

OEA/Ser.L/V/II.
Doc. 170
2 July 2020
Original: Spanish

REPORT No. 160/20
PETITION 524-10
REPORT ON ADMISSIBILITY

TANIMBU GUIRAENDY ESTREMADOIRO QUIROZ
BOLIVIA

Approved electronically by the Commission on July 2, 2020.

Cite as: IACHR, Report No. 160/20. Petition 524-10. Admissibility. Tanimbu Guiraendy Estremadoiro Quiroz. Bolivia. July 2, 2020.

I. INFORMATION ABOUT THE PETITION

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| Petitioner | <i>Centro de Estudios Jurídicos e Investigación Social – CEJIS</i> |
| Alleged victim | Tanimbu Guiraendy Estremadoiro Quiroz |
| Respondent State | Bolivia |
| Rights invoked | Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 15 (assembly), 21 (property), and 22 (movement and residence) of the American Convention on Human Rights ¹ |

II. PROCEEDINGS BEFORE THE IACHR²

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| Date of filing | April 12, 2010 |
| Notification of the petition | April 21, 2017 |
| State's first response | August 31, 2017 |
| Additional observations from the petitioner | April 4, 2018 |
| Additional observations from the State | July 1, 2019 |

III. COMPETENCE

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| <i>Ratione personae</i> | Yes |
| <i>Ratione loci</i> | Yes |
| <i>Ratione temporis</i> | Yes |
| <i>Ratione materiae</i> | Yes, American Convention (instrument of ratification deposited on July 19, 1979) |

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

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| Duplication of procedures and international <i>res judicata</i> | No |
| Rights declared admissible | Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 21 (property), 22 (movement and residence), and 25 (judicial protection) of the American Convention |
| Exhaustion or exception to the exhaustion of remedies | Yes, the exception set forth in Article 46.2.b of the American Convention is applicable |
| Timeliness of the petition | Yes, in the terms of Section VI |

V. ALLEGED FACTS

1. The petitioner invokes Bolivia's international responsibility for violations of the rights to personal integrity, personal liberty, freedom of expression, freedom of movement, fair trial and judicial protection of indigenous journalist Tanimbu Guiraendy Estremadoiro Quiroz (hereinafter "Ms. Estremadoiro" or "the alleged victim"). These violations took place when an angry mob -in which State officials allegedly participated- forcibly retained the alleged victim, took her belongings and mistreated her. These incidents allegedly occurred between April 13 and 17, 2008. It is also claimed that the State has failed to duly investigate and punish these actions.

2. The petition explains that during the process of legalization of the ancestral indigenous territories of the Alto Parapetí region, on April 13, 2008, a brigade of government officials and a team of journalists, including Ms. Estremadoiro, traveled to the Itacutía community, in the department of Santa Cruz, to carry out research and socialization work on the territorial legalization process. Around 6:30 p.m. on that April 13th, in the township of Cuevo, an angry mob attacked the vehicles that were transporting the delegation. Some of these were able to escape, but the vehicle where Ms. Estremadoiro was traveling in did not manage to flee and was captured by a group of people, which allegedly included officials of the Cuevo mayoralty, headed by the mayor and the president of the local civic committee. Stones were thrown at Ms. Estremadoiro's vehicle,

¹ Hereinafter "American Convention" or "Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

and she herself received some of the blows upon her body. She was then violently retained, insulted, threatened with being raped and burned alive, and pulled by her hair to the main road. Next, she was tied hand and foot to a post and savagely beaten for “betraying her people.” Allegedly, the assailants took Ms. Estremadoiro’s belongings, including her identity card, personal items, working equipment and clothes, and distributed these among themselves.

3. That night, the alleged victim was driven in a van around private homes, Cuevo’s city hall, and the Cuevo Hospital. She was allegedly subjected to constant threats of death and bodily injury, attempted sexual assault, and interrogations about the delegation that had come with her and the purposes of their work in the area. Next day, around midday, Ms. Estremadoiro was rescued by officers of the “Bullaín” Military Battalion in Cuevo, military base where she was taken, and where she received medical first aid. However, that military base was soon surrounded by the same persons who had attacked her the day before, who prevented an ambulance from entering the base, ambulance that was to take her to the town of Camiri to receive adequate medical assistance. Given this blockade, it was not until April 16, around midday, that the alleged victim was able to leave the military base, disguised in military clothing, along with other people who were part of the convoy attacked three days before. Finally, they were transported to the town of Camiri, where they were received at a military barracks, remaining there for safety reasons until the next day, when the authorities thought it prudent to transport them to the city of Santa Cruz in order for them to receive adequate medical assistance.

4. The petitioner indicates that given these incidents, Ms. Estremadoiro filed a criminal complaint with the Camiri Public Prosecutor’s Office on April 29, 2008. However, on October 9, 2008, the prosecutor in charge of the case rejected her complaint, in the petitioner’s view without providing a legal justification for that resolution. On December 3, this decision was referred to the Santa Cruz District Prosecutor for review; at the same time, it was appealed by the petitioner. On December 24, 2008, the Santa Cruz District Public Prosecutor confirmed the dismissal. Petitioner claims that, by a memorandum dated May 5, 2009, the District Public Prosecutor instructed the Camiri Public Prosecutor to reopen the investigation. On October 8, 2009, Ms. Estremadoiro submitted a request for information on the status of the procedure, in which she invoked that memorandum and requested a reopening of the investigation. However, by an official letter dated October 12, 2009, the Camiri Public Prosecutor’s Office denied her request on the grounds that, since the instruction in the memorandum had been addressed to the previous prosecutor, a decision to reopen the case was not in line.

5. The petitioner claims, *inter alia*, that (i) during that criminal investigation, the witnesses whose testimony was requested in the complaint were not summoned to declare, even though their statements were of critical importance; (ii) between the initiation and closure of the investigation, the prosecutor in charge was replaced seven times for various reasons, including conflicts of interest because of family relations with the defendants, removal from office, absenteeism, or dismissal from the investigation for undisclosed motives; and (iii) the investigation was closed solely based on a police report claiming that a lack of coordination with the defense counsel had prevented some notifications from being served.

6. In sum, the petitioner claims that (a) Ms. Estremadoiro was a victim of torture, because the physical and psychological attacks she suffered were deliberately inflicted upon her for the purpose of making her suffer; (b) her right to personal liberty was violated, because for several days she was *de facto* retained in an illegal and arbitrary manner; (c) her freedom of movement was violated because she was violently ambushed and retained on the road she was traveling, as well as her right to private property, since her belongings were unjustifiably taken by the persons who retained and assaulted the caravan; (d) her rights to a fair trial and to judicial protection were also violated, because of the above-mentioned irregularities in the criminal investigation that was initiated following the alleged victim’s complaint, and ultimately because of the alleged impunity in which these incidents remain; and (e) her right to freedom of expression was curtailed, because in her capacity as a journalist she had been heading to the indigenous ancestral territory of Alto Parapetí to make a documentary about the situation of slavery of the captive Guaraní families of that region. In the petitioner’s view, these rights violations are attributable to the State of Bolivia, insofar as they were allegedly perpetrated by its agents: “municipal officers, military officials and public prosecutors, as intellectual

and material authors, instigators, accomplices and accessories, were responsible for the illegal detention and subjection to torture of Tanimbu Guiraendy Estremadoiro Quiroz.”

7. The State, in its response, begins by contesting the claim of state officials' alleged participation in the retention and mistreatment of Ms. Estremadoiro, arguing that these acts were committed solely by private individuals. The events would therefore be criminal offences committed by private parties, which may have taken place, but do not give rise to international responsibility for Bolivia. For this reason, the State argues that the crime of torture was not configured, because this criminal description requires a qualified perpetrator (a public official) and therefore that crime cannot be committed by private individuals. The State also claims that freedom of expression was not violated, because those who hampered Ms. Estremadoiro's journalistic work were private individuals, and the State in fact intervened to rescue her and allow the free exercise of her work as a journalist – a right which the State had moreover promoted by including her in an official brigade in the first place. The State further contends that for these same reasons, it did not violate her freedom of movement or her right to private property, as claimed in the petition. The State also asserts that it fulfilled its duty to guarantee Ms. Estremadoiro's rights, because it was military agents who in fact rescued her from her private captors, transported her to Camiri, and safeguarded her there at a military base until she could safely be taken to Santa Cruz.

8. On the other hand, the State holds that in the course of the criminal investigation initiated about those incidents, all of the petitioner's procedural rights were respected. As for the reasons that led to the closure of the investigation on October 9, 2008, the State points out said closure was decided *“due to the lapse of the six-month period established for the preliminary stage (...) [and] the insufficiency of the evidence to support an accusation, in strict application of the principles of objectivity and favorability that limit the actions of the Public Prosecutor's Office”*, as well as in application of the principle of presumption of innocence to those being investigated. This resolution was duly notified to the parties and presented to the Due Process Guarantees Controlling Judge. Following an objection filed by the petitioner on December 3, and in application of the relevant rules of criminal procedure, after its communication to said Controlling Judge, the Santa Cruz District Public Prosecutor ratified the decision to close the investigation on December 24, 2008. Starting on that moment, the six-month period for submitting a constitutional appeal against the District Public Prosecutor's decision, or the one-year period for requesting the reopening of the criminal proceeding upon provision of new evidence, began to run. The State claims that the petitioner did not make use of either of these legal alternatives that were available to her.

9. The State indicates that on March 9, 2010, the prosecutor attached to this case sent the district prosecutor's decision confirming the closure of the investigation to the Due Process Guarantees Controlling Judge; and that taking this closure resolution into account, the Second Investigating Judge of Camiri ordered the closure of the case and sent it to the archive. In this line, the State further holds that the alleged memorandum of the Santa Cruz District Prosecutor of May 5, 2009, does not exist; and that, in any case, such a memorandum would not affect the fact that the resolution to close the investigation became final on December 24, 2008, for which reason the State considers that the petition was not presented to the IACHR in a timely manner. The State also asserts that the decisions to replace the prosecutors responsible for the investigation were all based on the requirements of public service *“and in accordance with the principle of unity that governs the Public Prosecutor's Office; this means that prosecutors fully represent it so that no investigation will be suspended when a prosecutor is absent.”*

10. In its response to the petitioner's additional observations, the State argues that domestic remedies have not been exhausted with regard to Ms. Estremadoiro's freedom of expression, insofar as she has not filed any criminal complaint alleging the crime of attack against her freedom to work, which may also encompass the restriction on her journalistic work on the situation of the Guaraní people. The State also claims, with regard to her right to property, that the petitioner did not comply with the burden of identifying the items stolen in detail, and proving both their existence and her ownership of them; at the same time, the State argues that she abstained from properly exhausting the remedies in the domestic criminal jurisdiction regarding the purported theft, for she did not submit enough evidence when she filed the complaint or during the investigation.

11. Finally, the State claims that the petitioner has appealed to the IACHR as a court of fourth instance, given that she has requested the Commission to recommend the State that it investigate, identify, and punish the perpetrators of these supposed criminal actions - that is to say, she requests the Commission to review the domestic criminal process and the analysis of the evidence that has already been made at the internal level. The criminal investigation into the reported incidents concluded with a dismissal of the complaint, which became final without being appealed through a request to reopen the case or through a constitutional appeal (*amparo*).

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

12. The uniform precedent established by the Inter-American Commission indicates that whenever a crime against personal integrity is committed -such as, for example, torture, personal injury or sexual violence-, the State is in the obligation of *ex officio* initiating and conducting the corresponding criminal procedures, and that, in such cases, this is the adequate remedy to be pursued in order to clarify the facts, prosecute those responsible, establish appropriate criminal punishments, and make possible other means of reparation, in accordance with the guarantees embodied in the American Convention.³ In this sense, the IACHR notes that the alleged victim filed a criminal complaint against those people whom she thought had taken part in the assault and mistreatment that she suffered. That complaint was rejected on October 9, 2008, by the prosecutor in charge of the investigation. The alleged victim filed an appeal (an objection) against this dismissal, and on December 24, 2008, the Santa Cruz District Prosecutor confirmed the dismissal. Furthermore, the alleged victim filed a request for information on the status of the investigation and demanded that it be reopened, on October 8, 2009. This petition was responded on October 12, 2009 by the Camiri Public Prosecutor's Office, in the sense that the case would not be reopened. Consequently, the Commission concludes that the alleged victim did activate the adequate and suitable domestic remedy that was available to her in order to establish the criminal responsibility of those who violated her human rights.

13. The State argues that the petitioner had two adequate remedies available, which she did not exhaust: a request to reopen the criminal investigation, and a constitutional appeal (*amparo*). Nonetheless, the Commission's precedents are consistent in the sense that it is not necessary for the victims or petitioners to exhaust absolutely every remedy that might be available to them in the domestic legal system; if they have brought the matter to the State's attention through the activation of one of the adequate remedies, in such a way that the State has been made aware of the situation and it has had the opportunity to address and remedy the possible violations of human rights in its own domestic jurisdiction, then the purpose of the international rule has been fulfilled, and domestic remedies are deemed exhausted. Thus, in a recent case where it was argued that the victim of a violation of the rights to life and personal security should have filed, in addition to an existing criminal complaint, an *amparo* action and other domestic remedies, the IACHR found that it was not necessary to initiate an additional *amparo* action, because the activation of the criminal course of action was sufficient to meet the requirement set out in Article 46.1 of the American Convention.⁴ Also, it is pertinent to note, as pointed out by the State, that the reopening of the investigation was contingent on the submission of new evidence.

14. In this sense, the Commission deems that for the purpose of having exhausted domestic remedies, it was not necessary for Ms. Estremadoiro to have filed an *amparo* action or a request to reopen the investigation, on top of the existing criminal complaint, the objection to the dismissal of her complaint, and the additional request for information on the status of the procedures.

³ *Inter alia*, see IACHR, Report No. 3/12, Petition 12.224. Admissibility. Santiago Antezana Cueto *et al.* Peru, January 27, 2012, par. 24; Report No. 124/17. Petition 21-08. Admissibility. Fernanda López Medina *et al.* Peru. September 7, 2017, pars. 3, 9-11; Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, par. 10; Report No. 70/14, Petition 1453-06. Admissibility. Maicon de Souza Silva, Renato da Silva Paixão *et al.* Brazil. July 25, 2014, par. 18; Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, par. 13; Report No. 75/19, Petition 246-11. Admissibility. A.T.V. Argentina. May 21, 2019, par. 9.

⁴ IACHR, Report No. 174/17. Petition 831-11. Admissibility. Hester Suzanne Van Nierop and Family. Mexico. December 30, 2017, pars. 7 and 8.

15. Regardless of the foregoing, the IACHR notes that in the present case, the unilateral closure of a criminal investigation by the public prosecutor took place, before the case got to the trial stage, by means of a decision to dismiss the criminal complaint, which was confirmed on appeal. In prior cases involving such a situation of unilateral closure of a criminal investigation by the prosecuting authority prior to the trial stage, the IACHR has considered that the exception to the duty of exhausting domestic remedies set forth in Article 46.2.b of the Convention applies, insofar as the possible victim is in fact prevented, through such a unilateral decision to dismiss, from exhausting the domestic remedies available to her.⁵ In addition to this, there are specific claims made by the petitioner -to be analyzed at the merits stage- about purported irregularities and obstacles to the alleged victim's participation in said criminal investigation.

16. Accordingly, the Inter-American Commission finds that, in the instant case, the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2.b of the Convention is applicable.

17. In accordance with the above, and considering that the incidents occurred on April 13-17, 2008; that the criminal complaint was filed on April 29, 2008; that the final decision to close the investigation was adopted on December 24, 2008; that on October 8, 2009, a new request for information was submitted regarding the investigation, and asking to reopen it; that the IACHR received the petition on April 12, 2010; and that the effects of the impunity of the reported facts persist to date, the Commission concludes that the petition was presented within a reasonable time, in the terms of Article 32.2 of its Rules of Procedure.

18. On the other hand, as for the State's allegation that domestic remedies have not been exhausted regarding the purported violation of the alleged victim's rights to private property and freedom of expression, the Commission deems that those violations are subsumed under, and result from, the main facts set forth by the petitioner in the criminal complaint that she filed.

VII. ANALYSIS OF COLORABLE CLAIM

19. The criteria applied for evaluating the admissibility of a petition differ from those used for ruling on the merits of a petition. At the admissibility stage, the Commission must carry out a *prima facie* evaluation in order to determine whether a petition establishes the grounds for a possible or potential violation of a right enshrined in the Convention, and not in order to determine the existence of an actual violation of rights. This determination on admissibility constitutes a primary analysis, that does not imply a prejudgment on the merits of the matter.⁶

20. Based on the foregoing axiom, the IACHR notes that the State's argument about an alleged lack of characterization of violations of conventionally protected rights is based on a factual circumstance, namely, that no State agents of any level took part in the assault on Ms. Estremadoiro, and that the State complied with its duty to guarantee the rights of the alleged victim. Given the petitioner's insistence that State officers did indeed actively participate in the alleged violation of her rights, and that the State did fail to protect her rights, the Commission deems it necessary to conduct, at the merits stage, a detailed analysis of the evidence. Such an analysis cannot be performed in the current admissibility stage, during which a *prima facie* evaluation is called for, and where no prejudgments on the factual or legal merits of the matter are made.

21. As for the State's arguments in reference to the "fourth instance formula," the Commission reiterates that, within its mandate, it is indeed competent to declare a petition admissible when it refers to domestic proceedings which may be in violation of rights protected by the American Convention. Hence for admissibility purposes, the IACHR must decide whether the facts alleged in a petition may characterize a violation of rights, according to the provisions of Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of the said article. The criterion for evaluating these requirements differs from that used for ruling on the merits of a petition. Likewise, within the framework of its mandate, the Commission is competent to declare a petition admissible

⁵ IACHR, Report 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and Family. Colombia. July 28, 2019, pars. 17-19.

⁶ IACHR, Report No. 69/08. Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina, October 16, 2008, par. 48.

when it refers to domestic legal proceedings that may be in violation of the rights protected by the American Convention. That is, under the above-cited conventional norms, in line with Article 34 of the IACHR Rules of Procedure, the admissibility study centers on the verification of those requirements which refer to the existence of elements that may constitute, if corroborated, *prima facie* violations of the American Convention.⁷ Based on this evaluation criterion, the IACHR considers that the instant petition has described several possible reasons why Ms. Estremadoiro's judicial guarantees and right to judicial protection may have been violated during the criminal investigation that was conducted and closed in relation to the assault she suffered in April, 2008, including the lack of collection and analysis of allegedly critical evidence, the non-observance of basic requirements established in the applicable procedural legislation, the inadequate justification of decisions, and the Public Prosecutor's Office's unilateral decision to close the investigation before reaching the trial stage. Should these allegations be corroborated at the merits stage, they may characterize corresponding violations of Articles 8 and 25 of the American Convention.

22. Furthermore, the petitioner's claims relating to possible violations of her rights to personal integrity -having allegedly been the victim of torture, personal injuries, mistreatment and sexual violence-, personal liberty -given her arbitrary retention by the assailants, some of whom she says were state agents-, fair trial guarantees and judicial protection, freedom of expression, freedom of movement and private property, are not manifestly groundless, and should they be corroborated at the merits stage, they may characterize violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 21 (property), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof, to the detriment of Ms. Tanimbu Guiraendy Estremadoiro Quiroz.

23. Lastly, the Commission considers that the petition presents no arguments or elements to establish a possible violation of the right to freedom of assembly.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 7, 8, 13, 21, 22, and 25 of the American Convention in accordance with Article 1.1 thereof;

2. To declare the instant petition inadmissible in relation to Article 15 of the American Convention; and

3. 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 2nd day of the month of July, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁷ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzáles. Peru. December 4, 2018, par. 12.