

REPORT No. 92/13

PETITION 843-07

ADMISSIBILITY

AGAPITO PÉREZ LUCAS, NICOLÁS MATEO, MACARIO PÚ CHIVALÁN AND LUIS RUIZ LUIS

GUATEMALA

October 14, 2013

I. SUMMARY

1. On June 26, 2007, the Inter-American Commission on Human Rights (hereinafter “Commission”, “Inter-American Commission” or “IACHR”) received a petition lodged by the *Runujel Junam* Council of Ethnic Communities (hereinafter “CERJ”), represented by Mr. Amilcar Méndez Urizar (hereinafter “the petitioners”), against the Republic of Guatemala (the “Guatemalan State”, “Guatemala” or the “State”), for international responsibility in the forced disappearance of Nicolás Mateo, Macario Pú Chivalán, Luis Ruiz Luis and Agapito Pérez Lucas (the “alleged victims”), Maya-Quiché indigenous individuals who were members of the CERJ. Messrs. Macario Pú Chivalán and Luis Ruiz Luis were said to have been detained and subsequently disappeared on April 1, 1989, allegedly by members of the Guatemalan Army. Messrs. Nicolás Mateo and Agapito Pérez Lucas were said to have been detained on April 7, 1989 and subsequently disappeared, allegedly by agents of the Guatemalan Army. These acts were said to have been in reprisal for the work that the alleged victims were doing as active members of the CERJ and as human rights defenders of the people living in the communities of Pachoj, municipality of Santa Cruz del Quiché, and Potrero Viejo, municipality of Zacualpa, both of which are in the Department of El Quiché. The whereabouts of these four persons are still unknown.

2. The petitioners maintained that the State of Guatemala is responsible for having violated the rights set forth in Articles 1.1, 4, 5, 7 and 8 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”) in respect of Nicolás Mateo, Macario Pú Chivalán, Luis Ruiz Luis and Agapito Pérez Lucas.

3. The State indicated that as regards the acts alleged, there was a failure to exhaust domestic remedies, given that those events are under investigation in a special inquiry procedure. It further maintained that in light of the subject matter and the timing of the events in the present case, the case should be heard by the National Commission for Redress [*Comisión Nacional de Resarcimiento*]. It alleged that the international protection of rights “reinforces or is complementary to that provided by the domestic law of the American States”, and that in this case, the State has appropriate mechanisms for relief.

4. Without prejudging the merits of the matter, the Commission examined the parties’ positions and, pursuant to the requirements of Articles 46 and 47 of the American Convention, concluded that it is competent to hear the complaints filed concerning the rights set forth in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to Article 1.1 thereof, and in Articles I and IX of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the IACFDP”). The Commission also decided to advise the parties of the present Report on Admissibility, publish it and include it in its annual report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission received the petition on June 26, 2007 and assigned it number 843-07. The IACHR transmitted the pertinent parts of the petition to the State of Guatemala on August 24, 2009, with the request that it present its response within two months, in accordance with the provisions of Article 30.3 of the Rules of Procedure of the IACHR that were in force at the time. The State's response was received on October 22, 2009, and was duly transmitted to the petitioners.

6. The IACHR also received information from the petitioners on December 4, 2007, June 10, 2009, August 18, 2009, December 10, 2009, January 8, 2010, August 20, 2012, February 14, 2013, March 22, 2013, April 4, 2013 and April 8, 2013. These communications were duly transmitted to the State.

7. The IACHR also received information from the State on October 19, 2009, February 22, 2010 and July 17, 2013. These communications were duly transmitted to the petitioners.

III. POSITION OF THE PARTIES

A. The petitioners

8. The petitioners maintained that Messrs. Nicolás Mateo, Macario Pú Chivalán, Luis Ruiz Luis and Agapito Pérez Lucas were members of the Maya-Quiché indigenous people and active members of the CERJ in the communities of Pachoj, municipality of Santa Cruz del Quiché, and Portero Viejo, municipality of Zacualpa, both in the Department of El Quiché. Because of the work they had been doing as human rights defenders since 1988, the alleged victims had managed to free hundreds of *campesinos* who had been forced to serve, without pay, on the so-called Civil Defense Committees ("CDCs"), which had initially been called the Civil Self-Defense Patrols [*Patrullas de Autodefensa Civil*] ("PACs"), created by the Guatemalan Army as part of the counter-insurgency policy implemented during the domestic armed conflict.

9. They stated that as a consequence of their human rights work, the alleged victims had been threatened and persecuted, which is why, at the end of March 1989, they and their families had to move to a farm called Trinidad Miramar, in the town of Patulul in the Department of Suchitepéquez, to work as seasonal agricultural workers.

10. The petitioners alleged that at 10:15 p.m. on April 1, 1989, Messrs. Luis Ruiz and Macario Pu Chivalán were forcibly removed, almost naked, from their homes on the Trinidad Miramar farm and detained by uniformed members of the Guatemalan Army, whose faces were covered with black camouflage paint. Then, at 10:30 p.m. on April 7, Messrs. Nicolás Mateo and Agapito Pérez Lucas were forcibly removed from their homes, located on the same farm, and were detained by the same group from the Guatemalan Army. In both cases, the soldiers told the families not to interfere while they were taking the men away. Ever since these events occurred, the whereabouts of the four people have been unknown.

11. They stated that on April 4, 1989, Mr. Amílcar Méndez submitted petitions for habeas corpus to the Supreme Court of Justice on behalf of Messrs. Macario Pu Chivalán and Luis Ruiz Luis, and on April 10, 1989, on behalf of Messrs. Agapito Pérez Lucas and Nicolás Mateo. On April 9, 1989, he filed a petition for habeas corpus with the First Judge of the First Instance of the Department of Santa Cruz del Quiché on behalf of Messrs. Agapito Pérez Lucas and Nicolás Mateo. They claim that these petitions were unsuccessful because no investigation of the facts was ever conducted.

12. They stated that following the complaints filed at the time the events occurred, Amnesty International and Americas Watch formed an international commission, which travelled to Guatemala in 1989 to investigate the forced disappearances of members of the CERJ.

13. On December 6, 2005, Mr. Amilcar Méndez as legal representative of the CERJ, filed a new request for habeas corpus with the Supreme Court of Justice on behalf of the four alleged victims, and also requested that a special inquiry proceeding be set up immediately in order to locate the four people detained and/or disappeared, given that the excessive length of time that had elapsed without their being brought before a competent court, if there had been grounds for detaining them.

14. Regarding the petition for habeas corpus, the Supreme Court of Justice ruled on February 27, 2006 that it was not in order because, when the executing judge was unable to locate Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas y Nicolás Mateo, he decided that there was no evidence that their liberty had been curtailed or that they had suffered any injury—necessary preconditions for granting a writ of habeas corpus. Amilcar Méndez Urizar was advised of this decision on May 18, 2006.

15. Regarding the request that a special inquiry procedure be initiated, the Criminal Bench of the Supreme Court of Justice held a hearing on October 23, 2006, in which the proponent of the special inquiry, Amilcar Méndez Urizar, and the Office of the Attorney General and the Assistant Prosecutor for Human Rights participated. By decision of that same date, the Criminal Bench of the Supreme Court of Justice ruled that the special inquiry procedure was in order, and instructed the Prosecutor for Human Rights to conduct an investigation into the disappearance of Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas and Nicolás Mateo, within a period of four months. After that deadline had passed, the Supreme Court of Justice granted many extensions of the time period for the investigation, in order that the Prosecutor for Human Rights could continue the investigation. According to the petitioners, as of July 2013, the special inquiry had not yet been completed.

16. With respect to the exhaustion of domestic remedies, they claim that the forced disappearances of the alleged victims took place during the domestic armed conflict, when the Guatemalan State's policy was the doctrine of national security. They indicate that starting at the time of the forced disappearances of the alleged victims in April 1989, petitions for habeas corpus had been filed with the competent courts. They also maintain that even though a special inquiry was begun in 2006, it had yielded no results after seven years. They further indicate that the Guatemalan justice system has had more than twenty years to address these disappearances, but without an effective response.

B. The State

17. The State maintained that in its Decision 4-2006 of October 23, 2006, the Criminal Bench of the Supreme Court of Justice granted a mandate to the Prosecutor for Human Rights to conduct a special inquiry proceeding on the alleged forced disappearance of the alleged victims. It stated that this procedure gave special powers to, *inter alia*, the Prosecutor to carry out the investigation, with the appointment of a government agent from the Office of the Attorney General, to establish the whereabouts of the individuals and determine the criminal liability of those persons who might be implicated in the event. It indicated that the investigation procedure is under the control of the court, and that for this purpose, the First Judge of the First Instance in Criminal Matters, Narcoactivity and Crimes against the Environment of Guatemala City, together with the Office of the

Attorney General, is taking steps to shed light on the circumstances of the events alleged. In its observations of July 17, 2013, the State indicated that in its decision of October 22, 2012, the Criminal Bench of the Supreme Court of Justice extended the deadline for the investigation to allow for new steps to be taken. It maintains that it continues to follow up on all of the actions of the different government institutions involved in the special inquiry procedure, which is still pending.

18. With regard to allegations about delays in the investigation, the State maintained that a determination about “a reasonable time period” for the special inquiry procedure should be made on the basis of an “objective criterion”, that is to say, taking account of the nature of the events under investigation, which should be examined according to the criteria of: i) the complexity of the matter; ii) the procedural activity by the party concerned, and iii) the conduct of the authorities responsible for the investigation.

19. As to the complexity of the matter, the State maintained that the investigation carried out as part of the special inquiry procedure by the Prosecutor for Human Rights should be examined in the context of the domestic armed conflict that took place in Guatemala and should take account of the undoubted complexity of cases of alleged forced disappearances; it should not, therefore, be analyzed solely on the basis of the specific facts in the case, but also the context in which the case arose and in which the investigation took place. It also indicated that the three-month time period set earlier by the Criminal Bench of the Supreme Court of Justice was very short, given the characteristics of cases of alleged forced disappearances. As a result, the President of the Criminal Bench was asked in November 2012 to extend the mandates for a longer period of time.

20. The State has further indicated that, as an outcome of the Peace Accords, the State must assure effective guarantees of the right of civilian victims and their families to receive redress for violations of their human rights and for crimes against humanity committed during the internal armed conflict. For that reason, Government Order No. 258-2003 of May 7, 2003 created the National Redress Program and the National Redress Commission as the agency responsible for directing, coordinating and executing that program. Along these lines, given the characteristics of forced disappearances and the era when they were committed, the State offered to bring the present case to the National Redress Commission and, under the law, provide the families with appropriate relief.

21. In conclusion, the State alleges that first, the present case shows that domestic remedies were not exhausted. Secondly, it maintains that given the subject matter and the timing of the events, the matter should be dealt with by the National Redress Commission. Third, it argues that the case is in the investigation stage via a special inquiry procedure. It also claims that the international protection of rights “reinforces or is complementary to that provided by the domestic law of the American States”, and in this case, the State has mechanisms to deliver adequate reparation.

IV. ANALYSIS OF ADMISSIBILITY

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

22. The petitioners are authorized by Article 44 of the American Convention to file petitions before the IACHR. The petition names as the alleged victims individual persons in respect of whom the State of Guatemala has pledged to respect and guarantee the rights set forth in the American Convention. For the State's part, the Commission notes that Guatemala has been a State Party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification. The Commission is therefore competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to consider the petition, since it alleges violations of rights protected under the American Convention said to have occurred in the territory of Guatemala, a State Party to the treaty.

23. The Commission is competent *ratione temporis* since the obligation to respect and ensure the rights protected in the American Convention was in force for the State as of the date on which the events alleged in the petition took place. The Commission is competent *ratione materiae* because the petition adduces possible violations of human rights protected by the American Convention and by the Inter-American Convention on Forced Disappearance of Persons, the instrument of ratification of which was deposited by Guatemala on February 25, 2000.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

24. Article 46.1.a of the American Convention provides that, in order for a petition lodged with the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable the national authorities to learn of the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is taken up by an international body. Article 46.2 of the Convention sets out three possibilities where the rule on exhausting domestic remedies would not apply: a) the domestic legislation of the state concerned 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; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These possibilities refer not merely to the formal existence of such remedies, but also that they be appropriate and effective.

25. The precedents established by the Commission indicate that whenever a crime has been committed that must be prosecuted by the State on its own initiative, the State has the obligation to promote and move forward with a criminal case, and that a criminal case is the appropriate means of shedding light on the facts, determining those responsible and fixing the corresponding criminal penalties, as well as providing for other possible forms of relief. It is through such criminal proceedings that domestic remedies are exhausted appropriately and effectively. The acts alleged by the petitioners in connection with the alleged forced disappearances of Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas and Nicolás Mateo would, under domestic law, be considered criminal conduct that the State must, on its own initiative, investigate and prosecute.

26. As to the exhausting of domestic remedies, the petitioners allege that since April 1989, the State of Guatemala has not met its obligation to carry out an investigation of the facts of the present case in an objective, serious and responsible manner. They further argue that there was an unwarranted delay in the decision on the special inquiry procedure.

27. The information presented by the parties indicates that the State of Guatemala took cognizance of the alleged forced disappearance of Messrs. Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas and Nicolás Mateo on April 4 and 10, 1989 when the petitions for habeas corpus were presented. Subsequently, on December 6, 2005, another habeas corpus petition was filed on behalf of the four alleged victims; it was denied on February 27, 2006.

28. The information in the file indicates that on October 23, 2006, the Criminal Bench of the Supreme Court of Justice decided in favor of the special inquiry procedure, and instructed the Prosecutor for Human Rights to carry out the inquiry into the disappearance of Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas and Nicolás Mateo. That information indicates that more than twenty-four years after the alleged forced disappearances and more than seven years after the special inquiry began, the procedure has been extended time and again, and is still awaiting an outcome.

29. In its ruling on the merits of the case, the Commission will examine whether the Guatemalan State provided the families of the alleged victims with a remedy and due guarantees *vis-à-vis* the obligations deriving from Articles 8 and 25 of the American Convention. At the present stage of the proceedings, however, and without prejudging the merits of the matter, the IACHR considers that the points made in the petition—the passing of more than twenty-four years since the alleged forced disappearances of Macario Pú Chivalán, Luis Ruiz Luis, Agapito Pérez Lucas and Nicolás Mateo, no determination as to their whereabouts, and no final decision establishing what occurred and no punishment of those responsible—are sufficient to conclude that in this matter, the exception to the exhaustion of domestic remedies applies, in the sense that there was an unwarranted delay in the terms of Article 46.2.c of the American Convention.

30. It only remains to note that the invocation of exceptions to the rule on exhausting domestic remedies as provided in Article 46.2 of the Convention is closely linked to a determination of possible violations of certain rights set out therein, such as the right of access to the justice system. However, in view of its nature and purpose, the contents of Article 46.2 are independent of the substantive rules of the Convention. Therefore, a determination as to whether the exceptions to the rule on exhaustion of domestic remedies provided in that rule apply to the case in question should be made prior to and separate from the examination of the merits of the matter, since it relies on a different standard than that used to determine a violation of Articles 8 and 25 of the Convention. We note that the causes and effects that prevented domestic remedies from being exhausted in this case will be examined, as pertinent, in the report that the Commission will make on the merits of the dispute in order to determine whether in fact there were violations of the Convention.

2. Time for filing the petition

31. Article 46.b of the American Convention provides that in order for the Commission to admit a petition, the petition or communication must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the case under analysis, the IACHR has found that the exceptions to exhaustion of domestic remedies are

applicable under Article 46.2.c of the American Convention. On this issue, Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

32. In the instant case, the petition was received on June 26, 2007 while the special inquiry to investigate the events that took place regarding Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis was under way. That investigation is still open as of the date of the present report, with no indication that it has progressed beyond the initial stage. The Commission therefore considers that the petition concerning the alleged victims was presented within a reasonable period of time and that the admissibility requirement on the time period for presentation shall be deemed to have been satisfied.

3. Duplication of procedures and international *res judicata*

33. It does not appear from the file that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization. The requirements set out in Articles 46.1.c and 47.d of the Convention are therefore deemed to have been satisfied.

4. Characterization of the facts alleged

34. The Commission considers that at this stage of the proceedings, it is not appropriate to decide whether the alleged violations against the alleged victims took place or not. For purposes of admissibility, the IACHR must at this time decide only whether the facts as stated would, if proven, be characterized as violations of the American Convention, as stipulated in Article 47.b thereof, and whether the petition is "manifestly groundless" or "obviously out of order" as stated in subparagraph (c) of the same article.

35. The criterion for weighing these extremes is different from that required for a ruling on the merits of a petition. The IACHR must undertake a *prima facie* assessment and determine whether the petition gives grounds for an apparent or potential violation of a right guaranteed by the American Convention, but not establish the existence of such violation¹. At the present stage, a summary analysis will be done that does not involve prejudging or advancing an opinion on the merits. By establishing an admissibility phase and then a merits phase, the Rules of Procedure of the Inter-American Commission reflect this distinction between the assessment that the Inter-American Commission must make in order to declare a petition admissible, and that required to establish whether a violation attributable to the State has been committed².

¹ See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of "La Nación" Newspaper* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54.

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

36. Neither the American Convention nor the IACHR Rules of Procedure require the petitioners to identify in the case filed with the Commission the specific rights alleged to have been violated by the State, although the petitioners may do so. It is up to the Commission to determine in its admissibility reports, based on the jurisprudence of the system, which provision of the pertinent inter-American instruments is applicable and might have been violated if the alleged facts or events are sufficiently proven.

37. In light of the points presented, the IACHR finds that the alleged forced disappearance of Messrs. Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis, and the alleged impunity of the events could be characterized as violations of the rights set forth in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to the obligations set forth in Article 1.1 of that instrument, as well as in Articles I and IX de la IACFDP, to the prejudice of Messrs. Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis. The Commission also finds that these facts might be characterized as violations of the rights enshrined in Articles 5, 8 and 25 of the American Convention in relation to the obligations set forth in Article 1.1 thereof to the prejudice of the families of Messrs. Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis.

38. Finally, inasmuch as it has not been shown that the petitioners' allegations are groundless, or that they are out of order, the Commission concludes that the petition satisfies the requirements established in Articles 47.b and c) of the American Convention.

V. CONCLUSIONS

39. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the matter, the Inter-American Commission finds that the present case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the petition admissible in relation to the alleged violations of the rights recognized in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in accordance with the obligations established in Article 1.1 of that Convention and in Articles I and IX de la IACFDP, with respect to Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis. To further find [the petition] admissible under Articles 5, 8 and 25 of the American Convention in relation to the obligations established in Article 1.1 of the Convention to the prejudice of the families of Messrs. Agapito Pérez Lucas, Nicolás Mateo, Macario Pu Chivalán, and Luis Ruiz Luis.

2. To notify the parties of this decision.

3. To begin proceedings on the merits of the question.

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 4th day of the month of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, and Rose-Marie Belle Antoine, members of the Commission.