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File Number(s):	Report No. 10/03; Petition 12.185
Session:	Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause:	Tomas de Jesus Barranco v. Mexico
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran.
Dated:	20 February 2003
Citation:	de Jesus Barranco v. Mexico, Petition 12.185, Inter-Am. C.H.R., Report No. 10/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: the Liga Mexicana por la Defensa de los Derechos Humanos
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## I. SUMMARY

1. On April 20, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or the “IACHR”) received a complaint lodged by the Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH-FIDH) (“the petitioners”) alleging the international responsibility of Mexico (“the State” or “the Mexican State”) for the illegal detention and physical and psychological torture of Tomás de Jesús Barranco, as well as his later conviction and sentencing to a 40-year prison term and a fine of 55,626 pesos for the crimes of terrorism and homicide.

2. The petitioners argue that the facts alleged constitute violations of several provisions of the American Convention on Human Rights (“the American Convention”): the obligation to respect the rights (Article 1(1)); the right to humane treatment (Article 5); the right to personal liberty (Article 7); and that all of the admissibility requirements provided for in the American Convention have been met. The State argues failure to exhaust domestic remedies, and that there has been no violation whatsoever of the American Convention, especially with respect to personal liberty, the rights of all criminal defendants, proper foundation and motivation (la debida fundamentación y motivación), and the right to judicial guarantees.

3. Without prejudging on the merits, the IACHR concludes herein that the case is admissible, as it meets the requirements set forth in Articles 46 and 47 of the American Convention. Accordingly, the Inter-American Commission decides to notify the parties of the decision and to continue analyzing the merits with respect to the alleged violations of Articles 1(1), 5, 7, 8, and 25 of the American Convention by the Mexican State.

## II. PROCESSING BY THE COMMISSION

4. On April 20, 1999, the Commission received the petition lodged against the Mexican State.<sup>[FN1]</sup> On June 18, 1999, additional information was received from the petitioners. On June 25, 1999, pursuant to Article 34 of the Regulations in force at that time, the Commission sent the Mexican State the pertinent parts of the petition and requested its observations within 90 days.

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[FN1] The petition was received April 20, 1999, in an electronic communication directed to the Executive Secretary of the IACHR, which is in the record. Two days later the petitioners forwarded the same document by facsimile.

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5. On September 24, 1999, the State submitted its observations, which were sent to the petitioners on October 12, 1999; the response was received on November 30, 1999. On December 21, 1999, the IACHR asked the Mexican State to provide information on the situation of Tomás de Jesús Barranco; after it was given an extension of the initial time period indicated, the State answered on February 7, 2000. On February 17, 2000, the Inter-American Commission forwarded the pertinent parts of that communication to the petitioners, and the petitioners' response was received on March 24, 2000.

## III. THE PARTIES' POSITIONS ON ADMISSIBILITY

### A. The petitioners

6. According to the petitioners, Tomás de Jesús Barranco, Rodolfo Tacuba Moreno, and Juan José Flores de la Cruz were detained without any arrest warrant by agents of the Judicial Police of the state of Guerrero in the early morning hours of August 29, 1996. The petitioners allege that the arbitrary detention occurred at approximately 12:30 a.m., when Mr. Barranco was on his way to a taxi terminal in the city of Tixtla, state of Guerrero, in the company of Mr. Rodolfo Tacuba Moreno.<sup>[FN2]</sup> The agents believed those persons had participated in an attack committed in Tixtla on August 28, 1996, when a group of armed and hooded persons shot firearms from the street towards the Judicial Police command headquarters. As a result, two members of the police were seriously wounded; one of them later died.

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[FN2] Communication from petitioners, April 20, 1999, pp. 1-2.

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7. The petition states that Tomás de Jesús Barranco was taken to the offices of the state Judicial Police command headquarters, where he was subjected to physical and psychological torture. He adds that they threatened and intimidated him and his relatives, and that they questioned him to determine whether he was one of the "hooded ones." Afterwards he was taken to the offices of the Office of the Attorney General of Guerrero (PGJE: Procuraduría General de Justicia de Guerrero) in Chilpancingo, Guerrero, where he was once again tortured physically

and psychologically by members of the state Judicial Police, to force him to declare himself guilty of having participated in the events of August 28, 1996.

8. The version of the facts given by Tomás de Jesús Barranco is as follows:

The next day, at about 11:00 a.m., they took me from the cells and took me to declare right there in the Procuraduría, where they had a document in which I supposedly declared myself guilty of being a member of the Ejército Popular Revolucionario (EPR), but as I refused to accept it, once again they began to beat me to force me to accept, because if I didn't accept, I had to die that same day, and they gave me a weapon for me to hold it so they could televise me, and so they could say that I had the weapon, so they could depict me as guilty; while they filmed me others were keeping guard over me.

Next they told me that I was to state that I was going to make the final declaration, but for that they told us that we had to tell the truth, which is what was contained in the document, and there I met one of the persons who had punched me in the stomach, and then they put me with the Public Ministry agent, where their conduct was the same as in the judicial police, saying that if we didn't tell the truth we would have to go for a helicopter ride, to see if we could withstand the fall, to return once again to the cells, and since we didn't accept having them blame us, they argued the validity of the document from the Judicial Police.[FN3]

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[FN3] Communication from petitioners, April 20, 1999. Testimony of Tomás de Jesús Barranco, Section I, chapter on evidence.

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9. The petitioners allege that they denounced the torture before the Guerrero State Commission for the Defense of Human Rights (Comisión de Defensa de los Derechos Humanos del Estado de Guerrero - CODDEHUM). However, they state that said Commission did not investigate in an exhaustive or impartial manner, since it based its conclusions exclusively on the medical examinations presented by the PGJE and the Readaptation Center, and that it did not conduct a review of those certificates by a forensic medical expert. Based on this, the petitioners allege:

There was negligence on the part of the CODDEHUM, inasmuch as it did not conduct a medical and psychological examination of Mr. Tomás de Jesús Barranco. Such an examination would lead to determine--at least--the rupture of the right ear, which has a posttraumatic origin; this lesion is typical of the torture technique known as "telefonazo" and the possible psychological sequels, which was applied to him in order to make him confess his guilt in the events he was being accused of. This lesion was determined by the LIMEDDH-FIDH in the course of the medical examination conducted on Mr. Tomás de Jesús Barranco on March 1st 1999 in order to confirm the testimony where he was denouncing the acts of torture against him.[FN4]

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[FN4] Communication from petitioners, November 16, 1999, p. 2.

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10. On September 10, 1997, the Superior Tribunal of Justice of Guerrero convicted Mr. Tomás de Jesús Barranco of terrorism and for the aggravated homicide of Silvio Morales Miranda and Joel Juvenal Narciso Cruz Miranda. The court imposed a sentence of 40 years imprisonment and a fine of 55,626 pesos in reparation for the harm caused.

11. The petitioners allege that at trial there were violations of due process, because the evidence of the prolonged detention and torture to which Mr. Barranco was subjected was not given weight. Mr. Barranco, in his first appearance before the judge, had alleged that his confession had been extracted under torture. They add that he was not allowed to call a person of trust as provided by law, and that contrary to what is indicated in the record, the public defender was not present at any time. The petitioners also note that the principle of the presumption of innocence was not respected at any stage of the process, and that, when Tomás de Jesús Barranco made his preparatory declaration, the First District Judge failed to indicate that he is indigenous and speaks the Náhuatl or Mexica dialect, and does not have a sufficient comprehension of the Spanish language.

12. In addition, the petitioners stated that the remedies pursued have been ruled on without considering those violations. In effect, they filed an appeal on September 23, 1997, before the Superior Tribunal of Justice, First Criminal Chamber, file 59/99, against the guilty verdict of September 10, 1997. Later they filed direct criminal amparo number 544/98 of August 15, 1998, against the ruling issued by the first criminal chamber of the Superior Tribunal of Justice. Finally, they mention the complaint presented on October 7, 1998 to the CODDEHUM.

#### B. The State

13. In response to the petition under consideration, the State has provided a summary of the actions taken in the process, and states that the National Human Rights Commission (Comisión Nacional de Derechos Humanos) did not find any record for Tomás de Jesús Barranco. It indicates that the Commission for the Defense of Human Rights of the State of Guerrero reported that on October 7, 1996, it received a complaint brief against the state Judicial Police, for alleged unlawful detention and torture. The State reports that the CODDEHUM file was archived in April 1997, since no evidence was identified showing the violation of Mr. Tomás de Jesús Barranco's human rights.

14. The State indicates that the Agency of the Public Ministry for the Regular Jurisdiction of the Judicial District of Bravos, state of Guerrero, on August 28, 1996, opened inquiry BRA/SC/1194/96. That inquiry refers to the crimes of aggravated homicide of Joel Narciso Cruz Miranda and Silvio Morales Miranda, bodily injuries, damage already incurred and to be incurred, against Tomás de Jesús Barranco or Felipe García Flores, Rodolfo Tacuba Moreno, and Juan José Flores de la Cruz.

15. The Mexican State argues that during the processing of the matter the accused was afforded the opportunity to mount a defense, and that at all times his right to be guaranteed a hearing was respected. Once the preparatory phase of the inquiry and trial had culminated, the State reports that the Mixed Judge of First Instance of Tixtla handed down a judgment within

criminal case 59/996 in which it declared that Tomás de Jesús Barranco or Felipe García Flores was guilty of the crimes indicated, and imposed on him a sentence of 40 years imprisonment and reparation for damages to each of the survivors of the agents of the Judicial Police of Guerrero.

16. The Mexican State alleges that Mr. Barranco was surprised in flagrante delicto and that he himself accepted having participated in the acts attributed to him, in addition to which the police, in the act of detaining him, detected additional elements that confirmed his participation in the commission of the crimes mentioned. These evidentiary elements were later ratified when the sodium rhodizonate test was performed on the accused, as the result was positive.

17. With respect to the petitioners' arguments regarding acts of torture, the State argues that on August 29, 1996, the day of his detention, the forensic physician on duty at the PGJE examined him. It argues that in that exam it was determined that Mr. Tomás de Jesús Barranco was clinically healthy and no indicia of apparent physical assault were found; the Public Ministry was so informed when Mr. Barranco was placed at its disposal.

18. Similarly, the State argues that on August 30, 1996, the forensic physician on duty from the same Office of the Attorney General performed a second examination of Mr. Barranco, in which no physical injuries were found, and he therefore concluded that Mr. Barranco was conscious, active, reactive, and aware of time, place, and space. The Public Ministry agent for the regular jurisdiction attested to the medical certificate describing the physical integrity of the accused, after having before him the official note that certified the injuries.[FN5]

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[FN5] Communication from the State, September 24, 1999, pp. 3-4.

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19. The State alleges that domestic remedies have not been exhausted. It asserts in this connection that the Mexican legal system allows the alleged victim to go before the Public Ministry to lodge a complaint of torture. In addition, it argues that any irregularity in the actions of the public servants who handled his case can be reported to the Office of Internal Review of the PGJE. Finally, it adds that the legislation provides for a remedy to seek recognition of innocence, which was not pursued by Mr. Barranco.

#### IV. ANALYSIS

A. The Commission's competence *ratione personae*, *ratione temporis* and *ratione loci*

20. The petitioners are entitled to lodge complaints with the IACHR under Article 44 of the American Convention. The petition indicates as the alleged victim an individual person with respect to whom Mexico undertook to respect and ensure the rights set forth in the American Convention. As regards the State, the Commission points out that Mexico has been a party to the American Convention since March 24, 1981, the date it deposited the respective instrument of ratification. Accordingly, the Commission is competent *ratione personae* to examine the petition.

21. The IACHR is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention that allegedly occurred in Mexican territory, a state party to that treaty. In addition, the Inter-American Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date of the events alleged in the petition. Finally, the Commission is competent *ratione materiae* since the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

22. A dispute has been raised in the instant case with respect to the adequate and effective remedy that needs to be pursued in Mexico to remedy the situation alleged. Accordingly, the IACHR should proceed to make a determination as to whether the requirement to exhaust domestic remedies provided for in Article 46(1)(a) has been met.

23. From the information available, it appears that the petitioners have had recourse to the regular mechanisms provided for in Mexico for reporting the alleged violations that have been presented to the Inter-American Commission. In this regard, the record reveals that on September 2, 1996, in his first judicial appearance, Mr. Barranco refuted his declaration to the Public Ministry, and reported that he had been unlawfully detained and tortured by agents of the Judicial Police.[FN6] The judgment in the criminal trial was appealed and then the *amparo* remedy was pursued in an effort to get the competent judicial organ to overturn the verdict imposed on Mr. Tomás de Jesús Barranco. As for the non-judicial remedies, it has been noted that Mr. Barranco's representatives lodged a complaint with the CODDEHUM in Guerrero.

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[FN6] When the declaration of the Public Ministry was read in court, Mr. Barranco said:

That yes it is true that he so declared, but that it was due to the fact that he was badly beaten by the members of the judicial police who detained him, but he doesn't know how many there were because there were also members of the PGR and he doesn't know how many there were, for, as he said earlier, he so declared because he had been beaten, and that even some members of the judicial police told him to invent more things, apart from those he had already said, but that he refused to do so, and that the facts that were the motive for his detention were that the judicial police detained him for being drunk, for they apprehended him in Tixtla, and that he does not ratify any of his ministerial declaration because they forced him to so declare...

First District Court of Guerrero, Chilpancingo, testimony of Mr. Tomás de Jesús Barranco, September 2, 1995, p. 4.  
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24. The Mexican State identifies as remedies still pending the complaint lodged with the Public Ministry for alleged acts of torture, the complaint before the Office of Internal Review of the PGJE for any illegal conduct of its officials, and the remedy seeking recognition of innocence.

25. In the instant case, the Inter-American Commission considers that the complaint made by Mr. Barranco in his statement to the district judge on September 2, 1996, followed by the criminal trial that culminated with the affirmation of the verdict and the rejection of the direct amparo constitute the adequate and effective remedies available for seeking to have the Mexican authorities solve the situation alleged. In this regard, it is observed that the facts involve agents who are part of the PGJE itself, and that they were put before the judge at the first available opportunity.

26. The Federal Law to prevent and punish torture, in force in Mexico at the time of the events analyzed here, imposes on all public officials the duty to report acts of torture that come to their attention, and establishes a sanction.[FN7] The information in the record does not reveal that there was any investigation whatsoever of the alleged acts of torture reported by Mr. Barranco to the criminal judge in his case, more than six years after the date when they were alleged committed. Therefore, for the purposes of exhausting domestic remedies as required by the American Convention, the IACHR considers that Mr. Barranco was not under an obligation to present a complaint to the Public Ministry for the acts of its agents, nor to lodge a complaint with the Office of Internal Review of the Public Ministry.

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[FN7] Article 11 of that law provides:

A public servant who in the performance of his or her functions learns of an act of torture, is under an obligation to report it immediately, and, if he or she fails to do so, he or she shall be subject to three years imprisonment, and 15 to 60 days fine, without prejudice to what is established by other laws. To determine the days of fine, reference shall be had to the final part of Article 4 of this law.

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27. The violations of due process alleged before the Inter-American Commission were also denounced during criminal case 59/996 in Guerrero, and were the basis of the appeal of the verdict, and of direct criminal amparo 544/98. As for the remedy seeking recognition of innocence, the Inter-American Commission believes that the Mexican State has not met its duty to show that said remedy is adequate and effective, as required in the context of this case.[FN8] For this reason, and considering the remedies that were pursued and the procedures that concluded in a firm judgment, the IACHR determines that the recognition of innocence is not a remedy that Mr. Barranco must exhaust for the purposes of admissibility of a petition before the IACHR.

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[FN8] On the remedy of recognition of innocence, see IACHR, Annual Report 2001, Report N° 68/01, Case 12.117, Santos Soto Ramírez and Sergio Cerón Hernández, Mexico, June 14, 2001, paras. 12-15.

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28. The requirement of exhaustion of domestic remedies established in Article 46 of the American Convention refers to available judicial remedies that are adequate and effective for solving the alleged violation of human rights. In keeping with what the Inter-American Court has

reiterated on several occasions, if in a specific case a remedy is not adequate for protecting the legal situation that has been infringed, and capable of producing the result for which it was designed, it obviously need not be exhausted.[FN9]

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[FN9] See, for example, Inter-American Court of Human Rights, “Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights,” Advisory Opinion OC-11/90, of August 10, 1990, para. 36.  
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29. Accordingly, the IACHR determines that domestic remedies were exhausted on October 14, 1998, with the judgment that rejected the direct criminal amparo filed by Mr. Barranco’s defense. Accordingly, the requirement set forth in Article 46(1)(a) of the American Convention is met.

b. Time period for submission

30. The petition was received on April 20, 1999, in an electronic communication sent to the Executive Secretary of the IACHR. On April 22, 1999, another copy of the same petition was received by fax. The petitioners indicate that they were given notice of the judgment that exhausted domestic remedies on October 20, 1998; and that accordingly the petition was submitted within the six-month period. The Inter-American Commission concludes that the requirement indicated in Article 46(1)(b) of the American Convention has also been met.

c. Duplication of proceedings and res judicata

31. No information appears in the record of this case that might lead to a determination that the matter is pending before another proceeding for international settlement or that it has previously been decided by the Inter-American Commission.

d. Characterization of the facts alleged

32. In their complaint the petitioners allege the illegal detention and torture of Tomás de Jesús Barranco, as well as the use of the confession obtained under coercion and the failure to weigh the evidence in the regular criminal proceeding in which he was convicted. The State argues that there was no violation of Mr. Barranco’s human rights.

33. In the present procedural stage the Commission is not called on to make a determination as to whether the American Convention was actually violated. For the purposes of admissibility, the IACHR should determine whether facts are alleged that tend to establish a violation, as stipulated by Article 47(b) of the American Convention. The margin of appreciation of these factual allegations is different from that required for deciding on the merits. The Inter-American Commission must make a prima facie evaluation to examine whether the complaint lays the foundation for the apparent or potential violation of a right guaranteed by the American Convention. This is a summary analysis, which does not imply any prejudice or prejudging of the merits of the dispute. The distinction between the study for a declaration of admissibility and

that required to determine a violation is reflected in the very Rules of Procedure of the IACHR, which clearly distinguish the admissibility and merits phases.

34. The IACHR considers that the facts alleged in this case, if true, would tend to establish violations of Articles 5, 7, and 1(1) of the American Convention. In addition, though the petitioners didn't argue them during the processing of this case, the Commission applies the principle of *iura novit curia* and concludes that the facts could also tend to establish violations of Articles 8 and 25 of the American Convention. Therefore, the IACHR considers that the petitioners have made a *prima facie* showing that the requirements of Articles 46 and 47 of the American Convention have been met.

## V. CONCLUSIONS

35. The Inter-American Commission concludes that it is competent to take cognizance of and decide on the petition, and that it is admissible under Articles 46 and 47 of the American Convention. Based on the foregoing arguments of fact and law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible, with respect to alleged violations of the rights protected by Articles 1(1), 5, 7, 8, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue analyzing the merits.
4. To publish this decision and 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., February 20, 2003. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts and Susana Villarán, Commissioners.