner. No response has been received.

12. On June 3, 1992, the petitioner added statements which several eyewitnesses made in the presence of a notary public concerning the events in this case. Three witnesses asserted that "in effect, on the day in question (April 27, 1991), they were standing near the atrium of the local Catholic church when the local military commissioners, Simeon Perez and Emilio Sunun, approached Alejandro Piche Cuca and took him away by force." Also sent to the Commission was a sworn statement made in the presence of a notary public by Manuel Piche Tepaz, father of the individual in question, in which he described the serious predicament of the family of Alejandro Piche Cuca as a result of the latter's enforced recruitment

and the agony which they experienced during the period when they knew nothing of his whereabouts.

13. In a note dated June 5th, 1992, the Commission forwarded to the Guatemalan Government the additional information supplied by the petitioner. No response was received.

14. On March 12, 1993, the Commission adopted a provisional version of this report in accordance with Article 50 of the Convention. That version was sent to the Government with recommendations for implementation by the latter before a given deadline. The deadline was later extended, at the Government's request, until September 19, by which date the Government had not submitted its reply to the report.

15. New information provided by the Government. During this period the Government sent the Commission information on the military status of Mr. Piche Cuca. The Commission feels it should take this information into account even though it did not constitute a formal Government reply to the preliminary report. The following items are included:

- a. Statement, issued by INTECAP, the Instituto Tecnico de Capacitacion Profesional (technical professional training institute), that Mr. Piche Cuca is actively enrolled in the carpentry course.
- b. Statement that Mr. Piche Cuca is actively serving in the Third Squadron, Fourth Platoon, Second Company, Third Infantry Battalion at Military Zone 19 headquarters.
- c. Certificate attesting to infantryman Piche Cuca's promotion to infantry corporal.
- d. Certificate listing Corporal Piche Cuca's leave and vacation time.
- e. Handwritten note from a friend of the family, certifying that he himself visits his parents.
- f. List of payees of army checks, in which the father of Piche Cuca, who himself says he has received the corresponding payments, is shown as a payee.

WHEREAS:

As to the procedure:

16. The background information under examination shows that the subject matter is within the Commission's competence because it concerns events that would be a violation of the rights recognized by the American Convention on Human Rights and because the petition was filed within the statutory time limit referred to in Article 46.1.a of the Convention.

17. The domestic remedies is considered to have been exhausted, because the application for a writ of habeas corpus, which would be the appropriate remedy in the case in question, was declared inadmissible and the Supreme Court upheld the lower court ruling.

18. According to information in the Commission's possession, the subject of the petition is not pending in any other international proceeding for settlement (Article 46.1 of the Convention).

19. In accordance with Article 48.2 of the Convention, the Commission made itself available to the parties so that a friendly settlement might be reached, but to no avail.

20. That the corresponding procedural steps set forth in Article 50 of the Convention have been carried out, but no formal reply to the recommendations contained in the provisional report has been received from the Government.

As to the merits:

21. In its response to this Commission, the Guatemalan Government did not provide any additional information that would discredit the facts reported to the Commission, namely, that Mr. Alejandro Piche Cuca was taken forcibly and unlawfully, by military commissioners who are agents of the Guatemalan State, put on board a truck and taken, along with others, to a military garrison.

22. The investigation conducted by the Guatemalan legal authorities was patently inadequate, judging by the information made available in the instant case. That investigation lasted only two days (May 6 to 8, 1991) and the judge declared that the procedure used to recruit Alejandro Piche Cuca was not known. According to the information on file in this case, the only inquiry the judge made was to request information from Staff Infantry Col. Sergio Arnaldo Camargo Muralles, Commander of Military Zone No. 19, who said that he did not know how Alejandro Piche Cuca was recruited. The judge did not adhere to the provisions of Article 88 et seq of the Law on Amparo, Habeas Corpus and Constitutionality, because as he did not request from the Military Commander a detailed report on what transpired at the time Mr. Piche was taken by the military commissioners. Because of his statute and given the circumstances, that military officer was in the best position to obtain all the background information on the case. Also, the judge did not visit the place where Alejandro Piche was located and did not ask that he be brought before him.

23. The petition included abundant evidence stating to the fact that in Guatemala, remedies of habeas corpus are ineffective and the lack of efficacy in the instant case is not an isolated one but part of a general pattern. Hence, the conclusion is that there are no effective legal mechanisms in Guatemala to resolve complaints involving enforced recruitment into the Army.

24. The information supplied with the petition shows that public statements have been made on the case and that the proper Guatemalan authorities have failed to react. According to the information supplied, the problem was publicized nationwide, especially through the Human Rights Office of the Archbishopric of Guatemala City. One of the documents the office prepared was a "Report on denial of petitions of habeas corpus filed by the Human Rights Office of the Archbishopric of Guatemala City and enforced military recruitment, a persistent violation of human rights in Guatemala."

25. The publicity given to this case and to others like it in Guatemala, the knowledge that the Government of Guatemala has of the abuses committed through enforced recruitment and the fact that this practice persists demonstrate that the Guatemalan State, under the authority of its administrative, military and judicial agent, has no real interest in correcting this problem.

26. That, during its on-site visit to Guatemala in September 1993, the Commission was able to verify that, although steps had been taken to see that military recruitment was carried out in actual observance of legal provisions, abuses continued, especially irregularities committed by the military commissioners--arbitrary detentions of potential recruits, without prior observance of the legal notification requirements, and with no opportunity for the recruits to demonstrate they had legitimate grounds for exemption or that the call to military service was incorrect for other reasons.

27. During its visit, the Commission was also able to verify that discriminatory recruitment practices that make young Maya-Quiches almost a majority of conscripts persist. These practices consist mainly of strict application of recruitment criteria to the rural and indigenous populations while youths from mestizo, urban, and higher-income groups are almost automatically exempted.

28. That on October 6, 1993, the Commission approved Final Report No. 36/93 drawn up under Article 50 of the American Convention on Human Rights, in which it discussed the facts giving rise to the petition, drew conclusions thereon, and made recommendations to the Government, giving it thirty days to carry them out and report to the Commission.

29. That on November 9, 1993, the Government responded with information showing that Mr. Piche Cuca was serving in the army and enjoying his legally entitled benefits, and, since no offense had been proven, further investigation and compensation or reparation were unwarranted.

30. That the reply and the elements it contains, which generally repeat those indicated in consideration No. 15 of this report, presents no new evidence to refute the facts denounced or to prove that adequate measures, as required in Report No. 36/93, were taken to resolve the denunciation.

31. That the Commission has no new evidence to justify changing the original report's conclusions.

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,
RESOLVES:

1. That the facts denounced in the communication of January 22, 1992, concerning Mr. Alejandro Piche's forced recruitment into the army are serious violations of the Guatemalan Government's obligation to respect and guarantee the right to personal liberty (Article 7), the protection of human dignity (Article 11) and the right to freedom of movement (Article 22), guaranteed in the American Convention on Human Rights, in connection with Article 1.1 of that same legal instrument.

2. That, the Government of Guatemala is responsible, through action or inaction, for the events that may have led to the forced recruitment in this complaint, since judging by the complaint and the evidence available to the Commission, individuals or agents intervened in those events, operating on the authority of the Government or with its acquiescence.

3. That the State of Guatemala is also held responsible for the judicial and military authorities' lack of compliance in this case with the Law of Amparo, Habeas Corpus and Constitutionality, hereby violating the provisions on guarantees and judicial protection in Articles 8 and 25 of the American Convention.

4. That the Government of Guatemala neither conducted a full and impartial investigation to determine who was responsible for the reported acts, nor punished the guilty parties, nor compensated the victims' relatives.

5. That the Government of Guatemala still has not taken the corrective measures needed to stop the forced recruitment of persons into the military, nor has it complied with the pertinent legal requirements to end discriminatory recruitment practices against certain persons and/or sectors of Guatemalan society.

6. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Guatemala did not adopt measures to correct the situation denounced within the time period.