

**REPORT No. 24/12<sup>1</sup>**  
PETITION 859-03  
INADMISSIBILITY  
MARIA ELENA MACEDO GARCIA DE URIBE (WIDOWED)  
MEXICO  
March 20, 2012

**I. SUMMARY**

1. On October 15, 2003, the Inter-American Commission on Human Rights (hereinafter, "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by José Gabriel Bastidas Salido (hereinafter, "petitioner") against the United Mexican States (hereinafter, "State," "Mexican State," or "Mexico"), alleging that the human rights of María Elena Macedo García de Uribe (hereinafter, "alleged victim"), widow of Rafael Uribe, were violated as a result of the failure to enforce two judicial decisions stemming from an action for constitutional protection, or *juicio de amparo* (89/80), and a complaint, or *recurso de queja* (3/83). These decisions, issued in domestic courts, restored to the alleged victim certain properties located in the Federal District.

2. The petitioner alleges that the Mexican State is responsible for violating the rights to property (Article 21), a fair trial (Article 8), and judicial protection (Article 25), and the right to compensation (Article 10), all established in the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention"), in conjunction with the general obligation contained in Article 1(1) of that international instrument. The petitioner states that domestic remedies have been exhausted.

3. For its part, the State holds that the petition should be declared inadmissible because the facts do not support the conclusion that there were human rights violations under the American Convention. It also adds that the petition was lodged past the deadline and that the petitioner is trying to make the Commission a court of fourth instance.

4. After examining the parties' positions, the Commission concludes that it has jurisdiction to consider the petition under examination and that the case is inadmissible, under Articles 46 and 47 of the American Convention. The Commission also decided to notify the parties of the decision and to publish the decision and include it in its Annual Report to the General Assembly of the Organization of American States.

**II. PROCESSING BY THE COMMISSION**

5. On October 15, 2003, the Commission received the petition and assigned it the number 859-03. On December 16, 2003, the Commission forwarded the relevant parts of the petition to the State, asking that it submit its response within a two-month period, in accordance with the provisions established in Article 30(2) of the IACHR Rules of Procedure. The State's response was received on May 5, 2004. That communication was duly forwarded to the petitioner.

6. The IACHR also received information from the petitioner on June 25, 2004; April 7, 2005; July 27, 2005; September 5, 2006; December 1, 2006; April 4, 2007; May 22, 2007; February 8, 2008; July 19, 2010; and March 11, 2011. These communications were duly forwarded to the State.

7. In addition, the Commission received information from the State on May 21, 2004; September 22, 2004; June 28, 2005; July 3, 2006; May 1, 2007; December 27, 2007; and November 1, 2010. These communications were duly forwarded to the petitioner.

**III. POSITIONS OF THE PARTIES**

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<sup>1</sup> As provided in Article 17(2) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, who is of Mexican nationality, did not participate in the debate or in the decision in the instant case.

## A. The petitioner

8. The petitioner states that the alleged victim and her deceased husband, Rafael Uribe Alvarez, were the owners of two lots with a joint surface area of 377,000 square meters, located on Calzada de las Bombas (no street number) in Villa Coapa, in the Federal District. The petitioner indicates that in 1979, Mr. Rafael Uribe was accused of various crimes by the company Fraccionadora Cafetales S.A., and as a result, was incarcerated for the crimes of dispossession of property (*despojo*), falsification of documents, and property fraud (criminal proceeding No. 302/79). He was also stripped of the aforementioned properties.

9. Mr. Uribe filed an *amparo* action and, in an enforcement order issued on August 22, 1980, in case No. 89/90, was granted *amparo* and protection with regard to the crime of dispossession. With respect to the crimes of fraud and falsification of documents, the petitioner states that the Federal District Superior Court of Justice found that these crimes never took place, acquitted the alleged victim's husband, and ordered his permanent release. The petitioner alleges that when the enforcement order was not carried out, Mr. Uribe lodged a complaint (5/83). On August 29, 1983, the Hon. First Unitary Court of the First Circuit ordered the judge in charge of the case to restore Mr. Uribe's ownership of the properties in compliance with the *amparo* judgment. Specifically, it ordered the annulment of the May 15, 1980, agreement issued by the judge in proceeding No. 302/79 and of the procedural step that had been taken to restore ownership to Fraccionadora Cafetales of the properties under litigation.

10. In an attempt to block compliance with the aforementioned enforcement order, the company divided and sold the properties whose restitution had been ordered and filed a complaint (21/83), which was declared baseless on February 18, 1984. The petitioner also indicates that the Fraccionadora Cafetales Association of Buyers and Residents filed a complaint in response to the decision issued in case No. 89/90; this was found to be inadmissible on April 27, 1984.

11. The petitioner states that the judge in charge of the case refused to reinstate ownership; therefore Rafael Uribe petitioned the Fifth Criminal Judge for substitution of the judge in charge of the case and for execution of the judgment. The Fifth Judge responded by sending to the Supreme Court, of his own accord, a Motion for Non-Compliance stemming from *amparo* action 89/80; this was processed in the Second Chamber of the Supreme Court (73/95).

12. At the Supreme Court, on July 3, 1995, the matter was referred to Minister Juan Díaz Romero so that he could prepare a draft decision. A decision was drafted and was rejected by the Second Chamber. A second decision was subsequently drafted; this took several years, which ran contrary to the 15-day deadline established under the law. The petitioner alleges that on January 26, 2001, the Second Chamber of the Supreme Court determined that the case should be remanded to District Court so the authorities could state and show, with proper evidence, any physical and legal obstacles they might have for not complying with the judgment, thus opening a new judicial avenue completely on its own initiative, in a baseless and unlawful manner. This sent the case to the Third Court of Criminal Proceedings, previously the Fifth District Court for Criminal Matters in the Federal District. In a decision dated May 18, 2001, the Presiding Judge of the Third Court determined, in violation of all *amparo* laws, that it was not possible to carry out the *amparo* judgment "as the legal status has changed, and it is physically and legally impossible to be executed."

13. The petitioners indicate that such arguments are unlawful, given that under the Constitution and the Amparo Law, a change of legal status does not exist nor can it exist with respect to enforcement orders handed down in *amparo* cases. In addition, changes in the real status of the properties, not the legal status, may not influence in the execution of the judgments. Thus far, the properties have not been restored to the alleged victim under the pretext that these were sold to third parties and that construction had been done on them.

14. Finally, it is alleged that on August 16, 2003, in the rulings in *amparo* case 89/90, the petitioner sought a substitute implementation of the *amparo* judgment so as to be compensated for the

non-compliance with the decisions issued in the *amparo* action (89/90) and the complaint (5/83), a request that was denied on August 21, 2003, with no reasons or grounds provided.

## B. The State

15. The State alleges that the petition should be declared inadmissible because the alleged victim did not demonstrate that human rights contemplated in the American Convention had been violated, and because the alleged victim is seeking to make the IACHR a court of fourth instance.

16. The State maintains that Mr. Rafael Uribe claimed he had entered into a verbal sales contract in 1953 with Carmen Sánchez de Algara (widowed), for the lots located in Coapa, in the Federal District. It argued that in 1971 he normalized the status of the properties and received certified copies of decisions 301/91 and 302/71 in the civil cases involving adverse possession, in which he appeared as owner of the lots under dispute.

17. Subsequently Mr. Uribe underwent a criminal trial in the Sixth Federal District Criminal Court for the crimes of fraud, use of false documents, and dispossession over the transfer of ownership of the aforementioned properties to the detriment of the company Fraccionadora Cafetales S.A. That corporation divided and sold to individuals the lots that the alleged victim claims are hers, located in Coapa, in the Federal District.

18. Due to the accusations against Mr. Uribe, the judge in criminal case No. 302/79 issued a formal order of committal to prison for the aforementioned crimes; this order was upheld on appeal by the Sixth Chamber of the Superior Court of Justice. The State alleges that Rafael Uribe filed indirect *amparo* action 89/90 before the Fifth District Judge for Criminal Matters in the Federal District (now the Third Court of Federal Criminal Proceedings in the Federal District), which in its judgment denied *amparo* with respect to the order of committal for the crime of fraud, as the facts of the crime and his probable responsibility had been established, and granted *amparo* with respect to crimes of use of false documents and dispossession. The alleged victim lodged an appeal for review of the *amparo* judgment, and on November 24, 1981, the First Circuit Collegiate Court for Criminal Matters dismissed the case because the alleged victim's status had changed from accused to convicted.

19. As part of the criminal case for the crime of fraud, Mr. Rafael Uribe was declared criminally responsible on March 5, 1981, and sentenced to serve four years in prison and to pay a fine, and it was ordered that the property be restored to Fraccionadora Cafetales, Mr. Uribe appealed that judgment and was released due to what the State describes as a technical error in the proceedings, namely that the agent in the Public Prosecutor's Office (*Ministerio Público*) charged Mr. Uribe with the crime of specific fraud and the judge in the case prosecuted him for the crime of generic fraud. The State clarifies that this technical error does not mean that Mr. Uribe was not guilty of the crime for which he was convicted.

20. The State indicates that on April 15, 1983, Mr. Uribe asked that, in carrying out *amparo* judgment 89/90, the Fifth District Judge for Criminal Matters in the Federal District request the judge in criminal case 302/79 to restore his ownership of the properties. This request was rejected, as he had been found criminally responsible for the crime of fraud, and the reparation of the damages consisted of restitution of the properties that were the objects of the crimes.

21. Based on the foregoing, Mr. Uribe filed complaint 5/83, which was found admissible on August 29, 1983, by the then First Circuit Collegiate Court for Criminal Matters, under the argument that if *amparo* had been granted for the crimes of use of false documents and dispossession, not only should the formal order of committal be annulled, but also the subsequent rulings such as the decision of the Sixth Criminal Judge that ordered restitution of ownership of the properties to Fraccionadora Cafetales S.A. and the procedural step carried out to grant it. The State explains that the aforementioned court did not examine the nature of Mr. Uribe's ownership rights. To comply with complaint No. 5/83, the Sixth Criminal Judge, by means of a procedural step dated October 10, 1983, visited the properties and found

them to have occupied structures with lots, green areas, etc.; this was established as a physical impediment to precisely defining the property.

22. The State likewise alleges that the Thirty-Ninth Federal District Criminal Judge informed the President of the Supreme Court that on October 10, 1983, a record had been produced stating that it was impossible to comply with the decision in complaint No. 5/83 with regard to case No. 302/79, based on *amparo* No. 89/90. Moreover, that a copy exists of the final judgment in regular civil action No. 5138/79, in which the Twenty-Fourth Civil Judge declared void the false certified copy of the judgment from the alleged regular civil action brought by Rafael Uribe against Carmen Sánchez Algara (302/71). That judgment was appealed by Rafael Uribe by means of cases 973/80 and 979/80, and the lower court's decision was upheld.

23. Mr. Uribe invoked motion No. 73/95 for non-compliance with judgment (referring to *amparo* No. 89/90 and complaint No. 5/83) before the Second Chamber of the Supreme Court. On January 26, 2001, the Supreme Court ordered that the *amparo* case be remanded to the Fifth District Court so that the responsible authorities could provide a basis for the alleged physical and legal obstacles regarding compliance with the enforcement order for the *amparo*. On May 18, 2001, the Third Judge of Federal Criminal Proceedings in the Federal District ruled that the responsible authorities had established the existence of physical and legal reasons that made it impossible to carry out the *amparo* judgment. Specifically, in his reasoning the judge made reference to judgment No. 302/71 issued in the regular civil lawsuit brought by Fraccionadora Cafetales against Mr. Uribe, in which it was established that the property title to the lots being disputed belonged to the company Fraccionadora Cafetales, and it was determined that the title that the alleged victims were trying to justify was apocryphal. That judgment was upheld in case 973/80 by the Fourth Chamber for Civil Matters of the Federal District Superior Court of Justice.

24. In response to that judgment, the alleged victim lodged two complaints, Nos. 361/2001 and 351/2002, which were declared inadmissible on November 29, 2002; thus the preliminary judgment of May 18, 2001, became final. On February 28, 2003, the Second Chamber of the Supreme Court of Justice of the Nation declared the motion for non-compliance with judgment to be immaterial.

25. In August 2003, the alleged victim lodged an appeal with the Third District Court of Federal Criminal Proceedings in the Federal District for "the enforcement order to be carried out by means of payment of the damages that the client has suffered"; this was declared inadmissible on August 21, 2003. A new complaint was lodged against that judgment; this was rejected. In short, the enforcement orders issued in *amparo* judgment 89/90 and complaint 5/83 became void because it was found that there is no basis for their enforcement.

26. The State indicates that Mr. and Mrs. Uribe had access to all appropriate remedies to protect their case, but that these remedies, having been exhausted, were not decided in their favor, since it was proved that Mr. Uribe used false documents to register the properties in their name. It holds that this does not mean that the remedies were not effective.

27. With respect to exhaustion of domestic remedies, the State maintains that the petitioner exhausted all domestic remedies provided by law. With respect to the time period for submission, the State indicates that the last decision of the Mexican judicial authorities took place on February 28, 2003, and the petitioners came before the inter-American system on October 2, 2003, seven months and two days following notification of the exhaustion of remedies, and that therefore this requirement had not been met. The State further maintains that the petition should be declared inadmissible because the petitioner is seeking to turn the IACHR into a fourth instance in order to review the judgments that the alleged victim believes violated her rights.

#### **IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY**

##### **A. Commission's jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci***

28. In principle, under Article 44 of the American Convention, the petitioner may lodge petitions with the Commission. The petition indicates that the alleged victim is María Elena Macedo García de Uribe (widow of Rafael Uribe), with respect to whom the State of Mexico made a commitment to respect and guarantee the rights established in the American Convention. In terms of the State, the Commission notes that Mexico has been a State party to the American Convention since March 24, 1981, the date on which it deposited its respective instruments of ratification. Therefore, the Commission has jurisdiction *ratione personae* to consider the petition. The Commission also has jurisdiction *ratione loci* to consider the petition, as the petition alleges violations of rights protected by the American Convention, violations which allegedly took place within the territory of Mexico, a State party to said treaty.

29. The Commission has jurisdiction *ratione temporis*, as the obligation to respect and guarantee the rights protected in the American Convention were already in effect for the State on the date in which the facts alleged in the petition are said to have taken place. Finally, the Commission has jurisdiction *ratione materiae*, because the petition claims potential violations of human rights protected by the American Convention.

## **B. Exhaustion of domestic remedies and characterization of the facts**

30. Article 46(1)(a) of the American Convention provides that, in order for a petition lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, it is necessary to have pursued and exhausted domestic remedies, in accordance with generally recognized principles of international law. Article 47(b) of the same instrument establishes that the Commission shall declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

31. In terms of exhausting domestic remedies, the Commission observes that the allegations that gave rise to this petition have to do with the State's response by way of the judiciary. It should be noted that there is no dispute between the parties as to the exhaustion of domestic remedies. More specifically, the State has not suggested the existence of other appropriate remedies that must yet be exhausted. Based on the analysis of the information provided by both parties, the Commission finds that the alleged victims invoked the remedies that were available, the last of these being the petition for damages in August 2003 that was declared inadmissible on August 21, 2003.

32. As a result, the Inter-American Convention verifies that the domestic remedies under Mexican law have been exhausted, and determines that the petition being examined complies with the requirement established in Article 46(1)(a) of the Convention.

## **2. Deadline for filing the petition**

33. With respect to the requirement contemplated in Article 46(1)(b) of the Convention, under which the petition must be lodged within a period of six months from the date on which the victim is notified of the final judgment exhausting domestic remedies, the State indicates that the final decision of the Mexican judicial authorities took place on February 28, 2003, and the petitioners came before the inter-American system on October 2, 2003, seven months and two days after notification of the exhaustion of remedies, and that therefore this requirement had not been met.

34. In this regard, the IACHR observes that while the decision to which the State is referring, dated February 28, 2003, found the motion for non-compliance with judgment to be immaterial, both parties make reference to the filing of subsequent domestic remedies which sought to have the enforcement order carried out through payment of damages and which were found inadmissible in a decision dated August 21, 2003, issued by the Third District Court of Federal Criminal Proceedings in the Federal District. The petition being examined here was received October 15, 2003. Therefore, the Commission finds that the requirement established in Article 46(1)(b) of the American Convention has been met.

### 3. Duplication of Proceedings and International *Res Judicata*

35. There is no indication in the record that the subject of this petition is pending settlement in another international proceeding or that the petition substantially duplicates one previously examined by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

### 4. Characterization of the alleged facts

36. For the purpose of admissibility, the IACHR must decide whether the allegations state facts that could tend to characterize a violation to the American Convention, as provided for in Article 47(b), and if the petition is “manifestly groundless” or “obviously out of order,” according to the paragraph (c) of the same article.

37. Based on the information provided, the Inter-American Commission observes that the alleged victim had access to the domestic courts. Specifically, the IACHR observes that both criminal and civil judicial proceedings were pursued against Mr. Uribe. In criminal jurisdiction, Mr. Uribe was granted *amparo* in case No. 89/90 in response to the order of committal for the crimes of use of false documents and dispossession of property. In the execution of the judgment he petitioned the Fifth District Judge to restore ownership to him of the properties of which he claimed he had been dispossessed, an application that was denied. In response to that situation he lodged complaint No. 5/83 before the First Circuit Collegiate Court for Criminal Matters, which determined it to be well-founded, in a decision dated August 29, 1983.

38. Moreover, the documents provided by the parties indicate that in regular civil action No. 5138/79 brought by Fraccionadora Cafetales against Mr. Uribe, the Twenty-Fourth Civil Judge issued a judgment declaring void the certified copy of the judgment in the regular civil action for adverse possession brought by Rafael Uribe against Carmen Sánchez Algara (302/71), in which Mr. Uribe was recognized as having ownership of the properties in dispute. That judgment was appealed by means of case No. 973/80 and No. 979/80, which upheld the judgment, recognizing that Fraccionadora Cafetales S.A. had had legal ownership since 1978. In addition, it ordered the complete cancellation of the property registrations made by Rafael Uribe with respect to the properties under dispute. Thus, the judicial authorities determined that the authorities in charge had established the existence of legally impossible grounds for carrying out the enforcement order for *amparo* 89/90 and complaint 5/83, since the original grounds for legitimate claim to the properties (ownership acquired through adverse possession) had ceased to exist. Consequently, as the judicial decisions had established, it would appear that the alleged victim had no right to enforcement of *amparo* over ownership of a property that did not belong to her.

39. Based on this exposition, the IACHR confirms its doctrine by which its role is not to replace domestic judicial authorities in the interpretation of the scope of applicable rules of procedural and substantive law.<sup>2</sup> The IACHR has asserted that it cannot act as a higher court to examine alleged errors of law or of fact that may have been committed by national courts within the scope of their jurisdiction.<sup>3</sup>

40. The Commission therefore lacks jurisdiction to substitute its judgment for that of the national courts on matters that involve the interpretation and explanation of domestic law or the evaluation of the facts. The judicial protection afforded by the Convention includes the right to fair, impartial, and prompt proceedings which give rise to the possibility, but never the guarantee, of a

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<sup>2</sup> IACHR, Report No. 79/10, Petition 12.119, Inadmissibility, *Association of Retired Oil Industry Workers of Peru - Metropolitan Area of Lima and Callao*, Peru, July 12, 2010, paras. 41 and 42; Report No. 27/07, Petition 12.217, Inadmissibility, *José Antonio Aguilar Angeletti*, Peru, March 9, 2007, paras. 41 and 43; and Report No. 39/05, Petition 792-01, Inadmissibility, *Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre*, Peru, March 9, 2005, paras. 52 and 54.

<sup>3</sup> IACHR, Report No. 45/04, Petition 369-01, Inadmissibility, *Luis Guillermo Bedoya de Vivanco*, Peru, October 13, 2004, para. 41; Report No. 16/03, Petition 346-01, Inadmissibility, *Edison Rodrigo Toledo Echeverría*, Ecuador, February 20, 2003, para. 38; Report No. 122/01, Petition 15-00, Inadmissibility, *Wilma Rosa Posadas*, Argentina, October 10, 2001, para. 10; and Report No. 39/96, Case 11.673, Inadmissibility, *Santiago Marzoni*, Argentina, October 15, 1996, para. 71.

favorable outcome.<sup>4</sup> Thus, the interpretation of the law, the relevant proceeding, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.<sup>5</sup>

41. Based on the foregoing considerations, the IACHR concludes that the allegations and facts provided by the petitioners do not tend to characterize the violation of rights protected in the American Convention, and thus the petition does not meet the requirement established in Article 47(b) of that instrument.

## V. CONCLUSIONS

42. Based on the foregoing arguments of fact and law, the Inter-American Commission concludes that the petition is inadmissible in accordance with the provisions established in Article 47(b) of the American Convention, since the petition does not state facts that would constitute a violation of any of the rights protected by the Convention.

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare this case inadmissible, under Article 47(b) of the American Convention.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20<sup>th</sup> day of the month of March 2012.  
(Signed): Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.

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<sup>4</sup> IACHR, Report No. 39/96, Case 11.773, S. Marzioni, Argentina, October 15, 1996, and Report No. 48/98, Case 11.403, *Carlos Alberto Marín Ramírez* (Colombia), September 29, 1998, para. 42.

<sup>5</sup> IACHR, Report No. 39/05 (Peru), Petition 792/01, *Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre*, March 9, 2005.