

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 129/99; Case 11.565
Session: Hundred and Fifth Special Session (19 – 21 November 1999)
Title/Style of Cause: Ana, Beatriz and Celia Gonzalez Perez v. Mexico
Fictitious names. The real identities of the sisters and their relatives are withheld at the express request of the petitioners and in keeping with the practice of the Commission when dealing with denounced acts such as are characterized in the instant case which, when published, could affect a person's dignity and honor. Moreover, one of the alleged victims was a minor at the time the violation allegedly occurred. In their note of May 2, 1999, the petitioners stated the following:
After lodging the petitions the victims suffered reprisals from the community where they lived, as a result of which they had to move away from their village of origin and two of them to changed their names. For those reasons, we, the petitioners, have left out the names of the injured parties and respectfully request the honorable Commission in future to keep the names of the victims secret.

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: 19 November 1999
Citation: Gonzalez Perez v. Mexico, Case 11.565, Inter-Am. C.H.R., Report No. 129/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: the Center for Justice and International Law
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I. SUMMARY

1. On January 16, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the Center for Justice and International Law - CEJIL [Centro por la Justicia y el Derecho Internacional], (hereinafter “the petitioners”). The petition alleges the international responsibility of the United Mexican States (hereinafter “the State”, “the Mexican State”, or “Mexico”) for the illegal detention and torture of the Tzeltal native sisters Ana, Beatriz, and Celia González Pérez, as well as the subsequent failure to investigate and provide redress for those acts. The petitioners allege violation of several rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention”): right to humane treatment (Article 5); right to personal liberty (Article

7); right to a fair trial (Article 8); right to privacy (Article 11); rights of the child (Article 19); and right to judicial protection (Article 25).

2. According to the petition, on June 4, 1994 a group of military personnel illegally detained in the State de Chiapas, Mexico, the sisters Ana, Beatriz, and Celia González Pérez and their mother Delia Pérez de González, in order to interrogate them; the four women were held for approximately two hours. The petitioners allege that the three sisters were separated from their mother, beaten, and raped several times by the military personnel; that on June 30, 1994 a petition was lodged with the Federal Public Prosecutor's Office based on a gynecological examination; that same examination was corroborated before the said institution by the testimony of Ana and Beatriz, the two older sisters; that the record was transferred to the Office of the Public Prosecutor of Military Justice in September 1994; and that the latter decided finally to close the record for failure of the sisters to come forward to testify again and to undergo expert gynecological examination. The petitioners assert that the State failed in its duty to investigate the facts denounced, punish those responsible, and provide redress for the violations.

3. For its part, the Mexican State contends that the competent authorities carried out a serious investigation, although domestic remedies were not exhausted; that the representatives of the González Pérez sisters did not show sufficient interest in the case; and that the military investigation that was closed could be reopened, but that it was not possible without the cooperation of the alleged victims. The State requests that the IACHR declare the case inadmissible due to non-exhaustion of domestic remedies and for failure to constitute violations of human rights.

4. The IACHR concludes in the instant report that the case meets the requirements set forth in Articles 46 and 47 of the American Convention. Accordingly, the Commission declares the case admissible, notifies the parties of its decision, and continues to examine the merits in respect of the alleged violations of Articles 5, 7, 8, 11, 19, and 25 of the American Convention. At the same time the Commission places itself at the disposal of the parties with a view to initiating a friendly settlement procedure and decides to publish this report.

II. PROCESSING BY THE COMMISSION

5. The Commission assigned case number 11.565 to the matter and requested the Mexican State for information on the pertinent parts of the petition on January 18, 1996. The IACHR received the observations of the petitioners on May 13, 1996 and transmitted them to the Mexican State on September 10, 1996. On October 24, 1996 the State sent its observations to the Commission, which forwarded them to the petitioners.

6. The IACHR requested the petitioners for up-to-date information on the case on November 13, 1998 and, in the absence of a reply, repeated the request on March 19, 1999. The petitioners submitted information on the case on May 27, 1999, the Mexican State doing likewise on July 14, 1999.

7. On October 4, 1999 a work meeting was held to address the instant case at the headquarters of the Commission and was attended by the petitioners and representatives of the

State. At the meeting the Commission received updated information on the positions of the parties in regard of the admissibility and merits of the petition.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petition received by the IACHR mentions that on June 4, 1994, members of the Mexican Federal Army arbitrarily detained Mrs. Delia Pérez de González and her daughters Ana, Beatriz, and Celia, and interrogated them in order to make them confess that they belonged to the Zapatista Army of National Liberation – EZLN (Ejército Zapatista de Liberación Nacional).[FN2] The petitioners underscore that the women communicate in the language of the Tzeltal ethnic group and that their knowledge of Spanish is very limited, owing to which they had difficulty understanding the questions that were put to them. The petitioners allege that the mother was then separated from her daughters and that Ana, Beatriz, and Celia were taken to a wooden room where they were beaten and raped several times in the presence of some 30 members of the military, most of whom took part in those acts. According to the petition, the four women were released at 4:30 p.m. on the same day, after they received death threats to prevent them from denouncing the violations.

[FN2] An armed dissident group that launched a rebellion in Chiapas in 1994. The “Law for Dialogue, Conciliation and Fitting Peace in Chiapas”, which entered into force on March 11, 1995, defines the EZLN as a “group of people who identify themselves as an organization of mostly indigenous Mexican citizens, who for various reasons chose to rebel and became involved in an armed conflict that started on January 1, 1994”.As of the date of approval of this report the conflict continues and the negotiations for reaching peace in Chiapas remain unconcluded.

9. The petitioners allege that the women remained in hiding for several weeks for fear of the reprisals with which the members of the military threatened them if they reported the acts. On June 29, 1994, a female doctor performed a gynecological examination on each of the three sisters and found that there were still traces of the rape more than 20 days after the denounced acts occurred. That piece of medical evidence was attached to the petition lodged on June 30, with the Office of the Public Prosecutor in San Cristóbal de las Casas, Chiapas. On August 30, 1994, in Preliminary Investigation 64/94, which had been opened on basis of the petition, Ana and Beatriz González Pérez corroborated and enlarged on their petition before that authority, and in the presence of a “senior official of the Office of the Public Prosecutor”. The petitioners add that the youngest sister, Celia, did not come forward because she was unable to overcome the fear caused by her ordeal; for that reason, the mother stayed at home to keep her company.

10. On September 2, 1994, the Federal Public Prosecutor’s Office decided to refer Preliminary Investigation 64/94 to the Office of the Public Prosecutor of Military Justice “for lack of legal competency to hear the matter due to lack of jurisdiction”. The petitioners maintain that they fulfilled the requirement of seeking the suitable domestic remedies available in Mexico

for resolving the petition; and that the transfer of competency to the military authorities was a violation both of the Mexican Constitution and of the duty to investigate the violations. In relation to this they state the following:

Following the transfer of competency to the jurisdiction of the military courts in September 1994 there was no substantial progress in the investigations, despite the court of the civil jurisdiction ordering the Office of the Military Public Prosecutor to continue said investigation. The case has been closed since February 1996, which constitutes a violation of the duty to investigate.

The fact that Mexican legislation states that the military courts shall take cognizance of common offences committed by military personnel while on service or in the performance of acts thereof, combined with the argument made by the government for the military courts to take up the instant case, lead one to presume that the detention, torture and rape of the injured parties were acts of service or acts deriving therefrom.[FN3]

[FN3] CEJIL communication of May 27, 1999, p.4.

11. The petitioners maintain that the investigation opened and later closed by the Office of the Military Public Prosecutor does not meet the requirements of suitability and impartiality essential to any investigation of human rights violations. In relation thereto they observe that Press Release N° 38 of the Secretariat of National Defense (hereinafter “the SEDENA”) of July 3, 1994, referring to the events that led to the petition, “vigorously rejects the false charges made against military personnel and reserves the right to take legal action against persons or entities that defame our institution”. They add that the Office of the Public Prosecutor of Military Justice is an institution hierarchically subordinate to the head of the SEDENA.

12. As to a new court appearance and medical examination before the military authorities – which the State deems essential for reopening the investigation-- the petitioners state the following:

It is unacceptable to claim that these women, who had endured such an experience of torture by members of that institution, would feel safe testifying (for the third time) before this entity. On several occasions the petitioners informed the government attorney’s office of the victims’ fear and trauma, which made it difficult even for them to go to the civil court, since they were obliged to cross military roadblocks, which made it impossible for them to appear before the military authority to testify.

It should be noted that, owing to the nature of the case, it is logical that the victims should have been terrified of appearing before the military entity, especially since the agencies involved --in this case the Army-- turn out to be the ones in charge of the investigations.

The victims, who had already testified before the competent court, had no obligation to consent to the kind of psychological torture entailed by fresh questioning and the humiliation of another

gynecological examination, particularly before the entity that represents those responsible for the torture, illegal detention, and rape of the injured parties.

The foregoing entails a violation and aggression equal to or worse than that endured on June 4, 1994, by which token the Army's proposal to reopen the investigation itself, thereby rejecting the inquiries already made by the Federal Public Prosecutor's Office, cannot be valid. This is particularly true given that they have testimonies from the very soldiers who "interrogated" the injured parties and who accept having been in the right time and place and having had the opportunity to commit the aggression. Basically, the only thing they do not accept in their testimony is having raped them. However, they do accept having detained them, interrogated them, and [engaged in] other acts, which, by their very contradiction allow one to assume that the women witnesses are telling the truth and the soldiers are lying. However, all of that was rejected and not one of them was ever prosecuted.[FN4]

[FN4] CEJIL communication of May 27, 1999, pp.5 and 6.

13. As regards the supposed lack of interest of the petitioners, which the State alleged, CEJIL reiterates that a medical examination was performed immediately after the events, the results of which were presented to the Office of the Public Prosecutor and later corroborated by the testimony of the victims. On the basis of those elements, the petitioners state that there is evidence of the violations, and that the silence of CEJIL for such a long time was due to the difficulty in locating the women, since as a consequence of the events, they were compelled to leave their communities and families because they were repudiated in accordance with their indigenous culture.

14. The petitioners say that the abuses denounced in this case are a part of a general problem in Mexico, and they mention in that light the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará").[FN5] Also, the petitioners allege that the facts tend to establish a violation of the rights of the child protected in Article 19 of the American Convention:

The youngest of the victims was 16 when she was tortured and raped by the soldiers of the Mexican Federal Army. Her case, as the Committee on the Rights of the Child has rightly stated, is one of so many that remains unpunished, where the unwillingness of the Government to protect its juvenile citizens is made plain by the closure of the instant case, as a result of which, five years after the physical, psychological, and sexual abuse suffered by this minor, none of the parties responsible has been tried and convicted of those crimes[FN6].

[FN5] The Mexican State ratified the "Convention of Belém de Pará" on November 12, 1998.

[FN6] CEJIL communication of May 27, 1999, p.13.

15. Finally, the petitioners claim that facts were duly reported with strong supporting evidence to the authorities in Mexico but that the transfer of competency to the Office of the Military Public Prosecutor and its lack of willingness resulted in the failure to investigate the violations, with the upshot that, to date, those responsible have got off scot-free.

B. The State

16. The Mexican State initially omits any reference to the merits and states that the petition should be rejected for failure to exhaust domestic remedies:

Under the jurisdiction of the military courts, the complainants have not lodged any petition with the SEDENA against the prosecuting attorneys in charge of the investigation, despite the fact that they have the right to do so and that, any proven wrongdoing on the part of the Office of the Military Public Prosecutor would originate proceedings to determine criminal responsibility in the military courts ... In light of the severe punishments in which such a proceeding could result, this is not a mere formality from which the complainants are excused; nor have the remedies available under military jurisdiction been exhausted in accordance with generally recognized principles of international law.

The fact that this case corresponds primarily to the jurisdiction of the military courts does not mean to say, however, that the interested parties lack effective remedies in the federal civil jurisdiction. Under Article 34 of the Criminal Code ...”any person who considers himself entitled to indemnification for damage caused, who cannot obtain as much from a criminal judge, due to failure on the part of the Office of the Public Prosecutor to bring suit, dismissal of the case, or verdict of acquittal, may resort to the civil process under the terms of the corresponding legislation.”

If the complainants consider that the process failed to observe human rights and fundamental freedoms, there is nothing to prevent them from filing a judicial complaint against the way the criminal suit was prosecuted in this case, which would also be a matter for the civil and not the military courts to decide.[FN7]

[FN7] Communication of the Mexican State of May 13, 1996, pp.1 and 2.

17. The State subsequently broadens its arguments and states that the Office of Complaints and Citizen Attention conducted an investigation based on an article published in La Jornada newspaper on June 17, 1994, and informed the SEDENA of the statements of several persons regarding the events. The State asserts that on June 25, 1994 the military authority ordered an investigation “in order to determine if, as a result of the events in question, there was a breach of Military Discipline”(sic). The State also adds the following:

On July 2, 1994, the Secretariat of National Defense issued Press Release Number 38 informing the public that, as a result of the investigation carried out --into the supposed rape of three Tzeltal native women by military personnel-- it had emerged that said charge was completely false and

that there was no breach of military discipline, in accordance with Preliminary Investigation A5FTA/03/94-E (emphasis in the original).[FN8]

[FN8] Communication of the Mexican State of October 24, 1996, p.2.

18. The State also says that Preliminary Investigation N° 64/94 was opened “for the offences of GANG RAPE, ABUSE OF AUTHORITY, AND OTHERS” (capitals in the original), and that the following procedures were carried out in that investigation:

The Federal Judicial Police were called on to conduct an investigation of the above-mentioned events. The complainants [were] summoned in order to corroborate their complaint and presented themselves on July 1, 1994. The alleged injured parties [were] summoned in order to testify about the events in question. Experts in legal medicine were called on to give their opinion on the clinical age they claimed to have as injured parties, and to perform the respective gynecological examination.[FN9]

[FN9] Idem, pp. 2-3.

19. The State mentions the request from various non-governmental organizations that a woman be appointed as special prosecuting attorney in the case. The State also says that the Office of the Military Public Prosecutor appointed a female military prosecuting attorney and “female medical staff” to assist her in “clarifying the facts in question”; and that the said military official “requested and obtained” from the Representative of the Office of the Federal Public Prosecutor in Chiapas “definitive refusal of competency in favor of the jurisdiction of the military courts due to its being a matter for its purview”. The State describes the proceedings of the Public Prosecutor of Military Justice in the following terms:

He obtained further testimony from the civilians who witnessed the events, who in short said that at no time was there any physical or verbal abuse by the military personnel against the alleged injured parties, much less sexual assault. He obtained further testimony from the military personnel involved in the presence of their respective court-appointed defense counsel, who offered rebutting for the confrontation between his clients and the alleged injured parties, it not being possible to compare that evidence due to the nonattendance of the alleged injured parties. At the request of the Military Prosecuting Attorney staff from the National Commission on Human Rights were present as observers of the way the proceedings were put into practice, as were translation experts from the National Institute of Indigenous Affairs, and experts in medical law specializing in gynecology, all of whom are civilians and residents of the area. He summoned Mrs. MARTHA GUADALUPE FIGUEROA MIER and Mr. ROGER MALDONADO BAQUEIRO, (emphasis in the original) alleged legal representatives of the injured parties, of whom only the former appeared in court, she being noticeably annoyed, haughty, and intimidating, but with extreme nervousness (sic). By reason of the foregoing the

Head of Preliminary Inquiries of Military Justice concluded that the charge against the military personnel is totally and manifestly false.[FN10]

[FN10] Idem, p. 3.

20. The State goes on to perform a detailed analysis of the military preliminary investigation, which includes statements from several persons who concur on the good conduct of the military and deny that events occurred.[FN11] The State's analysis continues with a section entitled "Considerations regarding the competence of the jurisdiction of the military courts to take cognizance of the facts". In this section, the State indicates that "the jurisdiction of the military courts owes its existence to the very nature of the armed force and the way of life peculiar to it", and explains that the prerequisites under which the intervention of that jurisdiction is in order are the following: that the perpetrator of the infraction is a member of the armed forces; that the member of the military is on service or engaging in acts relating thereto; and that the infraction is in breach of military discipline. The State then applies those prerequisites to the case under consideration:

There is considered to be no problem whatever with the first prerequisite since the complainants themselves expressly accept that participants in the crime are members of the Armed Forces.

As to the second of these, regarding the participant in the crime being on service or engaging in acts relating thereto, service should be understood as any act executed by members of the military, either in an individually or a collective manner, in fulfillment of the orders they receive in the course of performing the duties that befall them, depending on their category and in accordance with the laws, regulations, and provisions of the Army. (Article 37 of the Army Corps Service Regulations)

In relation to the third element, that the infraction or offences be in breach of military discipline, Article 57 of the Code of Military Justice is very explicit when it establishes that the following ...are offenses in breach of military discipline (...) II. Common or federal offences when any of the following circumstances are involved: a) That were committed by members of the military while on service or in the performance of acts thereof (emphasis in the original)[FN12]

[FN11] For example, Pedro Santiz Espinoza declared,

That since the moment the military arrived at my home they have behaved well toward the people; that I have never noticed people passing through there having any problem with the military; that the military only ask the people passing through there for their identification and search their bags; that I have never heard any rumors of the military personnel at the post next door to my house taking advantage of women...

That he did not observe the soldiers strike the girls because otherwise he would have told the authority; that he has received advice from no-one on what he is saying, that neither has he been threatened, nor has he been given money to declare as he is doing, that on that day he was not drunk.... Communication of October 29, 1996, p.4.

[FN12] *Idem*, pp. 10 and 11.

21. The State continues with an analysis of Mexican jurisprudence relating to the competency of the jurisdiction of the military courts and argues that the intervention of the armed forces in matters of public security is entirely compatible with the Constitution of Mexico.[FN13] In addition to the Constitution, the State cites Mexican legal provisions that it considers applicable to the instant case, including the Statute of the Federal Public Administration, the Organic Law of the Army and the Air Force, the Federal Statute of Responsibilities of Civil Servants, and the Law of the National Commission on Human Rights. The State concludes that the instant case “is based on vague assumptions and conjecture and not on any firm proof, the main evidence held up being a newspaper article and a petition lodged with an authority that lacks legal competence”

[FN13] In this regard the State adds the following:

It is incomprehensible that they should cultivate accusations against vertical institutions with a clean historical record like the Mexican Army with proof no greater than rumors that only generate legal insecurity and the most disgraceful of attacks on the entities responsible for national security, which were brought to the area of conflict with the sole purpose of fulfilling their duty, their constitutional mandate, which is to safeguard the nation’s domestic security under the system of government ruled by law and respect for human rights that prevails in the Mexican State.

Idem, pp. 26 and 27.

22. In a later communication the State questions the petitioners’ delay in presenting information on the case to the IACHR, saying in relation thereto that, “in no circumstances can a delay of this magnitude be justifiable, especially when dealing with facts such as those alleged”. [FN14] The State adds that, “the National Commission on Human Rights itself ...decided to close the record in question precisely because of the inactivity and lack of cooperation of the petitioners”. In spite of that, however, “it reiterates its willingness to continue the investigations if the petitioners are prepared to cooperate with the authorities”. [FN15]

[FN14] Communication of the State of July 14, 1999, p.1.

[FN15] *Idem*.

23. The State maintains that the case is not admissible for the following reasons: the remedies under domestic law were not exhausted; the petitioners did not manage to prove the existence of acts that violate human rights; the military authorities are the competent authority to investigate the denounced acts; and the investigation initiated by the Office of the Public Prosecutor of Military Justice was serious and impartial, but had to be closed due to lack of cooperation from the alleged victims. Finally, the State requests that the IACHR close the instant case.

IV. ANALYSIS

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

24. The allegations in the instant case describe acts that purportedly violate several rights recognized and enshrined in the American Convention and took place within the territorial jurisdiction of Mexico when the duty to respect and ensure the rights recognized in the Convention was in force for that State.[FN16] Accordingly, the IACHR is competent *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* to examine the merits of the petition.

[FN16] The Mexican State deposited its instrument of ratification of the American Convention on April 3, 1982.

B. Other admissibility requirements of the petition

a. Exhaustion of domestic remedies

25. The Inter-American Court of Human Rights has established the following with respect to the rule of prior exhaustion of domestic remedies:

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art.1).[FN17]

[FN17] Velásquez Rodríguez Case, Preliminary Objections, Judgement of June 26, 1987, Inter-Am.Ct.H.R. (Ser. C), para. 91.

26. The IACHR, after examining the information supplied by the petitioners and by the State, considers *prima facie* that the petition lodged by the representatives of the victims with the Office of the Public Prosecutor in Chiapas on July, 1994, constitutes a suitable remedy for redressing the alleged violations. Indeed, the facts described by the petitioners --if established in the framework of a serious and impartial investigation, in accordance with due process of law-- would appear to constitute arbitrary detention, torture, and rape, that is to say, acts provided for and punished by common criminal law in Mexico.[FN18] In spite of that, the Office of the Federal Public Prosecutor refused competence in favor of its military counterpart. Both parties agree that the investigation of the facts remains unfinished to date, although they disagree on the reason: for the State it is due to lack of cooperation of the victims, and for the petitioners, to the intervention of an entity without legal competence that lacks impartiality and willingness.

[FN18] In this regard, the petitioners consider that “rape, in this case committed by a gang and against three females, including a child, is originally and by definition a common crime and not a breach of military discipline” (communication of August 29, 1996, p. 4). The State, for its part, holds that the military personnel was on duty on the date of the events, because “in time of peace the interior security of the country may also be threatened” (communication of October 24, 1996, p. 14); that “it is logic that the competency be assigned to the military organs”; and that “the competent military organs...after a profound and exhaustive investigation, concluded that the alleged facts were nonexistent” (idem, p.22).

27. In sum, the representatives of the alleged victims had access to a suitable remedy under the domestic jurisdiction and lodged a petition in good time and in the correct manner, but the aforementioned transfer of competency resulted in the paralyzation of the investigation and, finally, its closure. The petitioners allege that they are excused from appealing to the jurisdiction of the military courts due to the fact that they lodged the petition with the competent authority, and that the Office of the Public Prosecutor of Military Justice lacks the necessary impartiality to investigate the facts.

28. It is an uncontroverted fact that the complaint to the Office of the Public Prosecutor in Chiapas was filed with the result of a gynecological exam, according to which the three sisters had lesions of rape consistent with the date when they allegedly occurred; the Mexican State did not question the validity of that document in the proceedings before the IACHR. The IACHR furthermore notes, by way of a preliminary observation, that five years have elapsed since the petition was lodged in Mexico with the Office of the Federal Public Prosecutor, without it having been definitively established as of the date of adoption of the instant report how the events occurred, for which reason it has not been possible to identify those presumed responsible. However, these matters will be analyzed at the appointed stage of the proceedings, together with the other arguments relating to the right to due process of law and to effective legal protection.[FN19]

[FN19] The Inter-American Court has stated:

When certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case. Velasquez Rodriguez Case, *supra*, para. 91.

29. The Commission concludes that, for different reasons, exhaustion of domestic remedies in Mexico was not possible, even though five years have elapsed since the facts allegedly occurred. Consequently, the Commission applies to the instant case the exception provided for in the second part of Article 46(2)(b) of the American Convention. The causes and effect of the lack of exhaustion of domestic remedies shall be analyzed in the report that the Commission will

adopt on the merits, in order to determine whether they constitute violations of the American Convention.

b. Period for lodging the petition

30. Due to the application of Article 46(2)(b) of the American Convention to this case, it is not necessary to analyze the requisite established in Article 46(1)(b) of that international instrument. The Commission considers that in the instant case, under the circumstances set forth supra, the petition was presented in a reasonable time from the date on which the alleged violations were denounced in Mexico.

c. Duplication of proceedings and res judicata

31. The exceptions provided for in Articles 46(1)(d) and 47(d) of the American Convention have not been contended by the Mexican State, nor do they emerge from the information contained in the record of the instant case.

d. Characterization of the alleged facts

32. The Commission considers that the facts alleged, if shown to be true, would characterize a violation of the rights guaranteed in Articles 5, 7, 8, 11, 19, and 25 of the American Convention.

e. Request for closing the case

33. The Mexican State requested that the instant case be closed due to the delay in which the petitioners incurred to respond to the information supplied by it on October 24, 1996. The State said:

Delays such as the one that took place in this case, tarnish the proceedings before the Commission and they are contrary to the spirit of the American Convention.

Although that Convention does not expressly state a period of time in which a case must be decided, nor does it provide for preclusion of procedural stages, both the spirit and the general principles of law establish duties of equality, good faith and transparency. Giving value to cases in which there is such manifest lack of interest, not only with regard to the internal jurisdiction but also to the inter-American jurisdiction, would severely question such duties.[FN20]

[FN20] Communication of the State of July 14, 1999, p. 3.

34. In order to analyze the request of the State, the Commission must refer to the provisions that apply to closing files. Article 48(1)(b) of the American Convention establishes:

After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed. (emphasis added)

35. Likewise, the Regulations of the IACHR establish in Article 35(c) certain preliminary procedural questions:

The Commission shall proceed to examine the case and decide on the following matters:

- a. whether the remedies under domestic law have been exhausted, and it may determine any easures it considers necessary to clarify any remaining doubts;
- b. other questions related to the admissibility of the petition or its manifest inadmissibility based upon the record or submission of the parties;
- c. whether grounds for the petition exist or subsist, and if not, to order the file closed. (Emphasis added).

36. The Commission considers, on the basis of the information received from the parties and summarized in the instant report, that the grounds alleged by the petitioners fully subsist. Accordingly, there is no reason to suspend or close these proceedings in the inter-American system. On the contrary, the case must be declared admissible and move to the following stage provided for in the American Convention and the Regulations of the IACHR.

V. CONCLUSIONS

37. The Commission considers that it is competent to take cognizance of the instant case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

38. Based on the foregoing de facto and de jure arguments and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible in respect of the alleged violations of the rights protected in Articles 5, 7, 8, 11, 19, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To place itself at the disposal of the parties with a view to reaching a friendly settlement on the basis of respect for the human rights enshrined in the American Convention and to invite the parties to give their opinion on that possibility, and
5. To publish this report and include it in the Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights, in the city of San José, Costa Rica, on this the 19th of November of 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.