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REPORT No. 131/24
PETITION 191-08
REPORT ON ADMISSIBILITY

LUIS CRUZ CHO TUT
GUATEMALA

Approved electronically by the Commission on August 29, 2024

Cite as: IACHR Report No. 131/24. Petition 191-08. Admissibility. Luis Cruz Cho Tut. Guatemala. August 29, 2024..

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Antonio Pop Ac and Luis Cruz Cho Tut
Alleged victim:	Luis Cruz Cho Tut
Respondent State:	Guatemala ¹
Rights invoked:	Articles 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights, ² in conjunction with Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	February 20, 2008
Additional information received at the stage of initial review:	March 13, 2018, June 17, 2020, ⁴ July 16, 2020, and May 4, 2021
Notification of the petition to the State:	January 20, 2023
State's first response:	May 2, 2023
Additional observations from the petitioner:	July 7, 2022
Petitioner's response to the notification regarding the possible archiving of the petition:	July 20, 2022

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on May 25, 1978)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 7 (personal liberty), 8 (right to a fair trial), 11 (right to privacy), 23 (right to participate in government), 24 (right to equal protection), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on April 29, 2008
Timeliness of the petition:	Yes, on February 20, 2008

¹ In keeping with Article 17.2.a of the Commission's Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the deliberations or in the decision in this case.

² Hereinafter "the American Convention" or "the Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ In this communication, the petitioner requests that its petition be reactivated and that it continues to be processed by the IACHR.

V. POSITIONS OF THE PARTIES

1. The petition states that Luis Cruz Cho Tut (or “the alleged victim”) was accused of and arbitrarily detained for the murder of a member of Congress, and that during the investigations his right to a fair trial was violated due to the absence of legal grounds and evidence to charge him, as well as the excessive prolongation of his pretrial detention. He was later found not guilty. These acts against him are alleged to have occurred in a context of persecution of Indigenous leaders, given that he belongs to the Q’eqchi’ Indigenous people and was a candidate for a political party representing his community.

Key facts alleged⁵

2. Luis Cruz Cho Tut is an Indigenous Q’eqchi’ leader from the Community of San Juan Chamelco, Department of Alta Verapaz, and an active member of the National Unity of Hope Party (*Partido Unidad Nacional de la Esperanza*), who at the time of the alleged facts was participating in the party’s primaries as a candidate for congressional office. The petition does not specify whether he was running as a direct candidate or as an alternate, but Mr. Cruz Cho Tut was part of a faction within the party led by Mario Ronaldo Pivaral Montenegro, a member of the Congress of the Republic at the time.

3. On April 6, 2006, while traveling by bus to Guatemala City with other party members to attend a political event, Mr. Cruz Cho Tut received a call informing him that Congressman Mario Ronaldo Pivaral Montenegro had been assassinated. In light of the news, they continued their trip to the capital, now with the purpose of attending the memorial tributes.

4. The following day, as part of the homicide investigation, the Prosecutor’s Office for Crimes against the Person (*Fiscalía de Sección de Delitos Contra la Vida e Integridad de las Personas*) interviewed a witness who provided a physical description of the alleged perpetrator of the crime. With this description, technicians from the 32nd Police Station of the Municipality of Cuilapa, department of Santa Rosa, produced a computer-generated composite image of the face of the individual who fired the shots. On April 10, 2006, another witness, a private security police officer, gave a statement at the National Unity of Hope Party office describing the alleged perpetrator of the murder, for which a second computer-generated composite was issued. This person also said that the perpetrator shot the congressman with a firearm and fled on a motorcycle.

5. The Public Prosecution Service (*Ministerio Público*) subsequently received an anonymous tip through the aforementioned prosecutor’s office accusing the alleged victim of the congressman’s murder. On August 29, 2006, in file MP001/2006/26466 and Criminal Case 4862-2006, the prosecutor’s office requested that the Tenth Trial Court for Criminal Matters, Drug Trafficking, and Crimes against the Environment of the Department of Guatemala (hereinafter “Tenth Trial Court”) order his arrest for the alleged crime of murder. However, the petitioner claims that Mr. Cruz Cho Tut was arrested by members of the National Civil Police on May 13, 2006.⁶

6. On October 11, 2006, the court ordered the alleged victim to stand trial in a public, oral proceeding, in view of the seriousness of the crime and “*especialmente dada la cuenta de un testigo que categóricamente apunta al acusado como la persona que disparó los tiros [...] el día de los hechos, lo que hace probable que él estuvo involucrado [...] Como para las contradicciones evidenciales, es por esta misma razón que el juicio es necesario, en orden a mejor determinar los hechos para determinar si Luis Cruz Cho Tut estuvo involucrado.*”⁷

⁵ To prepare this first subsection establishing the basic facts of the petition, the Commission has had to analyze jointly the briefs and annexes of both parties, since the information submitted by each party is largely insufficient in terms of specific factual data.

⁶ The petitioner corroborates the above with news reports from May 14, 2006, showing that the alleged victim had been arrested the previous day (“*Policía captura en Cobán a uno de los presuntos asesinos [...]*” in *El Periódico Guatemala*, published on May 14, 2006). The Commission found the following news article: “*Arresto: Capturan a sospechoso del asesinato de diputado,*” published in *La Prensa* on May 15, 2006. Retrieved June 14, 2024, from: <https://www.laprensani.com/2006/05/15/internacionales/1265794-breves-1908>.

⁷ From the decision on the appeal of the *amparo* [petition for a constitutional remedy] judgment issued by the Constitutional Court in case file 835-2007 of August 1, 2007, submitted by the parties.

7. Defense counsel for the alleged victim filed a motion in the Tenth Trial Court alleging procedural defect. However, the Court denied the motion on October 31, 2006, on the grounds that “*no procedural defect was committed in admitting the charge brought by the Public Prosecution Service, first of all because the mechanisms for correction, rectification, and substitution are designed to amend procedural errors and not substantive errors, as in this case.*” Counsel filed a motion for reconsideration of this ruling—without mentioning the date—with the same judge, but on November 21, 2006, the judge denied the motion on the same grounds.

8. Counsel for the alleged victim subsequently filed a writ of *amparo* [petition for a constitutional remedy] with the Fourth Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking, and Crimes against the Environment, challenging the Tenth Trial Court’s decision of November 21, 2006. The Fourth Chamber ruled on February 16, 2007, that the court should have stated its reasons for finding that no procedural defect existed and ordered the court to issue the appropriate ruling to admit the plaintiff’s motion for reconsideration.

9. The Public Prosecution Service appealed this decision to the Constitutional Court, which, in a judgment of August 1, 2007 (file 835-2007), denied the appeal. The Constitutional Court noted that “*the authority did not clearly and precisely state the basis for its decision, which violates the right to a defense and due process.*” It also stated that the Tenth Trial Court offered no reasoning of its own, limiting itself to affirming the decision of October 11, 2006, in which it had ordered Mr. Cruz Cho Tut to stand trial.

10. On August 23, 2007, the Tenth Trial Court issued a new decision denying the claim of procedural defect and stating that “*the allegation of procedural defect [...] is inadmissible because it is a purely judicial decision, concerning content or substance, which cannot be challenged through this mechanism.*” In view of this position, on August 29, 2007, the Fourth Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking, and Crimes against the Environment rendered a decision noting that the Tenth Trial Court had failed to comply with the order and instructing it to issue a new reasoned decision.

11. The Tenth Trial Court, on September 3, 2007, rendered a new decision, in which it finally granted Mr. Cruz Cho Tut’s motion for reconsideration. However, the petitioner considered that the court did not address the issue of procedural defect, as ordered by the Fourth Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking, and Crimes against the Environment, and therefore filed a complaint against the Fourth Chamber with the Constitutional Court (file 2981-2007). On October 18, 2007, the Constitutional Court noted that the Fourth Chamber had failed to verify the proper enforcement of the judgment issued by the Constitutional Court on August 1, 2007, “*since the decision issued on September 3, 2007, did not expressly rule on the admissibility of the plaintiff’s timely claim of procedural defect*”; and ordered it to verify compliance with the judgment within three days.

12. After this decision, on December 20, 2007, the Tenth Trial Court filed a brief with the Third Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking, and Crimes against the Environment (since the fourth chamber was in recess), alleging that it had already complied with the order of the Constitutional Court through the rulings of August 23, 2007, and September 3, 2007. The petitioner reports that on January 10, 2008, this chamber found that the Tenth Trial Court had ruled on the admissibility of the procedural defect claim and concluded that the matter was settled.

13. At the same time, on December 18, 2007, the Criminal Chamber of the Supreme Court of Justice, at the request of the First Trial Court for Criminal Matters, Drug Trafficking, and Crimes against the Environment of the Department of Guatemala, issued a decision authorizing a two-month extension of the alleged victim’s detention so that the trial could be conducted, and the first instance proceedings could be completed.

14. In Judgment C-4862-2006, OF 3 of April 29, 2008, the First Trial Court for Criminal Matters, Drug Trafficking, and Crimes against the Environment of the Department of Guatemala acquitted Luis Cruz Cho Tut, finding that the Public Prosecution Service had not proved its case, since: “*in the absence of legal certainty, judges must issue a judgment of acquittal as a matter of law.*”

15. In this judgment of acquittal, the court found that the ballistic expert's report and statement lacked evidentiary value, since the Public Prosecution Service did not investigate the ballistic fingerprint of the murder weapon at the Department of Arms and Ammunition Control in order to perform a scientific comparison that would show the weapon that matched the bullets found in the body of the deceased. It also noted that no attempt was made to locate the firearm as required in homicide cases. The court also did not assign evidentiary value to the reports containing the computer-generated composite images, since they did not reflect the physical characteristics of Luis Cruz Cho Tut. It excluded the report of the anonymous caller who allegedly identified him, because the person's identity was never known. Finally, the court did not find the searches carried out by the Public Prosecution Service or the evidence seized by it to be conclusive, because it did not ask who the people who lived in the searched homes were, nor to whom the clothes or cell phones belonged; it therefore concluded that *"the Public Prosecution Service failed in this case to investigate and prosecute effectively. There are shortcomings in the investigation that the court cannot make up for, which casts doubt on the factual record of this tragic event."*

Position of the petitioner

16. Mr. Cruz Cho Tut claims that the investigation and criminal proceedings against him were marred by procedural errors that caused him to be held in pretrial detention for two years, from May 13, 2006, until his acquittal on April 29, 2008, during which time he was detained in the Men's Detention Center of Zone 18 in the department of Guatemala.⁸

17. He states that the arrest warrant was based solely on the testimony of a single anonymous witness and the identification of *computer-generated composite images* made from the accounts of two witnesses, and that the Public Prosecution Service discarded two other *computer-generated composite images*, made with input from other witnesses, showing images of persons who bore no resemblance to him. He argues that the identification process was illegal since there was *"a clear intention to incriminate [him]"*, given that there were three photographs of him and two of his brother in a set of 17 photos. He also claims that a National Police officer made a false statement against him, singling him out for: *"[his] 'Indigenous features,' or 'Indigenous race,' which was enough for them to prosecute [him], a situation that also violated [his] status as a Q'eqchi Indigenous person."* Likewise, the call received by the Public Prosecution Service in 2006, in which he was accused of being the direct perpetrator of the crime, should have been excluded from evidence because the caller never identified himself and remained anonymous, in violation of Article 297 of the Code of Criminal Procedure in Guatemala.⁹ He infers that this fact is relevant because the Public Prosecution Service made him the subject of investigation on the basis of this anonymous call. In addition, he states that at the initial hearing of the trial on October 11, 2006, no evidentiary value was given to the exculpatory evidence; for example, he presented the testimonies of 25 people who confirmed that he was in another place at the time of the events.

18. He argues that there were unnecessary delays in the case, caused, for example, by the Tenth Trial Court's failure to comply with the Constitutional Court's ruling of August 1, 2007. Although the court issued rulings on August 23, 2007, and September 3, 2007, and admitted the motion for reconsideration filed by the defense, it never ruled on the merits of the claim of procedural defect. This not only delayed the proceedings, but also constituted a violation of the alleged victim's right to defense, since the Tenth Trial Court twice evaded its obligation to issue a clear and well-founded decision.

19. Regarding his right to personal liberty, Mr. Cruz Cho Tut stresses that the time he spent in pretrial detention was excessive under the Code of Criminal Procedure,¹⁰ because he was held in pretrial

⁸ The exact date of Luis Cruz Cho Tut's release is not clear from the parties' submissions.

⁹ Article 297. Complaints. Any person shall report, in writing or orally, to the police, the Public Prosecution Service or the court, the knowledge he or she has of the commission of a public action crime. The complainant must be identified. The request, complaint, or authorization will be received in cases of crimes that so require.

¹⁰ The petitioner cites Article 268 of the Guatemalan Code of Criminal Procedure: Article 268. Cessation of Imprisonment. The deprivation of liberty shall end:

[continúa...]

custody for two years. Furthermore, although he was acquitted, he considers that his detention and prosecution did not arise from a simple judicial error, but rather from a history of persecution of Indigenous leaders by State officials. In communications to this Commission in 2020 and 2021, Mr. Cruz Cho Tut stated that the violations committed during his trial caused him to have financial problems because he had to pay an illegal weekly fee in prison, which the detention center demanded in order for him not to be killed.

20. The petitioner attached a document from the Office of the United Nations High Commissioner for Human Rights regarding the activities of her office in Guatemala in 2008, which states the following about the alleged victim's situation:

During 2008, over half of all persons deprived of their liberty were in preventive detention, and often were subjected to undue delays. The case of Luis Cruz Cho Tut, who was charged with murdering [...], and detained (despite the lack of legal basis and evidence), arbitrarily deprived of his liberty for more than two years and finally declared innocent, is an example. The application of certain rules which exclude the use of non-custodial measures, and Sentencing Tribunals' powers to retain in custody persons who have been acquitted by Court of First Instance, contribute to the problem.¹¹

21. The alleged victim was "*convicted in the court of public opinion*" because the media published the computer-generated composite image made with the description provided by the first witness, identifying him by name; furthermore, despite his acquittal, he has not been able to get a job as a rural elementary school teacher, so he is experiencing "*extreme poverty*." He also maintains that the abuses perpetrated against him were due to the fact that he is an Indigenous person with limited financial resources, and claims that his political aspirations were cut short.

Position of the Guatemalan State

22. The State contends that the petition does not meet the admissibility requirements of the American Convention and the Commission's Rules of Procedure, for the following reasons: (i) lack of a colorable claim and violation of the "fourth instance" doctrine of the IACHR; and (ii) non-exhaustion of domestic remedies.

23. Regarding the lack of a colorable claim, the State asserts that the petitioner's narrative does not state facts constituting violations of the rights enshrined in the American Convention. It affirms that neither Mr. Cruz Cho Tut's integrity nor his right to a defense and the presumption of innocence were violated; and dismisses the claim that his criminal prosecution constitutes an alleged persecution for being an indigenous leader. It affirms that the national courts acted in strict adherence to the law and the legislation in force. It argues that if the Inter-American Commission admits the petition, it will be acting as a fourth instance, since the alleged victim's procedural claims were properly addressed by the domestic courts.

1) When new evidence shows that the reasons for the measure no longer exist or that it should be substituted by another measure.

2) When its duration exceeds or is equivalent to the expected sentence, even considering the possible application of penal rules related to the suspension or remission of the sentence or early release.

3) When its duration exceeds one year; but if a conviction has been handed down pending appeal, detention may last three additional months.

The chambers of the Court of Appeals of the Republic, in cases brought before them at the request of magistrate judges, lower court judges or trial courts, or the Public Prosecution Service, shall hear and, if necessary, authorize as many times as needed, the extension of the pretrial detention periods established in the Code, establishing the term of the extension granted. In no proceeding under the jurisdiction of the magistrate courts may the extension referred to in this article be granted more than twice. In proceedings in which a conviction has been handed down, pretrial detention may be extended during the processing and adjudication of the special appeal. The Supreme Court of Justice, in cases that come before it *sua sponte* or at the request of the Chambers of the Court of Appeals or the Public Prosecution Service, may authorize, in cases within its jurisdiction, that the above terms be extended as many times as necessary, establishing the specific length of the extensions. In this case, it may specify measures to expedite the proceedings and will be in charge of reviewing the detention.

¹¹ United Nations General Assembly, Human Rights Council, Tenth Session, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala in 2008. A/HRC/10/31/Add.1. 28 February 2009, p. 11, para. 52.

24. With regard to pretrial detention, the State explains that it was warranted under domestic law, as according to Article 264 of the Code of Criminal Procedure, “*none of the alternative measures may be granted [...] in proceedings [...] for the crimes of intentional homicide, murder, parricide, etc. [...].*” This applied to the offense with which Luis Cruz Cho Tut was charged. Furthermore, on December 18, 2007, an extension requested by the Tenth Trial Court and approved by the Supreme Court of Justice was issued for the purpose of conducting the trial and finalizing the first instance proceedings.

25. In addition, with respect to the failure to exhaust domestic remedies, the State claims that the petitioner never initiated any administrative disciplinary proceeding before the Disciplinary Unit of the Human Resources System of the Judicial Branch of the Republic of Guatemala in order to determine the administrative responsibility of the judge who had failed to comply with orders or judgments. Thus, the State asserts that a suitable disciplinary remedy exists for situations such as the alleged victim’s, and that he should have filed a complaint against the Judge of the Tenth Trial Court for allegedly refusing to comply with the rulings issued by the Fourth Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking, and Crimes against the Environment and the Constitutional Court. The State argues that it cannot be held responsible for the alleged victim’s failure to file this appeal.

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

26. The petitioner alleges that the investigations and criminal proceedings against Luis Cruz Cho Tut fundamentally violated his rights to a fair trial, to personal liberty, and to judicial protection, due to the clear lack of evidence against him; the delay in the proceedings; negligent and arbitrary acts during the investigations; and the fact that he was subjected to a mandatory pretrial detention measure because of the offense type, which lasted for two years.

27. In this regard, the alleged victim’s defense challenged the procedural defect with several appeals aimed at remedying the violations arising from the criminal investigation. They filed an appeal on the grounds of procedural defect that was denied by the Tenth Trial Court on October 31, 2006; they then filed a motion for reconsideration that was denied by the same court on November 21, 2006; followed by a writ of *amparo* in the Fourth Chamber of the Court of Appeals, which was granted in February 2007. These challenges, appropriate to the procedural circumstances of the case, if successful, would also have had the effect of freeing the defendant. However, the case concluded on April 29, 2008, at the trial stage, when he was acquitted by the First Criminal Trial Court.

28. In this regard, and given that the State does not question the exhaustion of domestic legal remedies or the deadline for filing the petition with respect to the criminal proceeding, the Commission concludes that this case meets the requirement set forth in Article 46.1(a) of the American Convention. In addition, since it received the petition on February 20, 2008, the Commission also considers that it meets the filing deadline specified in Article 46.1(b) of the Convention.

29. Finally, with respect to the State’s assertion that the alleged victim failed to exhaust domestic remedies because he did not initiate an administrative disciplinary proceeding with the Disciplinary Unit of the Human Resources System of the Judicial Branch in order to determine the administrative responsibility of the judge who had failed to comply with orders or judgments, this Commission finds that this was not an appropriate remedy because it did not have the effect of challenging the irregularities in the criminal proceedings or of securing Mr. Cruz Cho Tut’s release.

VII. ANALYSIS OF COLORABLE CLAIM

30. For purposes of admissibility, the Commission must decide whether the alleged facts could constitute a violation of rights, as stipulated in Article 47(b) of the American Convention; or whether the petition is manifestly groundless or out of order pursuant to subparagraph (c) of that article. The standard for assessing these requirements is different from the one used to judge the merits of the petition. Within the framework of its mandate, the Commission is also competent to declare a petition admissible when it concerns

domestic proceedings that may violate human rights guaranteed by the American Convention. According to the above provisions of the Convention, and consistent with Article 34 of the Commission's Rules of Procedure,¹² the admissibility analysis focuses on verifying such requirements, which refer to elements that, if true, could constitute *prima facie* violations of the American Convention.

31. This Commission observes that the allegations presented by the petitioner regarding irregularities in the criminal proceedings against Mr. Cruz Cho Tut are not manifestly groundless. Thus, for example, it should be taken into account that, in addition to having been raised by the petitioner through very specific arguments and evidence, these allegations were also considered by the First Trial Court for Criminal Matters, Drug Trafficking, and Crimes against the Environment of the Department of Guatemala, in Judgment C-4862-2006, OF 3, of April 29, 2008, acquitting Luis Cruz Cho Tut. It has also been established that the alleged victim was subjected to mandatory pretrial detention based on the type of offense with which he was charged rather than as a result of an assessment of proportionality and necessity in his particular case. A police officer also presented him to the media in connection with the congressman's murder, possibly violating his right to the presumption of innocence and the protection of his honor and dignity. The petitioner further argues that the facts described are part of a systematic violation committed by agents of the State against Indigenous politicians and leaders.

32. In light of the foregoing, the Commission concludes that these facts warrant further analysis at the merits stage, since *prima facie* they could constitute violations of the rights established in Articles 7 (personal liberty), 8 (right to a fair trial), 11 (right to privacy), 23 (right to participate in government), 24 (right to equal protection), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof, to the detriment of Mr. Cruz Cho Tut, as described in this report.

33. Lastly, and to the extent that the Commission has the relevant information at the merits stage of this case, it will analyze the allegations that the alleged victim was accused because he is an Indigenous person, noting the obligation that States have under international law in general, and under inter-American law specifically, to provide special protection to Indigenous peoples, so they can exercise their rights fully and on an equal footing with the rest of the population. It is essential for States to provide effective protection that takes into account the specific characteristics of Indigenous peoples, as well as their situation of special vulnerability, their customary law, values, practices, and customs.¹³

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, 11, 23, 24, and 25 of the American Convention in conjunction with Article 1.1 thereof.

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 29th day of the month of August, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.

¹² Article 34 of the Rules of Procedure of the IACHR provides as follows: The Commission shall declare any petition or case inadmissible when: (a) it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; (b) the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or (c) supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

¹³ IACHR, Report No. 47/23, Petition 1880-11, Admissibility, Members of the Mapuche Community, Chile, April 18, 2023, para. 14.