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**REPORT No. 357/20**  
**PETITION 1797-10**  
REPORT ON ADMISSIBILITY

JERÓNIMO MEZA HERNÁNDEZ  
MEXICO

Approved electronically by the Commission on December 2, 2020.

**Cite as:** IACHR, Report No. 357/20, Petition 1797-10. Admissibility. Jerónimo Meza Hernández.  
Mexico

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Jerónimo Meza Hernández
<b>Alleged victim:</b>	Jerónimo Meza Hernández
<b>Respondent State:</b>	México <sup>1</sup>
<b>Rights invoked:</b>	None specifically invoked

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	December 17, 2010
<b>Additional information received at the stage of initial review:</b>	January 20, 2011, October 8, 2013, October 9, 10, 2017, May 18, 2017
<b>Notification of the petition to the State:</b>	January 31, 2017
<b>State's first response:</b>	July 5, 2017
<b>Additional observations from the petitioner:</b>	January 3, 2018
<b>Additional observations from the State:</b>	August 2, 2018
<b>Notification of the possible archiving of the petition:</b>	December 30, 2016
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	January 05, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention on Human Rights (deposit of ratification instrument on March 24, 1981)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial) 21 (right to property) and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Articles 1.1 (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commission member Joel Hernández García, a Mexican national, did not take part in the discussion or the decision-making process on the instant matter.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. This petition deals principally with complaints by the alleged victim relating to (a) unlawful deprivation of property; (b) unlawful deprivation of liberty; and (c) the alleged failure of the State to adequately investigate or redress the claims of the alleged victim.

2. According to the petition, the petitioner and alleged victim is the owner of a rural property called San Francisco, that is located in the state of Chiapas, Mexico. The petition further alleges that on September 20, 1997, the property was violently invaded by a group of persons who were armed with high-powered guns, machetes, sticks and other implements. These invaders destroyed living quarters on the property as well as killed cattle, and destroyed the shelters for cattle. According to the petitioners, these invaders belonged to la *Organización Regional de Cafecultores de Ocosingo* (ORCAO).

3. On October 9 1997 - the petitioner made a criminal complaint to the prosecuting authorities (*Ministerio Público*). This led to a formal opening of an investigation - which was ultimately consigned to a judge (*Juzgado Mixto de Primera Instancia*). The judge issued an arrest warrant against the invaders, but according to the petitioner, this order was not executed. In the absence of any arrests, the petitioner claims that he was forced to take initiative where he was successful in detaining two of the alleged invaders<sup>3</sup> and hand them over to the authorities, who then initiated criminal proceedings against them (criminal case # 295/98). These detentions took place in August 2002 and January 2003. These persons were charged with the offenses of “*despojo*” (wrongful dispossession) “*robo con violencia*” (robbery with violence), and “*abigeato*” (cattle stealing). On finding out about the detention of these two persons, the rest of the group fled, and the petitioner was able to recover possession of his property. However, the petitioner alleges that in May 2003, there was a second invasion of his property (by the same group of persons) that forced him to leave. Following this invasion, the petitioner presented another criminal complaint to the prosecuting authorities, which opened another criminal investigation. However, the petitioner claims that the prosecuting authorities took no steps to advance the investigation to criminal proceedings against the persons who committed the second invasion of his property.

4. According to the petitioner, between November 21-29 2003, he was detained by a group known as *Junta de Buen Gobierno Corazon de Arco iris de la Esperanza* (“*Junta de Buen Gobierno*”).<sup>4</sup> This group was apparently aligned with the group of persons who had carried out the invasions to the petitioner’s property. Petitioner alleges that he was detained in unsanitary conditions (in a cell), and that he was subjected to threats and humiliation. Ultimately, the petitioner states that he was released on condition that (a) he paid 105,000 pesos; (b) that he sign (and file) a “*desistimiento*” (withdrawal) of the criminal proceedings (criminal case # 295/98) against the two persons already being prosecuted in respect of the first invasion (leading to their release). The petitioner acknowledges that he did not complain to the authorities about his detention by *the Junta de Buen Gobierno*, or ultimately, to the prosecuting authorities. Based on the petitioner’s withdrawal, the prosecuting authorities discontinued the criminal proceedings against the two persons. The petitioner complains that the crimes committed were prosecutable ex officio, and therefore the prosecuting authorities should have continued the prosecution. For the petitioner, the initiation of criminal complaints (about the invasion to his property) was based not only the attacks that had already taken place, but also on the fear/risk of future attacks.

5. In the absence of any investigation or criminal proceedings regarding the second invasion, the petitioner alleges that he initiated a number of judicial steps between 2004 and 2012 (mainly amparo). In 2004, the petitioner initiated an amparo which was granted, but the prosecuting authorities declined to continue with criminal investigation. The petitioner then filed an action for reconsideration, but again (in November 2006) the prosecuting authorities declined to proceed. In 2007, the petitioner filed another amparo which again did not result in any further action by the prosecuting authorities. This led to an application for

<sup>3</sup> According to the petitioner, these persons were José Moreno Hernández and Jerónimo Miranda Sánchez.

<sup>4</sup> The petitioner doesn’t give a clear description of the Junta, except to indicate that they are aligned with the invaders (and not the government). It appears that it is a non-government organization comprising persons who have various grouses about property ownership and who are inclined to take land by force. The group is located in Morelia, in the municipality of Altamirano, in the State of Chiapas, México.

reconsideration in 2008. The matter was sent to prosecuting authorities by the courts, but again there were no steps to continue the investigation/criminal proceedings. The petitioner then filed another amparo - in 2009. This led to the prosecuting authorities initiating a new criminal proceeding - (criminal case # 50/2010) on February 18, 2010. On February 24, 2010, the presiding judge refused to issue an order of arrest (against the persons who alleged conducted the 2003 invasion). The court sent the matter back to the prosecuting authorities for further investigation. In the absence of any further investigation by the prosecuting authorities, the petitioner filed another amparo in 2012 (before the *Juzgado Segundo de Distrito*). The court granted the prosecuting authorities 60 days to complete the necessary investigations. On February 11, 2013, orders of arrest were issued against the invaders. In 2015, the petitioner states that one of the defendants successfully filed an amparo against his arrest. However, on December 3, 2015, the court issued a new order of arrest against all of the defendants.

6. According to the petitioner, on February 10 2017, law enforcement agents of the State attempted to recover possession of the petitioner's property and eject the invaders- but failed to do so. As consequence, the petitioner claims that this action caused the group of invaders to become hostile which culminated in threats being made against him. The petitioner states that he reported the threats to the State but he got no response. On March 6, 2017 - the petitioner alleges he was summoned by the *Junta de Buen Gobierno* in relation to the failed attempt to eject the invaders from the petitioner's property. According to the petitioner, the encounter took place in front of 200 people, where he was forced to pay 100,000 pesos, and to sign a withdrawal regarding the criminal proceedings (50/2010). He says the withdrawal did not apply to the offense of cattle stealing, and that prosecution for this offence, at least, ought to remain in force. Petitioner says he complained about the meeting with the *Junta de Buen Gobierno* to the Centro de Derechos Humanos on March 7, 2017 and subsequently to the prosecuting authorities on April 26, 2017. The petitioner claims that he got no response to his complaints. According to the record, the prosecuting authorities discontinued the criminal proceedings (# 50/2010) on May 21, 2017, based largely on the withdrawal signed by the petitioner.

7. As with the first withdrawal, the petitioner insists that the second withdrawal was signed under duress; and further that the prosecuting authorities were obliged to continue with prosecution given that crimes were ex officio - and should be prosecuted regardless of any withdrawal tendered by petitioner. Having regard for the foregoing the petitioner contends that he is not obliged to exhaust domestic remedies, and is entitled to an exception to this requirement based on the State's failure to adequately investigate and prosecute those responsible for the invasions of his property.

8. The State contends that the petition is inadmissible mainly on the basis that the petitioner (a) failed to exhaust domestic remedies in relation to the investigations initiated in 1998 and 2003 regarding the two invasions; (b) failed to exhaust domestic remedies relating to alleged deprivation of liberty by the *Junta de Buen Gobierno*; (c) presented his petition outside of six-month deadline. The State also contends that the any adjudication of the petition by the IACHR would constitute a violation of the fourth instance formula.

9. By way of background, the State contends that it exercised due diligence in conducting investigations into both invasions, but that ultimately, it was the petitioner who put an end to the criminal proceedings that arose from both investigations. In relation to the first invasion, the State indicates that arrest warrants were issued for a number of the suspected invaders, however, the State acknowledges that it was (initially) unsuccessful in procuring the arrests of any of the suspected invaders. The State submits that in November 2000, it expanded its criminal investigation to other suspects (including José Moreno Hernández and Jerónimo Miranda Sánchez). In this regard, the State indicates that it applied for arrest warrants against these additional suspects, but was initially refused by the courts. The State indicates that it was subsequently successful in having the arrest warrants issued in May 4, 2001. However, the State was initially unable to execute the arrest warrants. Between 2002 and 2003, the State indicates that it was successful in placing detaining and placing two suspects before the criminal courts - José Moreno Hernández and Jerónimo Miranda Sánchez. The State submits that on November 28, 2003, the State received a document of "*desistimiento*" (withdrawal) from the petitioner in favor of these persons, as a result of which the State discontinued proceedings against José Moreno Hernández and Jerónimo Miranda Sánchez.

10. With regard to the petitioner's claim that he signed the withdrawal under duress, the State contends that the petitioner never informed the State that he had been detained or threatened by the Junta de Bueno Gobierno and that this group forced him to sign the withdrawal.

11. With regard to the second invasion, (in May 2003) the State submits that a preliminary criminal investigation was initiated against Antonio Pérez López, Manuel Moreno Gómez, Francisco Moreno Hernández and others - for the crimes of wrongful dispossession and cattle stealing. In May 2005, the prosecuting authorities decided that there was insufficient evidence to proceed, and opted not to initiate criminal proceedings. On July 19, 2006, the State indicates that the petitioner challenged this decision by way of *recurso de reconsideración*. This ultimately led to a decision on February 19, 2010 to initiate criminal proceedings against these aforementioned persons. On February 24, 2011, an order of arrest (for these persons) was refused by the (criminal) court because of a lack of evidence regarding the alleged crimes. The prosecuting authorities again decided against pursuing criminal proceedings. However, according to the State, the petitioner challenged this decision by amparo - which was resolved partly in favour of petitioner. In this regard, the court granted a period of 60 days for the prosecutors to complete its investigations - starting from November 9, 2012. This led to a resumption of criminal proceedings against the aforementioned persons, who were detained and placed before the court. Ultimately, however, the State contends that on May 21, 2017, the petitioner went before the criminal court having conduct of the criminal proceedings and withdrew his complaint against these defendants. Accordingly, the prosecuting authorities discontinued the criminal proceedings against these defendants.

12. The State argues that it was always open to the petitioner to challenge any delays in the criminal investigation/criminal proceedings or the discontinuation of the criminal proceedings (with respect to both invasions), by way of amparo proceedings, or by way of the remedy of "revocation" (particularly in relation to the petitioner's claims that his withdrawals were coerced). The State emphasizes that the petitioner effectively put an end to the criminal proceedings and that the prosecuting authorities do not represent the petitioner. The State contends that the petitioner's decision to withdraw together with his failure to invoke any remedies thereafter signifies that the petitioner had failed to exhaust all available remedies, and further, is not entitled to an exception to the requirement to exhaust domestic remedies. In this regard, the State refers to jurisprudence by the IACHR<sup>5</sup> where the IACHR found a petition inadmissible for failure to exhaust domestic remedies after the petitioner withdrew a complaint regarding her dismissal, after reaching an agreement with the defendants (and prior to the conclusion of amparo proceedings). The State also contends that at time of the filing of petition - the investigation (regarding second invasion) was still ongoing (2003), and that this further illustrates that domestic remedies were not exhausted by the petitioner.

13. However, the State does acknowledge that petitioner filed amparo proceedings - some of which were successful. The State refers to the amparo filed in 2009 which resulted in the prosecuting authorities being ordered to continue investigation; and that this investigation culminated in criminal case # 50/2010. The State also acknowledges that the petitioner filed an amparo in 2012 which was granted - to compel the prosecuting authorities to continue with the criminal investigations/proceedings.

14. On the matter of timeliness, the petitioner filed his petition in 2010 seven years after he was notified of the termination of the first investigation (in 2003). According to the State the petition was filed outside of the six-month deadline, and it therefore inadmissible on the ground of extemporaneity.

15. Apart from the two investigations, the State claims that on February 2, 2017, it responded to a complaint by the petitioner that a number of persons had again invaded his property. According to the State, a detachment of law enforcement agents was sent to the property on February 10, 2017, with a view to restoring possession of the property to the petitioner. The State alleges that the law enforcement officers did not find any persons at the property except for the petitioner, and that accordingly, the officers were able to restore the property to the possession of the property to the petitioner. In the circumstances, the State contends that there has been no inaction on its part in redressing the rights of the petitioner; that there is no

<sup>5</sup> IACHR, Report No. 151/17, Petition 1474-07. Inadmissibility. Felicidad Flores Solórzano. México. October 26, 2017.

basis for the petitioner to assert any prima facie violations against the State; and finally that accordingly, any adjudication of the petition would constitute a violation of the Commission's fourth instance formula.

16. In response, the petitioner insists that the State has denied him justice largely due to its delay or failure to exhaustively prosecute those responsible for invading his property. The petitioner insists that the crimes committed in respect of the invasions are ex officio, and therefore ought to have been prosecuted by the State independently of any purported withdrawals on his part. The petitioner rejects the State's contention that it successfully recovered possession of the property in 2017, and that the State's attempt to do so served only to inflame hostility by the invaders against him (the petitioner).

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

17. According to the State, the petitioner failed to exhaust domestic remedies given that at the time of the filing of the petition, criminal proceedings were still ongoing and further that the petitioner failed to invoke domestic remedies to redress his complaints relating to the invasions of his property, and the alleged delay in conducting or completing criminal investigations and/or criminal proceedings. The State emphasizes that the petitioners filed withdrawals from two sets of criminal proceedings. On the other hand, the petitioner contends that he is entitled to an exception to the requirement for exhaustion based on (a) the delay in completing domestic proceedings (amparo) and (b) failure of the State to conduct and complete full criminal investigations and criminal proceedings against the invaders to his property or (c) to take any sufficient steps to restore the property to the petitioner. .

18. The Commission notes that the petitioner did invoke various remedies (amparo) some of which have been acknowledged by the State, which have not resulted in the restoration of the petitioner's property – after more than 20 years. Under these circumstances and without prejudging the merits of the case, the Commission finds that the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention on Human Rights applies to this petition and that this was filed within a reasonable period under Article 32.2 of the IACHR Rules of Procedure.

## **VII. ANALYSIS OF COLORABLE CLAIM**

19. The Commission notes that this petition deals primarily with allegations of violation of the right to property and the failure of the State to take any or any adequate steps to redress these violations by way of due process/criminal investigations/prosecutions. The Commission also notes that the petition contains a complaint regarding the petitioner's alleged deprivation of liberty and mistreatment by a group aligned with the invaders of this property.

20. The Commission considers the fact that over 20 years have elapsed since the initial invasion of the petitioner's property, and that the petitioner has not yet regained possession of his property despite multiple attempts to do through judicial means. , lack of any conclusive judicial remedy. Based on the above considerations and the nature of the matter brought to its attention, the Commission finds that the instant petition is not manifestly groundless and that a report on the merits is required to determine if the State has fulfilled its duty redress the petitioner's rights under the terms of Articles 8 (fair trial) 21 (right to property) and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Articles 1.1 (obligation to respect rights). In relation to the petitioner's claim of deprivation of liberty and mistreatment, the Commission notes that the petitioner did not report the first incident to the the State or provide the State an opportunity to redress this complaint at a domestic level. Further, the Commissioner notes that the petitioner issued withdrawals of criminal proceedings initiated by the State. Accordingly, the Commission is unable to consider that this complaint constitutes a potential violation of any rights granted by the American Convention on Human Rights.

21. With respect to the State's allegations regarding the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in article 47 (b) of the American Convention, or if the petition is

“manifestly unfounded” or “its total inadmissibility is evident”, pursuant to subsection (c) of said article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional standards, in accordance with article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violation of the American Convention.

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 21, and 25 of the American Convention on Human Rights in relation to its Articles 1.1; and;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 2<sup>nd</sup> day of the month of December, 2020. Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President;, Esmeralda E. Arosemena Bernal de Troitiño, and Sturado Ralón Orellana, Commissioners.