

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 74/99; Case 11.810
Session:	Hundred and Third Special Session (3 – 7 May 1999)
Title/Style of Cause:	Sebastian Sanchez Lopez, Sebastian Lopez Lopez and Mateo Lopez Perez v. Mexico The State expressed that Mateo Lopez Perez was the same person identified in the original petition as Mateo Jimenez Lopez, supposed victim of forced disappearance.
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
Citation:	Sanchez Lopez v. Mexico, Case 11.810, Inter-Am. C.H.R., Report No. 74/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANT: the Miguel Agustin Pro Juarez Human Rights Center
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I. SUMMARY

1. On July 19, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition from the Zapatista National Liberation Army (hereinafter “the EZLN”) and the Miguel Agustin Pro Juárez Human Rights Center (hereinafter “the petitioners”) claiming that the United States of Mexico (hereafter “the State”, “the State of Mexico”, or “Mexico”) has incurred in international responsibility for the violation of various rights enshrined in the American Convention on Human Rights (hereafter “the American Convention”) by extrajudicially executing Sebastian Sánchez López and Sebastian López López and causing the forced disappearance of Mateo Jiménez López. The petitioners initially claimed violation of the rights to life (Article 4), to equal protection before the law (Article 24) and to judicial protection (Article 25). They later added violations of the rights to physical, mental and moral integrity (Article 5), personal liberty (Article 7), freedom of conscience and religion (Article 12), freedom of thought and expression (Article 13) and freedom of association (Article 16).

2. According to the petition, on May 24, 1996, a paramilitary group ambushed several indigenous persons in the municipality of Tila, state of Chiapas, killing Sebastian Sánchez López and Sebastian López López and depriving of liberty Mateo Jiménez López, who has since not reappeared. The petitioners filed a complaint with the Office of the Public Prosecutor of Chiapas.

Receiving no response, they took it that the authorities did not have the desire to clarify the facts. For its part, the State claims that all domestic remedies have not been exhausted and that the reasons for exception cited by the petitioners are not admissible. It asks the IACHR to declare the case inadmissible on this basis and on the basis of the absence of any violation of human rights.

3. The Commission concludes in this report that the case meets the requirements for admissibility established in the American Convention. However, the Commission rejects the parts of the petition pertaining to Articles 12, 13, 16 and 24 of the American Convention, since the information presented does not state a colorable claim of a violation of any of the rights enshrined in the aforementioned articles. Thus, the Commission declares the case admissible, informs the parties of its decision and continues its examination of the alleged violations of Articles 4, 5, 7, 8, and 25 of the American Convention. At the same time, it places itself at the disposal of the parties to undertake a friendly settlement procedure and makes the present report public.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On April 2, 1997 the Commission requested information of the Mexican State on the pertinent parts of the petition. After receiving the observations from the petitioners, the IACHR forwarded them to the State on October 7, 1997 and it gave the case number 11,810. The State forwarded its observations to the Commission on February 5, 1998, April 22, 1998, June 12, 1998, and September 10, 1998. The petitioners sent their observations on April 22, 1998 and August 6, 1998. By virtue of these communications, the Commission gathered the information necessary to complete the procedure set forth in Article 48 of the American Convention.

III. POSITIONS OF THE PARTIES

A. The petitioners

5. The position of the petitioners underwent changes between the time the original petition was made and their final observations were received on August 6, 1998.

a. The petition

6. The initial petition cited alleged violations of Articles 4, 24 and 25 of the American Convention. In regard to the facts, the original petition states:

On May 24, 1996, a group of heavily armed persons identified as members of the self-proclaimed "Peace and Justice" paramilitary group ambushed a group of indigenous peasants near Comunidad Usipá, Municipality of Tila, Chiapas, shooting dead Misters Sebastian Sánchez López and Sebastian López López.

In addition to the death of these two peasants and also as a result of the ambush, 19 year-old student Mateo Jiménez López disappeared and has not reappeared since.

7. The petitioners added that charges were brought before the Office of the Public Prosecutor of Chiapas, but that they never received any further information from that office. They also undertook to talk with members of “Peace and Justice”, but that organization escalated its acts of violence nonetheless. The petition contains information on Peace and Justice, including names of members and activities attributed to that group: “repression of villages or individuals that have expressed their discontent with the reigning violence, or who have participated actively in the opposition, or who simply have not expressed support of the group.” The first communication of the petitioners presents information on various acts of violence and harassment that they attribute to “Peace and Justice”. These were allegedly carried out in northern Chiapas around the time of the events forming the basis of the petition and were presented as examples of violations that would continue to go unpunished.

8. With regard to the exhaustion of domestic remedies, the petitioners argued:

The murders and disappearance herein reported were never investigated due not only to a clear lack of desire on the part of the government to clarify what happened, but also to the intention of not clarifying it at all. This situation means that the remedies available to the victims and their families are rendered ineffective, and we thus consider that all domestic remedies have been exhausted.

b. Observations to the State’s reply

9. The observations to the initial response by the State broadened the petition by claiming violations of Articles 5(2), 7 (paragraphs 1 to 6), 12(1), 13(1), 16(1) and 25 of the American Convention.

10. The petitioners said that the response received from the State was “brief, evasive and incomplete.” They claimed that preliminary inquiry 1338/CAJ/4B/96, mentioned in the response, was previously unknown to them; that the State never informed them of the “supposed investigation”; and that “without further explanation” the State suddenly said that one Rubén López Pérez had been charged with the murder of Sebastian Sánchez López and Sebastian López López.

11. The petitioners said that the State of Mexico never referred to this fact in its response and that “so far nothing is known about it and as was said, there has not even been an investigation of the case”. In regard to the petition on the disappearance of Mateo Jiménez López, they added:

Moreover, the Mexican government contradicts itself when it says that there has not been any delay in this case, because the State itself reports that after more than one year since the two homicides were committed, it is clear that it has not been possible to apprehend the alleged perpetrator. And in regard to the disappearance, there is not even any sign of an investigation having begun.

12. In response to the State’s claim that all domestic remedies have not been exhausted, the petitioners maintained that they are not obliged to go before the National Commission on Human

Rights (hereinafter “the CNDH”) as “the proceedings and rulings of such Mexican bodies are not binding and thus should not be considered requirements for admissibility.”

13. The petitioners added that the only remedy available to them through Mexican law is the preliminary inquiry (“averiguación previa”) before the Office of the Public Prosecutor, and that such remedy is “neither easy, ideal, nor effective...”

14. The submission in question also contains an extensive section providing information on “Peace and Justice” and that group’s alleged connections to the Government of Mexico and paramilitary organizations. That section includes 23 statements and complaints made by inhabitants of northern Chiapas between June 30, 1996 and May 26, 1997, and extracts from articles published by Mexican newspapers with national circulation between September 6, 1995 and July 18, 1997.

c. Later communications

15. In communications received on April 27 and June 12, 1998, the petitioners stated their position of refusing to submit their observations to the reports presented by the State of Mexico, as they considered that “it did not offer information on the substance of the question.” This position was confirmed in a communication received by the IACHR on August 6, 1998.

B. The State

16. The Mexican State reported that the Office of the Public Prosecutor of Chiapas (hereinafter “the PGJ”) initiated preliminary inquiry 1338/CAJ/4B/96 on May 24, 1996, “against the person or persons responsible for the crime of HOMICIDE of the persons known in life as SEBASTIAN SANCHEZ LOPEZ AND SEBASTIAN LOPEZ LOPEZ.”(sic). Later, the investigation was begun by the competent judge, against Rubén López Pérez “as the probable perpetrator” of the homicide of Sebastian Sánchez López and Sebastian López López. The State further informed that an arrest warrant was issued for the prosecuted individual and that later a formal request was made to the Office of the Public Prosecutor of Tabasco for the execution of that measure, since the authorities of Chiapas had learned that Rubén López Pérez had fled to that state.

17. As to the requirements set out in Article 46(1)(b) of the American Convention, the State held:

As the petitioners themselves show by not invoking it, the exception stated in Article 46.2 of the Convention does not apply, since Mexican domestic legislation does provide remedies and legal processes to protect the right or rights that they claim have been violated. This means that effective legal remedies have always been available to the petitioners and if they did not avail themselves of them, it is for reasons imputable only to them.

The petitioners try to limit the concept of remedy to legal challenge through the courts, although they tacitly recognize that there are other administrative and jurisdictional remedies available to them within the Mexican legal system. Such remedies make it possible for the competent State

authorities to hear the populace's complaints of actions carried out by governmental bodies and persons in their employ.

Thus, the existence of said remedies and legal processes make it clear that the petitioners could have used them, since nothing was keeping them from doing so. If they did not avail themselves of them, it was by their own decision. Therefore, the exception stipulated in Article 46.2.b of the Convention cannot be invoked either, since they were never impeded in an attempt to seek remedy, but rather access to said remedies was actually facilitated.

18. On this basis, it asked the IACHR to declare the case inadmissible, as it maintained that:

No violation of human rights has occurred whatsoever, through action or illegal omission imputable to any competent authority. Thus, there has never been a lack of compliance with the international obligations set forth in the American Convention on Human Rights.

19. The State also countered the petitioners' allegations concerning the "Peace and Justice" organization, which it described as an "organization voluntarily founded by certain groups of farmers and cattle-raisers discontent with the illegal occupation of private lands by various civil associations." After justifying the activities of said organization, the State went on to clarify that the organization has no connection whatsoever with the Government of Mexico. The State also objected to the "the vague nature of the evidence and the speculations" put forward by the petitioners regarding alleged governmental implication in the events.

20. With regard to the forced disappearance of Mateo Jiménez López, the State did not address the subject in its initial communications. In comments dated February 5, 1998, it simply noted that the name of Mr. Jiménez López was not registered in the "Program of Disappeared Persons" run by the National Commission on Human Rights (hereinafter "the CNDH"). On September 10, 1998, the State informed the IACHR that the person in question "is incarcerated in Yajalón, Chiapas for the murder of José Tila López Gracia and thus there is no disappearance involved as the petitioners erroneously and groundlessly claim." To clear up this apparent confusion, on December 21, 1998, the Commission requested information from the State on the circumstances surrounding the arrest of Mr. Mateo Jiménez López.

21. The State replied to the request on February 5, 1999, and informed that Mr. Mateo López Pérez had been placed before the first instance judge in the city of Yajalón on February 25, 1998. On March 18, 1999, the IACHR asked the State of Mexico to explain the difference in names in order to determine if the person in question was the same person being claimed to have disappeared. The State informed the Commission on April 1st, 1999 that it was actually the same person, and that the confusion had happened for the following reason:

In its deposition before the agent of the Office of the Public Prosecutor, Mr. José Torres López, father of the deceased, mentioned the names of Mateo López Perez and Mateo Jimenez López. However, in a later stage of the procedure, Mr. Torres clarified that the correct name of the person in question was Mateo López Pérez.

Mr. Torres also declared that Mateo López Pérez lived in the community of Panchuc, Municipality of Tila, Chiapas. This information matches that given by Mateo López Pérez himself in a recent interview carried out in the CERESO penitentiary at Cerro Hueco, Chiapas, where he is currently detained.

IV. ANALYSIS

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

22. The submissions made in this case describe acts that would violate various rights recognized by and enshrined in the American Convention. Such acts occurred at a time when Mexico had the obligation to respect and guarantee all the rights established in the aforementioned instrument.[FN2] Therefore, the IACHR is competent *ratione materiae*, *ratione personae*, and *ratione temporis* to examine the facts and substance of the petition.

[FN2] The State of Mexico deposited the instrument of ratification of the American Convention on 3 April 1982.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

23. States party to the American Convention must ensure observance of the rights enshrined in it and provide domestic remedies for the effective investigation of violation of such rights, punishment of those guilty of violating them and compensation for victims. The Inter-American Court of Human Rights has pointed out:

Under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means.[FN3]

[FN3] Inter-American Court of Human Rights, Case of Viviana Gallardo et.al, No. G 101/81, Resolution of 13 November 1981, para. 26. Along the same lines the Court established that:

The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble).

Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of 29 July 1988, para. 61.

24. Here the State argues that the petition is inadmissible because domestic remedies have not been exhausted. The Inter-American Court has established that when a State argues that this requirement for admissibility has not been met, it is up to the other party to show that such remedies were in fact exhausted or that the exceptions cited in Article 46(2) of the American Convention apply.[FN4]

[FN4] *Idem*, para. 60.

25. Article 46(2)(c) of the American Convention includes as an exception the unjustified delay in the decision concerning domestic remedies. According to the petition, the extrajudicial execution of Sebastian Sánchez López and Sebastian López López and the illegal deprivation of liberty of Mateo Jiménez López occurred in May of 1996. A preliminary analysis of the record of the case before the Commission shows that during the aforementioned period, the jurisdictional bodies have not acted with the due diligence required in the obligation to investigate in a serious, impartial and complete manner the violations of human rights allegedly committed in the instant case.

26. As regards the admissibility of the instant case, the Commission determines *prima facie* that there has been an unreasonable delay in the decision on the jurisdictional remedies presented by the petitioners in Mexico. Therefore, the IACHR applies the exception of Article 46(2)(c) of the American Convention. The Commission shall rule on the allegations regarding the violation of the right to judicial protection (Article 25 of the American Convention) after a full analysis, in its decision on the merits of this case. To that effect, the IACHR shall weigh the arguments regarding the facts, the evidence presented by the parties, as well as the legal grounds.

b. Period for presentation

27. The State did not cite among its arguments the requirement stipulated in Article 46(1)(b) and it is not appropriate to analyze it in this report as both parties agree that the internal legal proceedings have not concluded.

c. Duplication of proceedings and *res judicata*

28. The exceptions under Articles 46(1)(d) and 47(d) have not been cited by the State of Mexico and do not arise from the information in the record.

d. Characterization of alleged violations

29. The Commission considers that the petition describes, in principle, acts that could constitute a violation of the rights guaranteed under Articles 4, 5, 7, 8 and 25 of the American Convention.

30. The petitioners have also alleged the violation of the rights to freedom of conscience and religion; freedom of thought and expression; freedom of movement and residence; and the right

to equal protection. However, the record shows that the petitioners have failed to state a colorable claim of a violation of the rights protected, respectively, in Articles 12, 13, 16, 22 and 24 of the American Convention.[FN5] Therefore, the petition is manifestly groundless as to such allegations.

[FN5] In previous occasions the IACHR has concluded that some parts of a case are admissible under Article 47(b) of the American Convention, while other do not meet the requirements of the self-same Article. See, for example, IACHR, 1998 Annual Report, Report N° 33/98 (Case 10.545 – Clemente Ayala Torres et. al), Mexico, 5 May 1998, par. 44 and 47.

V. CONCLUSIONS

31. The Commission concludes that the petition is admissible as far as the accusations of alleged violations of the rights to life, to humane treatment, to freedom, to a fair trial, and judicial protection under the American Convention. Accordingly, the Commission shall focus its considerations and its decision on such allegations when it rules on the merits of the case.

32. As to the other facts alleged in the initial petition and those added to it at a later date, the Commission considers that the requirements set forth in Article 47(b) of the American Convention have not been met. Therefore, the IACHR concludes that the petition is inadmissible with respect to the alleged violations of the rights protected by Articles 12, 13, 16 and 24 of the American Convention.

33. Based on the arguments of fact and law set out above, and without prejudging on the merits of the case in any way,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible and to proceed to the analysis of the merits of the matter, as to the alleged violations of the rights enshrined in Articles 4, 5, 7, 8 and 25 of the American Convention.
2. To declare inadmissible the allegations in this case regarding violations of Articles 12, 13, 16 and 24 of the American Convention.
3. To notify the parties of this decision.
4. To place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention and to invite the parties to present their respective opinions on this possibility, and

5. To publish this decision and include it in its Annual Report to be presented 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.