

REPORT No. 46/13¹
PETITION 659-07
ADMISSIBILITY
ÁNGEL CONCEPCIÓN PÉREZ GUTIÉRREZ AND FRANCISCO PÉREZ VÁSQUEZ
MEXICO
July 12, 2013

I. SUMMARY

1. On May 16, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition submitted by María Esther Cruz López, and the civic association "Abogados para la Justicia y los Derechos Humanos" (hereinafter "the petitioners") in representation of Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, members of the Chol indigenous people (hereinafter "the alleged victims"). The petition was submitted against the United Mexican States (hereinafter "the State," "the Mexican State," or "Mexico") for failure to provide the alleged victims an interpreter to enable them to defend themselves and to understand the accusations against them, as well as for the lack of an adequate defense and other due process guarantees in a criminal trial against them.

2. The petitioners allege that the Mexican State is responsible for violating the rights enshrined in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to Articles 1 and 2 of the same instrument, to the detriment of the alleged victims. They also allege the violation of Articles 2, 3, 8, 9, 10, and 12 of Convention 169 of the International Labor Organization on indigenous and tribal peoples in independent countries (hereinafter "ILO Convention 169"); and Article 14(3)(f) of the International Covenant on Civil and Political Rights, "both applied in the terms of Article 29 of the Convention."

3. For its part, the State alleges that the petition is inadmissible due to the lack of competence of the IACHR to issue a pronouncement on a criminal matter; and due to the failure to exhaust domestic remedies, on considering that a motion for review (*recurso de revisión*) could be brought against the judgment in the *amparo* proceeding.

4. Without prejudging on the merits, after analyzing the parties' positions, and in keeping with the requirements set forth at Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for the purposes of examining the alleged violation of the rights enshrined in Articles 5, 7, 8, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of that international instrument, to the detriment of Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the deliberations or decision in relation to this petition.

5. On May 17, 2007 the Commission received the petition and assigned it number 659-07. On January 12, 2012, it forwarded the pertinent parts of the petition to the Mexican State, asking that it submit its answer within two months, in keeping with Article 30 of the IACHR's Rules of Procedure. The State sent its response on June 14, 2012; it was duly forwarded to the petitioners. The IACHR also received information from the petitioners on March 11, 2008, which was forwarded to the State along with the petition.

III. THE PARTIES' POSITIONS

A. The petitioners

6. They allege the criminal conviction without due process guarantees of Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, members of the Chol indigenous people, ages 42 and 73 years respectively, who they indicate are deprived of liberty in the prison at Tacotalpa, State of Tabasco, Mexico.

7. They argue that Florentino Hernández López and Vicente Pérez Pérez were murdered on November 16, 1995, in the context of a conflict over land possession between *ejidatarios* of the community of Tuitzol, Municipality of Tila, Chiapas, and the community of Agua Blanca, Ejido of Huapacal, Tabasco. In particular, they state that on that date Florentino Hernández of the community of Agua Blanca, armed with a 22 caliber rifle, went along with his son Eulalio Hernández to the plot of Vicente Pérez, of the community of Tuitzol, for reasons related to the agrarian problem that both *ejidos* had experienced. They note that in the midst of an argument Florentino Hernández shot Vicente Pérez, who before falling—wounded, swung his *machete*, dealing a blow to Florentino, also wounding his son Eulalio, who in turn shot Vicente, killing him.

8. They state that at the time of those events Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, residents of the town of Huacapal, Municipality of Tila, Chiapas, were working on a plot situated at a distance of four to five hours by foot that belonged to Marco Hernández Vázquez. They state that on learning of what happened, Mr. Pérez Gutiérrez went to the crime scene, where he served as a forensic expert in the official act of removing the body of Vicente Pérez, at the request of the municipal judge and the clerk from the Office of the Public Prosecutor.

9. They assert that even so, the alleged victims were detained and brought before the Mixed Judge of Tacotalpa, Tabasco, as the persons allegedly responsible for the crime of aggravated homicide (*homicidio calificado*) only of Florentino Hernández López, and they were prosecuted in criminal case No. 4/996. They indicate that by judgment of August 7, 1998, they were convicted and sentenced to 25 years in prison and to pay reparation of \$12,197.60 pesos in damages.

10. They argue that the conviction of the alleged victims was the result of a criminal proceeding without due process guarantees. In particular, they argue that during the preliminary examination and the face-to-face confrontations with the witnesses, Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez did not have an interpreter, as was their right, as they speak the Chol language, and they have difficulty expressing themselves in Spanish. In this respect, they state that this omission in the report of their preliminary examination cannot be justified, for it indicates that they speak Spanish perfectly well, when Francisco Pérez Vázquez, for example, did not know how to read or write. They add that it is apparent that the public defender did not perform his function properly. They also argue that the judgment is contrary to due process guarantees when it says "they were not

provided an interpreter because the accused did not show that they did not know how to speak Spanish or failed to understand what was happening in the proceeding.”

11. They also allege that Ángel Concepción Pérez Gutiérrez was detained and prosecuted as “Miguel Ángel Pérez,” even though from his preliminary examination he clarified that that was not his name, yet the judge took no action to verify his identity. They indicate that even though the homicides of Florentino Hernández López and Vicente Pérez Pérez occurred as the result of a brawl in which they were involved, separate preliminary inquiries were undertaken that did not take into account the evidence regarding the homicide of Vicente Pérez Pérez, which corroborated the alleged victims’ version.

12. They argue that the victims brought a motion for appeal against the judgment of first instance, before the Third Criminal Chamber of the Superior Court of Justice of the State of Tabasco, identified as number 491/2000-III. They indicate that by judgment of June 26, 2000, that court upheld the conviction, modifying it only in relation to the suspension of the political rights of the alleged victim. In relation to the lack of an interpreter of the Chol language, they report that said court considered that the fact that the accused argued they were innocent, and that they alleged circumstances in this respect, showed that they “understand the Spanish language well enough and, therefore, the fact that they were not given an interpreter of the ‘Chol’ language did not violate their individual guarantees.”

13. They affirm that this decision was based on testimony and did not take into account the evidence offered by the defense, reaching the conclusion that “[...] those arguments of the defense are not accorded probative efficacy as the accused did not prove them with elements of conviction worthy of credit [...],” which they emphasize is directly at odds with the right to the presumption of innocence. They add that the court also failed to evaluate the preliminary inquiry initiated into the death of Vicente Pérez Pérez, even though he came forward at trial and was fundamental for corroborating what the defense witnesses said.

14. They state that on May 28, 2006 the alleged victims brought a direct *amparo* action before the Third Collegial Court of the Tenth Circuit, alleging the lack of an interpreter and the failure of the judgment to state its foundation. They indicate that the court resolved the action against the alleged victims by judgment of November 6, 2006, notice of which was given on November 16, 2006. As they affirm, their reasoning with respect to the language was that they said that they speak and understand the language, according to the document on the preliminary examinations, and that they had a public defender, therefore they were not defenseless. They indicate that the court considered it irrelevant that it was not unequivocally corroborated that Ángel Concepción Pérez Gutiérrez and “Miguel Ángel Pérez” were one and the same person, and that in the guilty verdict reference is made to the alleged victim with both names. With respect to the alleged violation of the presumption of innocence, they indicate that the court considered that “while it is true that the plaintiffs on *amparo* denied their participation in the events, they had to shoulder the burden of proof.”

15. In summary, they allege that the arbitrary deprivation of his personal liberty pursuant to a criminal proceeding in violation of the guarantees of due process; the refusal to afford judicial protection in the first instance, court of appeals, and *amparo* court; as well as the negative impact on their personal integrity “given the series of violations and the impact they have suffered,” particularly in the case of Mr. Francisco Pérez Vásquez, 73 years of age when the petition was filed, “whose physical and psychological conditions have continued to deteriorate,” amount to the violation of Articles 5, 7, 8, and 25 of the American Convention on Human Rights, in relation to its Article 1.

16. As regards the violation of Article 2 of the Convention, they allege a lack of specific provisions in the Mexican legal order establishing the duty of the state authorities with criminal investigation and prosecution functions to provide indigenous persons an interpreter so as to enable them "to confront, understand, and make themselves understood in their own language"; and a lack of specific provisions to implement the principle of the presumption of innocence in the investigation, prosecution, and decision in criminal matters. They also allege the violation of several articles of ILO Convention 169 and of Article 14(3)(f) of the International Covenant on Civil and Political Rights, both of which are invoked in the terms of Article 29 of the American Convention.

B. The State

17. Contrary to what was indicated by the petitioners with respect to the facts that led to the criminal proceeding against the alleged victims, the State argues that as a result of a land dispute in the *ejido* of "Agua Blanca," Municipality of Tacotalpa, Tabasco, on November 16, 1995, Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, along with other persons, "conceived of, prepared, and executed the crime of homicide against Mr. Florentino Hernández López."

18. The State indicates that the judicial proceeding against the alleged victims was heard by the Mixed Court of First Instance of Tacotalpa, before which they gave their first statement on June 10, 1998. It alleges that on that occasion Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez said that they understood Spanish and pled their innocence in the face of the charges brought by the Office of the Public Prosecutor. It adds that at all times the alleged victims were assisted by a public defender.

19. It asserts that "once the evidence submitted in the proceeding was given and studied," in August 1998 the court found Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez guilty of the crime of aggravated homicide of Florentino Hernández López. It reports that the alleged victims appealed that conviction to the Third Criminal Chamber of the Superior Court of Justice of the State of Tabasco, which on June 26, 2000 upheld the conviction. It indicates that as they were not pleased with the ruling, the alleged victims brought an *amparo* proceeding before the Third Collegial Court of the Tenth District, which handed down a judgment against their claims on November 6, 2006.

20. With respect to the admissibility of the petition, it alleges first the lack of competence of the IACHR to rule on a criminal matter; and second, failure to exhaust domestic remedies since the petitioners did not bring a motion of review against the judgment handed down in the *amparo* proceeding.

21. As for the first, it argues that the petitioners seek to have the IACHR "evaluate the evidence from the domestic proceeding with a view to obtaining a resolution on their guilt." It asserts that the organs of the inter-American system are not competent to rule on criminal matters, rather this area is of the "exclusive jurisdiction of the State," thus the IACHR cannot rule on "whether certain conduct violates domestic criminal statutes and much less guilt or innocence."

22. With respect to the second argument, the State alleges that the petitioners failed to exhaust domestic remedies given that the petitioner could have pursued a remedy against the November 6, 2006 decision in the *amparo* proceeding, which it described as "the first domestic remedy for the protection of human rights," but failed to do so. It notes in this regard that the Inter-American

Court has recognized that the *amparo* procedure is the suitable remedy for addressing human rights violations. It further argues that in the particular case of the Mexican legal order, it is an “effective, expeditious remedy and is conducted under the broadest protection granted by international human rights treaties to which Mexico is a party,” on occasion of the human rights reforms promulgated in June 2011.

IV. ANALYSIS OF ADMISSIBILITY

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

23. The petitioners are authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victims individual persons with respect to whom the Mexican State undertook to respect and guarantee the rights enshrined in the American Convention. As regards 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 instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights protected by the American Convention said to have taken place in the territory of Mexico, a state party to that treaty.

24. The 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 on the date on which the facts alleged in the petition are said to have taken place. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of rights protected by the American Convention.

25. With respect to ILO Convention 169 and the International Covenant on Civil and Political Rights, the Commission notes that it is not competent to rule on whether they have been violated, yet it can use them as guidelines for interpreting obligations under the Convention, in light of Article 29 of the American Convention.²

B. Other requirements for the admissibility of a petition

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that in order for a complaint to be submitted to the Inter-American Commission under Article 44 of the Convention, one must have first pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. The purpose of this requirement is to enable the national authorities to take cognizance of the alleged violation of a protected right and, as the case may be, to have the opportunity to resolve it before it is heard by an international body.

² See *inter alia*; IACHR, Application before the I/A Court H.R. in the Case of the Yakye Axa Indigenous Community v. Paraguay, March 17, 2003; IACHR, Report No. 40/04, Case 12,053, Maya Indigenous Community of the Toledo District v. Belize, October 12, 2004, para. 87.

27. In the matter at hand, the State argues that the petitioners failed to exhaust domestic remedies as they did not bring a motion for review against the judgment of the Third Collegial Court of the Tenth Circuit, of November 6, 2006, which dismissed the *amparo* action. The petitioners argue that they did exhaust domestic remedies.

28. In this respect the IACHR observes, based on the information produced by the parties, that on August 7, 1998, the Mixed Court of First Instance of the 17th Judicial District of Tacotalpa, Tabasco, issued a verdict convicting the alleged victims, which was appealed on August 27, 1998. That appeal was resolved by the Court of Appeals on October 1, 1999, which ordered the judgment overturned, and that the proceeding resume anew, and ordered the face-to-face confrontations between the prosecution witnesses and the defense witnesses. In addition, the IACHR notes based on the information available to it that after those procedural measures, on April 28, 2000 the Mixed Court of First Instance of the 17th Judicial District of Tacotalpa found Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez criminally liable for the crime of aggravated homicide and imposed a sentence on both of them of 25 years in prison and the payment of monetary reparations. The alleged victims filed an appeal, which was rejected by judgment of June 26, 2000, by the Third Criminal Chamber of the Superior Court of Justice of the state of Tabasco. An *amparo* remedy was brought against this decision; it was heard by the Third Collegial Court of the Tenth Circuit, which decided not to grant protection (*amparo*) to the alleged victims in a decision of November 6, 2006.

29. The IACHR also observes that at different stages of the process, such as for example in the appeals and *amparos* that were pursued, the alleged victims challenged, among other aspects related to due process guarantees, the alleged lack of interpretation in the Chol language. It also observes that the alleged victims exhausted regular remedies and filed a writ of *amparo* that was denied.

30. In this respect the IACHR has established that the requirement of prior exhaustion of domestic remedies does not mean that the alleged victims necessarily have to exhaust all available remedies. In effect, the Inter-American Court has held: "A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance."³ Both the Court and the Commission have held repeatedly that "...the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."⁴ Accordingly, if the alleged victims raised the issue by means of one of the valid and adequate alternatives in the domestic legal order, and the State had the opportunity to remedy the matter in its jurisdiction, the aim of the international rule is satisfied.⁵

31. Bearing in mind the remedies pursued and exhausted, based on the terms of Article 46 of the Convention, the Commission concludes that the requirement of prior exhaustion is satisfied. Accordingly, the Inter-American Commission verifies that the remedies provided for in Mexican

³ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4., paras. 64 and 66; I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 111; I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 117.

⁴ I/A Court H.R., *In the Matter of Viviana Gallardo et al.* Series A No. G 101/81, para. 26.

⁵ IACHR, Report No. 57/03 (Admissibility), Petition 12,337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003, para. 40; and IACHR, Report No. 67/12, Petition 728-04, Rogelio Morales Martínez (Mexico), July 17, 2012, para. 34.

legislation have been exhausted and determines that the petition analyzed meets the requirement established at Article 46(1)(a) of the Convention.

2. Deadline for filing the petition

32. Pursuant to Article 46(1)(b) of the Convention, for a petition to be admitted it must be presented within six months of the date on which the complainant was given notice of the final decision handed down in the domestic courts. The six-month rule guarantees certainty and legal stability once a decision has been adopted. In the instant matter, by judgment of November 6, 2006, the *amparo* proceeding was resolved; notice was given on November 16, 2006, according to the petitioners; this information was not controverted by the State. Given that the petition was received on May 16, 2007, the IACHR concludes that this requirement is satisfied.

3. Duplication of procedures and international *res judicata*

33. For the purposes of declaring a petition admissible, the Convention requires at Article 46(1)(c) that it not be pending resolution before any other international body, and, at Article 47(d), that it not reproduce the content of a petition already examined by this or another international organization. In the instant case, the Commission observes that the parties have not alleged the existence of any of these grounds of inadmissibility, nor is it possible to deduce them from the record in the case. Therefore, the IACHR considers that the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

34. The Commission considers that it is not appropriate at this stage of the procedure to decide whether the alleged violations occurred. For the purposes of admissibility, at this time the IACHR must rule only on whether facts are stated which, if proven, would tend to establish violations of the American Convention, as stipulated in its Article 47(b), and whether it is “manifestly groundless” or “obviously out of order” as per Article 47(c).

35. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, though the petitioner may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments apply and whose violation could be determined if the facts alleged are proven by sufficient information and evidence.

36. The case-law of the Inter-American Commission clearly establishes that it is not competent to review judgments handed down by domestic courts that act within their jurisdiction and apply the relevant judicial guarantees. The IACHR does not serve as a court of appeals to examine alleged errors of law or of fact that the domestic courts may have made while acting within their jurisdiction. Nonetheless, within the limits of its mandate to ensure the observance of the rights enshrined in the Convention, the Inter-American Commission is competent to declare a petition admissible and to rule on its basis when it refers to a domestic judicial decision that has been made

without observing due process, or if it describes a violation of any other right guaranteed by the American Convention.⁶

37. The State argues that the complaint is inadmissible because it does not contain facts that tend to establish a violation of the rights guaranteed in the American Convention. For their part, the petitioners allege, with respect to the prosecution of Messrs. Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, that the State should have provided them an interpreter for the criminal proceeding against them, and in particular, at the moment of giving their preliminary examinations and the face-to-face confrontations with the witnesses, in addition to not having had an effective defense, among other alleged violations of the right to due process.

38. Based on the arguments and documentation submitted by the parties, as well as the inter-American case-law, the Commission considers that there is no evidence that the claim presented is groundless or out of order. In addition, the IACHR is of the view that the petitioners' arguments regarding the deprivation of their personal liberty pursuant to a criminal proceeding purportedly lacking due process guarantees, and in particular the lack of an interpreter to allow them to express themselves in the Chol language, could tend to establish *prima facie* a violation of the rights ensured at Articles 5, 7, 8 and 25 of the American Convention, in relation to Article 1(1) of the same instrument.

39. As regards the alleged violation of Article 2 of the Convention, the petitioners based their argument on the fact that the criminal legislation in force at the time of the facts did not contain specific provisions establishing the duty of the criminal investigation and prosecution authorities to provide indigenous persons an interpreter; nor specific provisions to implement the principle of the presumption of innocence in the investigation, prosecution, and decision process in criminal matters. Considering that the information available indicates that legislative changes were made in these areas subsequent to the facts, the IACHR will analyze the petitioners' allegations in the merits stage in light of the obligations contained in Article 2 of the American Convention. In addition, mindful of the documents produced by the parties and their arguments, the Commission observes that the facts alleged regarding the lack of an interpreter during the criminal trial against the alleged victims could tend to establish a violation of Article 24 of the American Convention.⁷

V. CONCLUSION

40. The Commission concludes that it is competent to take cognizance of the merits of this case, and the petition is admissible pursuant to Articles 46 and 47 of the American Convention; and it decides to continue with the analysis of the merits in relation to the alleged violations of Articles 5, 7, 8, 24, and 25 of the American Convention, in conjunction with Article 1(1) and 2 of that international instrument, with respect to Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez.

⁶ See IACHR, Report No. 1/03, Case 12,221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, para. 46, citing Report No. 39/96, Case No. 11,673, Marzioni, Argentina, October 15, 1996, paras. 50-51. See, IACHR, Report No. 4/04, Petition 12,324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 44.

⁷ See in this respect IACHR, Report 49/08, Petition 261-04, Ricardo Ucán Seca (Mexico), July 24, 2008, para. 56; and IACHR, Report No. 67/12, Petition 728-04, Rogelio Morales Martínez (Mexico), July 17, 2012, para. 41.

41. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible in relation to the alleged violation of the rights recognized in Articles 5, 7, 8, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of said treaty, to the detriment of Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez.

2. To give the parties notice 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 12th day of July 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.