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Title/Style of Cause:	"Ojo de Agua" Cooperative v. Mexico
Doc. Type:	Decision
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	4 May 1999
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## I. SUMMARY

1. On March 11, 1996, the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") received a petition presented by David Herrera Valles, representing the residents of the "Ojo de Agua" cooperative (hereinafter, "the petitioners") families in the Municipal District of Tijuana, Baja California, Mexico, against the United Mexican States (hereinafter "the State" or "the Mexican State"). According to the petition, the Mexican agrarian authorities were refusing to comply with a presidential order that established 4,494 hectares as common land in favor of 132 peasants. The petitioners further allege that David Herrera and other persons received death threats for having denounced the facts. Although the petitioners do not make specific reference to the rights they consider violated by the State, the Commission finds that the briefs describe apparent violations of the following rights protected by the American Convention on Human Rights (hereinafter "the American Convention"): right to humane treatment (Article 5), fair trial (Article 8), property (Article 21), and judicial protection (Article 25).

2. The petitioners initially state that the failure to comply with the presidential order of April 25, 1980 is due to the fact that the authorities are implicated in acts of corruption and that they are acting in the interests of a drug trafficking organization known as the Arellano Felix Cartel, which operates on the border with the United States of America. The death threats, according to the petitioners, come from that criminal organization. The petitioners later retract all accusations against the Mexican authorities and limit their complaint to the alleged delay in judicial proceedings as being injurious to the right to property of the residents of the "Ojo de Agua" cooperative. For its part, the Mexican State replied that domestic remedies have not been

exhausted and that the administrative authorities are unable to attend to the petitioners' request due to the fact that a judicial decision is pending and that, furthermore, an investigation by the National Human Rights Commission (CNDH) of that country also remains open. The State requests that the Commission reject the petition for that reason and because it does not tend to establish acts in violation of the American Convention.

3. In the instant report, the Commission analyzes the available information in light of the American Convention and concludes that the petitioners have not exhausted the remedies under domestic law, and that the exceptions envisaged in Article 46(2) of that international instrument do not apply. Consequently, the Commission decides that the case is inadmissible under Article 47(a) of the American Convention; transmits the instant report to the parties; makes it public; and orders its publication in its Annual Report.

## II. PROCESSING BY THE COMMISSION

4. On April 25, 1996 the IACHR requested the State for information on the facts alleged by the petitioners. The petitioners made observations to the State's response and the matter was assigned case number 11.701. The processing of the case continued until information was obtained from both parties to complete the procedure provided for in Article 48 of the American Convention.

5. On September 9, 1998, the new representatives of the "Ojo de Agua" cooperative sent a communication containing documents attesting to the fact that David Herrera's mandate was revoked on April 12, 1998. In the same communication, the aforesaid representatives apologized "for the accusations made by the person who at one time represented us".

## III. POSITIONS OF THE PARTIES

### A. The petitioners

6. The petitioners alleged in their initial communications that the refusal to comply with the presidential order of April 25, 1980, was based exclusively on the corruption of administrative and judicial officials. Subsequently, upon observing the response of the State, they recognized that there had been a complicated judicial process in which the petitioners were initially favored by a decision granting them relief in civil rights proceeding [juicio de garantías] N° 2457/92. The decision granting relief "rendered null and void the acts undertaken in execution of the presidential order" and ordered the promulgation of "a new plan or proposal that faithfully reflects same." The petitioners again made references to several very well-known events that took place in Mexico in recent years[FN1] to support their argument that the failure to comply with the decree was due to the influence of drug trafficking and corruption.

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[FN1] In that regard the petitioners mentioned the murder of presidential candidate Luis Donaldo Colosio and the Aguas Blancas massacre. However, they failed to explain any direct or indirect connection between those events and the petition they lodged with the IACHR.

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7. On June 5, 1998, further to the facts in the complaint, the petitioners also alleged dispossession of lands corresponding to "El Dorado" Ranch, which is situated in an area adjoining the "Ojo de Agua" cooperative. According to the petitioners, those lands had been assigned to the cooperative in September 1987 after the military authorities discovered narcotic substances on the ranch, as a result of which said property was confiscated. The alleged dispossession was denounced and Preliminary Inquiry 102/97 opened by the Office of the Public Prosecutor. The petitioners also informed the Commission that they had sought institution of impeachment proceedings against several officials, including the Public Prosecutor and the Secretary of Agrarian Reform.

8. However, in September 1998 the new representatives of the "Ojo de Agua" cooperative expressly retracted from the petition being processed by the IACHR all references to corruption by administrative and judicial authorities, and to the alleged death threats.[FN2] In the end, the petitioners' case is reduced to the delay in proceeding 2457/92 and the alleged dispossession of "El Dorado" Ranch, as expressed in the petitioners' letter of January 21, 1999.[FN3]

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[FN2] Although no reference will be made in the present report to those events for the reason mentioned supra, it should be pointed out that the record does not show that the petitioners sought any remedy under Mexican domestic law for the alleged violations of the right to physical integrity of the persons who represented the "Ojo de Agua" cooperative at the time. Indeed, the communication signed by David Herrera Valles on June 5, 1998, acknowledges that "we have neither proven nor documented the attacks that we have suffered" (sic).

[FN3] On December 11, 1998, the Commission requested the new authorities of the cooperative and Mr. Herrera information that could lead to determine whether the legitimacy of the election of those authorities was brought before the courts in Mexico. The petitioners forwarded to the Commission the documents that prove their status as representatives of the cooperative on the other hand, Mr. Herrera did not respond to the request, although he did make several telephone calls to the Executive Secretariat to express his displeasure with the new authorities of the cooperative.

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## B. The State

9. The State maintains that the remedies provided under domestic law have not been exhausted and that the petition "does not state facts that tend to establish a violation of the rights guaranteed by the American Convention, under the terms of Articles 44 and 47(b) of that instrument, and of Articles 31 and 41(b) and (c) of the IACHR Regulations". Accordingly, the State considers that the Commission "has sufficient elements to enable it to proceed to the immediate closure of the case".

## IV. ANALYSIS

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

10. The Commission is competent prima facie to take up the instant petition. The petitioners have competency to appear before the Commission and have presented wrongdoings in relation to compliance with provisions established in the American Convention committed by agents of a state party thereto. The facts alleged in the petition purportedly took place at a time when the State's obligation to respect and ensure the rights recognized in the Convention was already in force.[FN4]

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[FN4] Mexico deposited its instrument of ratification of the American Convention on April 3, 1982.

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B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

11. The IACHR has determined that "The rule of prior exhaustion of domestic remedies is based on the principle that a defendant state must be allowed to provide redress on its own and within the framework of its internal legal system".[FN5] According to the positions of the parties, the facts in the initial complaint were subsequently reduced to delay in rendering a decision in civil rights proceeding [juicio de garantías] N° 2457/92 and the supposed dispossession of the "El Dorado" ranch, allegedly committed to the detriment of the residents of the "Ojo de Agua" cooperative. Consequently, the analysis hereunder will address those matters.

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[FN5] IACHR, 1996 Annual Report, Report N° 39/96 (Case 11.673 – Santiago Marzioni), Argentina, October 15, 1996, para. 49, p. 85.

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12. The Court and the Commission recall that "when a State claims that a petitioner has failed to discharge the requirement of exhaustion, the former bears the burden of indicating the specific remedies which remain available and effective.[FN6] The Court has also said that, "Once a State Party has shown the existence of domestic remedies for the enforcement of a particular right guaranteed by the Convention, the burden of proof shifts to the complainant, who must then demonstrate that the exceptions provided for in Article 46(2) are applicable".[FN7]

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[FN6] IACHR, 1997 Annual Report, Report N° 28/98 (Case 11.625 - María Eugenia Morales de Sierra), Guatemala, para. 28, p.150.

[FN7] I/A Court H.R., Advisory Opinion OC-11/90 "Exceptions to the Exhaustion of Domestic Remedies" (Arts. 46(1), 46(2)(a) and 46 (2)(b) of the American Convention on Human Rights), sought by the Inter-American Commission on Human Rights, August 10, 1990, para. 41.

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13. The State claims that the suitable remedies for the alleged wrongdoings are as follows: criminal accusation for abuse of office or for crimes against the administration of justice, and an

amparo or civil rights proceeding [juicio de garantías] before the Federal Judiciary. Subsequently the State adds that still pending are retrial [reposición] in the civil rights proceeding [juicio de garantías], and the outcome of the investigation by the CNDH of the facts alleged in the petition.

14. For their part, in the communication received by the IACHR on September 10, 1998, the petitioners say, "according to law, as the new authorities, we request that the proceeding continue for the delivery, should that be in agreement with the law, of the El Dorado Ranch...[where] the offences of threatening us and trespass were committed ..." (sic). In the note received on January 25, 1999, they express their hope that the Commission can help them to ensure that the cooperative's affairs are conducted in accordance with the law.

15. The Commission deems it timely to refer first to the investigation by the CNDH, mentioned by the State as a remedy still pending in Mexico. It should be highlighted that the law creating the Mexican ombudsman, in force since June 30, 1992,[FN8] itself provides in Article 6, paragraph III that the CNDH has the authority to "submit non-binding, autonomous public recommendations, as well as petitions and complaints to the respective authorities." [FN9] With regard to the characteristics of the domestic remedies that are required to be exhausted, the Inter-American Court stated that,

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.[FN10]

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[FN8] The law was adopted pursuant to Section B of Article 102 of the Constitution of Mexico, which states:

The Congress of the Union and the State Legislatures shall establish, in their respective jurisdictions, bodies for the protection of human rights under the Mexican legal system, which shall be competent to hear complaints regarding actions or omissions of an administrative nature arising from any authority or public officer, with the exception of officers of the Judiciary Branch of the Federation, who violate such rights. These bodies shall issue autonomous recommendations, non-binding and public, before the respective authorities. The bodies shall not be competent in electoral, labor or jurisdictional matters. (unofficial translation)

[FN9] The Commission has referred to the nature of the powers of the CNDH in the following terms:

The National Human Rights Commission is structured like the office of an ombudsman, hence it does not in any way replace the agencies with jurisdiction, i.e. the courts, which are entrusted with procuring and imparting justice. The CNDH is an independent body with responsibility for overseeing the public authorities. It has the power to receive complaints from the people against public authorities, except in political matters. Therefore, it is not competent to hear electoral disputes. Its decisions are not binding, since they are issued in the form of recommendations; hence they have moral force but are not compulsory.

IACHR, Report on the Situation of Human Rights in Mexico, OEASer.L/V/II.100, Doc.7 rev.1, September 24, 1998, para. 117. The Commission also established in an individual case that "the National Human Rights Commission ...is a quasi-judicial body that issues recommendations,

which are therefore not legally enforceable". IACHR, 1996 Annual Report, Report N° 45/96 (Case 11.492 – Jesús Armando Lara Preciado), Mexico, October 16, 1996, para. 24, p. 527. [FN10] I/A Court H.R, Velásquez Rodríguez Case, Judgement of July 29, 1988, para. 64.

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16. Based on the foregoing, the Commission concludes that lodging a petition or complaint with the CNDH is not a suitable remedy for the alleged human rights violations described in the instant case. While that mechanism was available, it is not effective in the sense established by the case law of the inter-American system, for which reason the petitioners are under no obligation to exhaust it before having access to the international protection provided for in the American Convention.

17. In addition, both the Mexican State and the petitioners concur that the Agrarian Reform Secretariat cannot comply with the presidential order in respect of the "Ojo de Agua" cooperative until a decision is reached on the retrial [reposición] of the amparo proceeding. The State informed the Commission that, to date, no judgement has been delivered "definitively upholding, annulling, or amending the decision in the civil rights hearing [juicio de garantías]".

18. The Commission finds that Mexican legislation provides for due process of law for protecting the rights allegedly violated, and that the petitioners have not challenged the State's assertion with respect to the availability of the remedies provided under domestic law for seeking such protection. Accordingly, the exceptions provided in Article 46(2), sections (a) and (b) do not apply. In such circumstances, pursuant to the provisions of Article 46(2)(c) of the American Convention, the burden of proof to show that there was unwarranted delay in rendering a final judgement under such remedies passes to the petitioners.

19. The notes of September 9, 1998 and January 25, 1999, sent by the representatives of the residents of the "Ojo de Agua" cooperative, contain no brief on the applicability of the aforementioned exceptions in the instant case. On the contrary, the petitioners expressly put aside the arguments of the cooperative's former representatives, according to which the delay of the administrative and judicial officials in delivering a judgement was due to corruption and the influence of drug trafficking.[FN12] As has been noted, the definitive position of the petitioners is confined instead to a request for IACHR support for ending a dispute pending before the Mexican judicial authorities.

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[FN12] The former representatives of the "Ojo de Agua" cooperative also failed to demonstrate that they had exhausted the remedies under domestic law with respect to those accusations, for which reason it would not in any case be incumbent upon the Commission to rule on the matter.

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20. The analysis of the record reveals that the petitioners have not exhausted the remedies available under the domestic law of Mexico, nor have they presented arguments that demonstrate unwarranted delay in rendering a decision under such remedies.

## V. CONCLUSIONS

21. The IACHR has established that the petition does not meet the requirement stipulated in Article 46(1)(a) of the American Convention and that the exceptions provided for under Article 46(2) thereof do not apply. Once the Commission concludes that a case is inadmissible because it fails to meet one of the requirements stipulated in the American Convention, it is not required to rule on the rest. Accordingly, the Commission concludes that the petition is inadmissible under Article 47(a) of the American Convention.

22. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify the petitioners and the State of this decision, and
3. To make public this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on this 4th day of May 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commission Members Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.