

REPORT No. 47/13
PETITION 1266-06
ADMISSIBILITY
ÁNGEL DIAZ CRUZ ET AL.
MEXICO¹
July 12, 2013

I. SUMMARY

1. On November 16, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition lodged by José López Cruz, Celia Hernández Gómez, Ricardo López Hernández, José Leonardo López Hernández, Reyna Cristina Cruz López, and *Centro de Derechos Humanos Fray Bartolomé de Las Casas* (hereinafter "the petitioners") against the United Mexican States (hereinafter "Mexico", "the State" or "the Mexican State") to the detriment of Ángel Díaz Cruz, Ricardo López Hernández, and José Leonardo López Hernández (hereinafter "the alleged victims").

2. The petition argues that the Mexican State bears international responsibility for the death of the boy Ángel Díaz Cruz (age 9) and the injuries to the boy Ricardo López Hernández (age 11) and José Leonardo López Hernández, all of them members of the Tsotsil indigenous people, allegedly caused by an explosive device of the Mexican Federal Army on December 17, 2000, in the municipality of San Cristóbal de las Casas, Chiapas State; and for the impunity in which those acts have remained as a result of the investigation's referral to the military jurisdiction and the failure to punish those responsible. They sustain that the facts alleged in the petition amount to violations of Articles 1(1) (obligation to respect rights), 2 (obligation to adopt provisions under domestic law), 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), 19 (rights of the child), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

3. For its part, the State requests that the petition be declared inadmissible because it was not lodged within the time limit of six months counted from the date of notification of the final decision which, it holds, was issued by the First Court attached to the First Military Region on January 13, 2003; and because it believes that the facts stated do not describe violations of human rights contained in the American Convention.

4. Having examined the positions of the parties, in accordance with the requirements set forth in Articles 46 and 47 of the American Convention the Commission, without prejudging the merits of the complaint, has decided to declare the petition admissible with respect to the alleged violations of Articles 4 and 5 of the American Convention, in conjunction with Article 1(1) of that instrument, to the detriment of Ángel Díaz Cruz; and of Articles 5, 8, and 25 of the Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of the surviving alleged victims and the next-of-kin of all three alleged victims. In addition, it declares the petition admissible with respect to the alleged violation of Article 19 of the American Convention to the detriment of Ángel Díaz Cruz and Ricardo López

¹ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or decision on this petition.

Hernández. The Commission has decided, furthermore, to inform the parties of this decision, publish it, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The Commission took receipt of the petition on November 16, 2006 and numbered it 1266-06. On February 4, 2011, the Commission forwarded the pertinent portions to the State and requested it to present its comments within two months. The State's response was received on April 28, 2011, and relayed to the petitioners by a noted dated July 15, 2011.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners claim the responsibility of the Mexican State for the death of the boy Ángel Díaz Cruz and the injuries sustained by the boy Ricardo López Hernández and José Leonardo López Hernández, all of them members of the Tsotsil indigenous people, upon handling an "antipersonnel rifle grenade of the Mexican Federal Army" found on a military facility situated near their community without the appropriate perimeter protection. Specifically, they say that the alleged victims were members of the Tsotsil village of El Aguaje, which belongs to the *ejido* of Albarrada in the Municipality of San Cristóbal de las Casas, Chiapas State.

7. They say that at some time between 1991 and 1992, the property known as Rancho Nuevo, which adjoins the community, was designated Military Zone No. 31 and that in 1994, the Secretariat for National Defense (SEDENA) turned the site into a firing range, with firing exercises carried out less than 500 m from the village. They say that the residents of El Aguaje were forced to live with the whistling of mortar rounds, the noise of machine-gun bullets, and the roar of exploding shells. They also say that the women could not go about their shepherding activities or collect mushrooms by themselves for fear of the soldiers, who would constantly harass them. They add that the military facility's perimeter fences did not respect the roads that the Tsotsil community traditionally used or take into consideration that their members used the area for grazing their herds and collecting firewood and edible fungi, among other traditional subsistence activities.

8. They say that after grenade explosion in the village of El Aguaje in 2000, the soldiers mended the wire, installed a two-ring fence, and built a watchtower. They say that in 2006 the firing range was moved two kilometers away from the *ejido*, but that soldiers still come and practice, and the noise of firearms and explosions can still be heard in the community.

9. With regard to the events of 2000, they say that in the morning of September 17 that year, 11-year-old Ricardo López Hernández set out with his cousin, nine-year-old Ángel Díaz Cruz, to gather mushrooms. They say that the boys entered Military Zone No. 31 as the "wire fence that demarcated the military site was broken as a result of the continuous traffic of people and animals who passed through that area." They indicate that in that place the boys came across a curious green-colored object that they picked up, thinking it was a toy. They say that on the way back to their village they met José Leonardo López Hernández, Ricardo López Hernández's brother, who accidentally dropped the device, which exploded when it hit the ground, wounding all three in the legs and abdomen.

10. According to the petitioners, Ángel Díaz Cruz died the following day; the López Hernández brothers were taken to the military hospital at Tuxtla Gutiérrez, where they remained for three months before being discharged. They add that as a result of the explosion, José Leonardo lost the use of the flexor muscles in his right leg, which is considered an irreversible injury.

11. They indicate that the Office of the Deputy Prosecutor for Indigenous Justice of San Cristóbal de las Casas opened preliminary inquiry IA/01/518/00-09 into the incident that very day, September 17. The investigation was transferred the next day to the Office of the Public Prosecution Service (*Ministerio Público*) of the San Cristóbal de las Casas Federation, which launched preliminary inquiry SCL/120/2000 for the crime of breach of the Federal Firearms and Explosives Act. They say that on October 16, 2000, that agency consulted the State Representative of the Public Prosecution Service of the Republic in Chiapas on jurisdiction, as it believed that the matter fell within the purview of the military authorities. They say that the decision to decline civilian jurisdiction in favor of the military jurisdiction violated the right of the victims to a hearing by a competent, independent, and impartial tribunal, and that the domestic laws of the Mexican State allow that declination of jurisdiction even though the Constitution provides that courts-martial are limited to offenses and faults against military discipline.

12. They say that neither the alleged victims nor their next-of-kin were notified of the decision in the civilian courts or of the declination of jurisdiction in favor of the military tribunals. They add that they repeatedly requested information from the Judge of the First Military Court and the First Attorney Attached to the Office of the Military Advocate General, to which they received the reply that they had to present themselves in Mexico City in order "to attest to [their] standing in accordance with the formalities required by law, since it [was] not certain that the person who filed the petition [was] the same person, and it [was] not known in what capacity they [were] appearing (victim or aggrieved)." They say that those responses are contained in Official Letter No. 3950, received on September 29, 2003, and in Official Letter No. SCP-4507-5 of June 21, 2004.

13. With respect to exhaustion of domestic remedies, they allege that the remedies invoked in the regular and federal civilian jurisdiction were ineffective, as were those in the military jurisdiction. By declining jurisdiction in favor of the military courts, the civilian authorities denied the alleged victims the right to justice as the military jurisdiction did not guarantee impartiality in the investigation.

B. The State

14. The Mexican state, for its part, did not dispute the account of the facts contained in the petition. However, it held that they were not the responsibility of the Secretariat for National Defense (SEDENA) and that they were investigated by the military courts, which punished those responsible.

15. Specifically, it indicates that Military Area No. 31-A belongs to the Secretariat for National Defense and is located on the property known as "Rancho Nuevo" in the State of Chiapas, where firing exercises are carried out using antitank and antipersonnel rifle grenades. It says that firing exercises with rifle grenades were carried out on August 14, 2000. The State alleges, based on the statement by Reyna Cristina Cruz López, the mother of the boy Ángel Díaz Cruz, that on September 16, 2000, her son told her that he and his cousin, the boy Ricardo López Hernández, had found a bomb as they were looking for mushrooms in the vicinity of Military Area No. 31-A. The State adds that the mother asked them not to touch the device; however, the following day the children returned and took the rifle grenade, and, upon handling it, dropped it whereupon it exploded.

16. The State says that the injuries caused to the boy Ángel Díaz Cruz consisted of trauma to the femoral artery, abdomen, and a lower limb, as a result of which he died on September 18, 2000. It says that on September 19, 2000, Ricardo López Hernández had external fixators fitted, two skin grafts taken, and six wound cleansing surgeries, while José Leonardo López Hernández added 12 wound cleansing surgeries and a graft implanted.

17. According to the State, in the face of “that regrettable situation and even though the incident was not the responsibility of SEDENA, on September 20, 2000, in the presence of a representative of the National Human Rights Commission, Mrs. Reyna Cristina Cruz López was given financial support in the amount of \$50,000.00 (fifty thousand) by way of humanitarian assistance.”

18. The State notes that the investigation of the incident was carried out in the military criminal jurisdiction, which tried the infantry Lieutenant Colonel in command of the Military Area, who, on appeal of the judgment issued by the First Court Attached to the First Military Region, was placed at liberty by the Supreme Military Tribunal on May 27, 2002, for lack of merits. The state also says that the infantry major who was serving as head of security during the exercises was acquitted on June 19, 2002, of the charges of negligent manslaughter and negligent injury by the Fifth Court of District B for Amparo Proceedings in Criminal Matters of the Federal District. The State adds that subsequently, on January 13, 2003, he was convicted and sentenced to one year and four months imprisonment for the crime of “infringement of duties common to all who are required to serve in the Army” by the First Court Attached to the First Military Region.

19. In relation to admissibility requirements, the State argues that, for one thing, the petition was time-barred since it was filed three years and 10 months after the final decision issued by the First Court Attached to the First Military Region on January 13, 2003, by which the infantry major was convicted. For another, it holds that the facts described in the petition are not a colorable claim of violations of the rights ensured by the American Convention, given that the injuries sustained by Ricardo and José Leonardo López Hernández were not attributable to the State since the grenade was deliberately removed without permission from the military area and it was improperly handled.

IV. ANALYSIS OF ADMISSIBILITY

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

20. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the IACHR. The petition names as alleged victims individuals on whose behalf the State of Mexico undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Mexico has been a party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Mexico, a state party to said treaty.

21. The Commission is competent *ratione temporis* because the obligation to observe and ensure the rights protected in the American Convention was already binding upon the State at the time the events described in the petition are alleged to have occurred. Finally, the Commission has *ratione*

materiae competence because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

22. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when: (a) domestic law does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The Mexican State offers no challenge regarding exhaustion of domestic remedies, but considers that the decision of the First Court Attached to the First Military Region concluded the proceedings at the domestic level. Indeed, it has not been contested in the case here examined that the investigation into the death of the boy Ángel Díaz Cruz and the injuries caused to Ricardo and José Leonardo López Hernández was carried out within the military jurisdiction and that it culminated with the release of the infantry lieutenant colonel for lack of merits and the sentencing to one year and four months in prison of the infantry major for the offense of “infringement of duties common to all who are required to serve in the Army.” The Commission further notes that the petitioners argued that they were unable to participate in or have access to information concerning the investigation and trial, in spite of requests made.

24. In this connection, the Commission recalls that as it has consistently held, the military jurisdiction does not provide an adequate remedy to investigate, prosecute and punish alleged violations of human rights supposedly committed by members of the security forces. As for using the military courts to try army personnel suspected of involvement, the Commission has repeatedly stated that the military jurisdiction is not an appropriate forum and, therefore, does not afford an adequate remedy to investigate, prosecute and punish violations of human rights enshrined in the American Convention.² Based on the foregoing the Commission believes it appropriate to apply the exception contained in Article 46(2)(a) of the American Convention.

25. It need only be added that Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Therefore, to determine whether or not the exceptions to the rule of exhaustion of domestic remedies are applicable to a

² IACHR, Report No. 11/11, Petition 697-04, Admissibility, Jesús Reynaldo Aguirre Ching, Peru, March 22, 2011, par. 26; Report No. 39/10, Petition 150-06, Admissibility, Nélio Nakamura Brandão and Alexandre Roberto Azevedo Seabra Da Cruz, Brazil, March 17, 2010, par. 31; Report No. 47/08, Petition 864-05, Admissibility, Luis Gonzalo “Richard” Vélez Restrepo and family, Colombia, July 24, 2008, par. 74; Report No. 93/06, Petition 972-03, Admissibility, Valentina Rosendo Cantú et al., Mexico, October 21, 2006, par. 28; Report No. 94/06, Petition 540-04, Admissibility, Inés Fernández Ortega et al., Mexico, October 21, 2006, par. 24.

particular case requires an examination carried out in advance of and separate from the analysis of the merits of the case, since it depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine if they constitute violations of the American Convention.

2. Timeliness of the petition

26. Under the terms of Article 46(1)(b) of the Convention, for a petition to be admitted it must have been lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level. In the complaint under review the IACHR has determined that the exception to the rule of exhaustion of domestic remedies pursuant to Article 46(2)(a) of the American Convention is applicable. In this regard, Article 32 of the Rules of Procedure of the IACHR states that when the exceptions to the rule requiring prior exhaustion of domestic remedies apply, the petition is to be presented within what the Commission deems to be a reasonable period. The Commission must therefore consider the date on which the alleged violation of rights occurred and the circumstances of each case.

27. The State argued that the petition was time-barred since it was filed three years and 10 months after the final decision issued by the First Court Attached to the First Military Region on January 13, 2003, by which an infantry major was convicted.

28. According to the information supplied by the parties, the facts that gave rise to this petition allegedly occurred on September 17, 2000; the decision that brought an end to the proceedings in the military jurisdiction was issued on January 13, 2003, which, according to the petitioners, was not communicated neither the alleged victims or their next-of-kin. The petition, meanwhile, was received by the Commission on November 16, 2006. The IACHR notes that in the instant case the petitioners claim that they were never notified of the procedural steps, nor were they permitted to participate in the proceedings carried out, in spite of having repeatedly requested as much during the proceeding conducted by the First Military Court and the Office of the Military Advocate General. Bearing those circumstances in mind, the IACHR concludes that the petition was lodged within a reasonable time under the terms of Article 32 of Its Rules of Procedure.

3. Duplication of international proceedings and res judicata

29. Article 46(1)(c) of the Convention provides that admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47(d) stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." There is nothing in the record in this case to suggest that those grounds for inadmissibility exist.

4. Colorable claim

30. The Commission considers that it is not appropriate at this stage of the proceedings to determine whether or not the alleged violations of the rights of the alleged victims actually took place. For admissibility purposes, the IACHR must only decide whether deeds are alleged that, if proven, would amount to violations of the American Convention, as stipulated in Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order” (Article 47.c). The standard for evaluating these factual requirements is different from the requirement for deciding on the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition supports the apparent or potential violation of a right guaranteed by the American Convention, but not to establish the existence of a violation.³ This determination involves a summary analysis which does not imply a prejudgment or advance opinion on the substance of the matter. The Commission’s Rules of Procedure, by establishing one stage for admissibility and another on merits, reflects this distinction between the evaluation that the Commission must conduct for the purpose of declaring a petition admissible and that required to establish a violation imputable to the State⁴.

31. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

32. The petitioners hold that the State is responsible for violation of the right to life of the boy Ángel Díaz Cruz and of the right to humane treatment of the boy Ricardo López Hernández and José Leonardo López Hernández as a result of the handling of an antipersonnel rifle grenade found in a military area without perimeter control. They add that the investigation of those facts was conducted by the military criminal jurisdiction based on the laws in force, a proceeding in which they were not permitted to participate.

33. The Inter-American Commission concludes that, if proven, the submissions of the petitioners could tend to characterize violations of the following provisions: (i) Articles 4, 5, and 19 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Ángel Díaz Cruz; (ii) Articles 5, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of Ricardo López Hernández and José Leonardo López Hernández and the next-of-kin of the three alleged victims; and (iii) Article 19 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Ricardo López Hernández.

³ See IACHR, Report No. and128/01, Caso 12.367, *Newspaper "La Nación"* (Costa Rica), December 3, 2001, par. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, par. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, par. 54.

⁴ See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate et al.* (Chile), March 7, 2003, par. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, par. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, par. 54; Petition 581-05, *Víctor Manuel Ancalaf Laupe* (Chile), May 2, 2007, par. 46.

V. CONCLUSION

34. The Commission concludes that it has jurisdiction to take up the complaint presented by the petitioners and that the petition is admissible, in accordance with Articles 46 and 47 of the Convention, as regards the alleged violations of Articles 4, 5, 8, 19, and 25 of the American Convention in connection with Articles 1(1) and 2 thereof to the detriment of the alleged victims and their next of kin.

35. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**DECIDES:**

1. To declare the petition admissible with respect to the alleged violations of Articles 4 and 5 of the American Convention, in conjunction with Article 1(1) of that instrument, to the detriment of Ángel Díaz Cruz; and of Articles 5, 8, and 25 of the Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of the surviving alleged victims and the next-of-kin of all three alleged victims.

2. To declare the petition admissible with respect to the alleged violation of Article 19 of the American Convention to the detriment of Ángel Díaz Cruz and Ricardo López Hernández.

3. To notify the parties of this decision.

4. 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 20th day of March 2013. (Signed): Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Antoine, Commissioners.