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REPORT No. 171/20
PETITION 655-10
REPORT ON ADMISSIBILITY

GLORIA OFELIA MACEDO AGUIRRE AND OTHERS
PERU

Approved electronically by the Commission on June 17, 2020.

Cite as: IACHR, Report No. 171/20, Petition 655-10. Admissibility. Gloria Ofelia Macedo Aguirre. Peru. June 17, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Gloria Ofelia Macedo Aguirre
Alleged victim:	Gloria Ofelia Macedo Aguirre and other heirs of Luis Ricardo Macedo Zamora
Respondent State:	Peru ¹
Rights invoked:	Article 21 (private property) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 5, 2010
Additional information received at the stage of initial review:	July 20, 2011
Notification of the petition to the State:	May 8, 2017
State's first response:	August 11, 2017
Additional observations from the Petitioner:	February 14, 2018
Notification of the possible archiving of the petition:	January 27, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	March 16, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes, in the terms of Section VII
Competence <i>Ratione materiae</i>:	Yes, American Declaration on the Rights and Duties of Man ⁴ (deposit of the instrument of ratification of the OAS Charter made on February 12, 1954) and American Convention (deposit of the instrument of ratification made on July 28, 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 XVIII (fair trial), XXIII (property) and XXVI (due process of law) of the American Declaration, and Articles 8 (fair trial), 21 (property) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof

¹ As set forth in article 17.2.a of the Commission's Rules of Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the discussions or decision on the present matter.

² Hereinafter "the American Convention".

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

⁴ Hereinafter, the "American Declaration".

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of article 46.2.c of the American Convention is applicable.
Timeliness of the petition:	Yes, in the terms on section VI

V. ALLEGED FACTS

1. The petitioner claims that the State is internationally responsible for violating her right to private property, by virtue of the allegedly excessive delay in adopting a definitive decision on the judicial process of expropriation of certain lands belonging to her late father, judicial delay which allegedly resulted in the lack of payment of the fair compensation she is entitled to as her father's judicially recognized heiress, given that the lands and their adjoining movable and immovable property were taken by the State since 1974 without any payment whatsoever.

2. The petitioner states that the Peruvian Government, via Supreme Decree No. 0354-74-AG of April 30, 1974, decided to incorporate the "San Luis" and "Puerto Arturo" estates, in the Department of Puno, to the process of agrarian reform, authorizing their expropriation together with that of the cattle, facilities, constructions and permanent plantations located therein; and that in compliance of such decision, the representative of the General Directorate of Agrarian Reform at the Ministry of Agriculture initiated the corresponding judicial expropriation process by means of a lawsuit filed with the Juliaca Lands Court on April 25, 1975. The aforementioned lands, and the movable and immovable property contained therein, were the private property of Mr. Luis Ricardo Macedo Zamora, who died in 1987. By means of a judicial decision of September 4, 1987, annexed to the petition, his three daughters were recognized as his heiresses: Gloria Ofelia Macedo Aguirre, Sonia Lida Macedo Aguirre and Maxi Macedo Pacheco. As noted hereunder, Mrs. Gloria Ofelia Macedo has been recognized by the Peruvian judicial authorities, including the Supreme Court of Justice, as procedural successor of her late father.

3. On April 25, 1980 Mr. Luis Ricardo Macedo filed before the aforesaid Lands Court a set of observations questioning the valuation of the expropriated assets, the amount of the indemnity and the form of payment that had been set, considering it legally mistaken and ridiculously low. The file was transferred to the Mixed Court of Juliaca, and since then, in the course of the next thirty years, it was the subject-matter of several successive ordinary and extraordinary appeals and annulment requests, filed by Mr. Macedo through his attorney, and upon his passing in 1987, by Ms. Gloria Ofelia Macedo as his procedural successor recognized in the process, all of them referring to the valuation of the expropriated assets, which the plaintiffs considered unfair and contrary to the law, for several specific factual and legal reasons. Such appeals and annulment requests were decided by the competent judicial authorities, through decisions annexed to the petition which include, among others, (a) a decision of September 11, 1998 by the First Mixed Court of San Román - Juliaca, rejecting the observations made by Mr. Macedo's attorney to the valuation; (b) a judgment of September 30, 1999, adopted by the First Mixed Court of San Román - Juliaca, accepting both the expropriation lawsuit's claims and the observations to the valuation, a ruling which was appealed; (c) a resolution of May 2, 2000 of the Decentralized Civil Chamber of San Román voiding the September 30, 1999 judgment and ordering the adoption of a new ruling in accordance with the law; and (d) a judgment by the Supreme Court of Justice of Peru - Permanent Constitutional and Social Law Chamber of November 22, 2010 which, as an extraordinary appeals instance (*cassation*), annulled the process of payment for the expropriation and the rulings of first instance (October 2, 2009) and second instance (May 11, 2010), rulings which had in turn declared the observations to the valuation unfounded and the expropriation lawsuit admissible (the petitioner failed to provide a copy of these latter judgments and to indicate the judicial authority that adopted them). In sum, as of the date of adoption of the present report, the expropriation process has not yet been definitively resolved by the competent judge.

4. The petitioner claims that as a result of this judicial delay of forty-five years in adopting a definitive decision in the process, she has not been paid the compensation that she is entitled to receive, since the assets in dispute were materially transferred decades ago, by the State which expropriated them, to other corporate beneficiaries of the agrarian reform processes. In her petition, Ms. Macedo Aguirre carries out a

detailed valuation, in current values, of the property that was expropriated, and calculates the amount owed her by the Peruvian State, in her capacity as recognized heiress of Mr. Luis Ricardo Macedo and as representative of his succession, in over two hundred million dollars.

5. Additionally, the petitioner claims that Supreme Decree 0354-74-AG, which ordered the incorporation of the assets to the agrarian reform process and mandated the conduction of the expropriation process, does not have the legal nature of legislation, being rather an administrative decision issued by the Government; this configures, in her view, an additional violation of article 21 of the American Convention.

6. The State, in its reply, requests that the petition be declared inadmissible for several concurrent reasons. First, it argues that the petition does not clearly specify which human right was allegedly violated by the State –despite the express acknowledgment by the State of the invocation of article 21 of the American Convention in the petition–. Next, the State cites a segment of the initial petition, and argues that *“since the petitioner does not clearly specify the allegedly affected rights nor the specific facts to which the violations refer, the State of Peru finds itself in a position of defenselessness, insofar as it does not comprehend the exact arguments posed in the present petition”*, for which reason it requests the IACHR to demand further clarifications from the petitioner on this point. The State then goes on to briefly summarize some features of the agrarian reform process undertaken in Peru in the 1960s decade, and then holds: *“From what the petitioner states in her different briefs, it is possible to infer two (2) facts that allegedly violated her rights: (i) the expropriation of the moveable assets and the cattle, and (ii) the delay in the process which causes the non-payment of the fair price”*.

7. Regarding point (i), the State argues that the IACHR lacks *ratione temporis* competence to examine the expropriation ordered in Supreme Decree 0354-74-AG, since this Decree was adopted on April 30, 1974, and Peru deposited the instrument recognizing the competence of the IACHR and the Inter-American Court under the American Convention on January 21, 1981. It further clarifies that *“the 1974 act of expropriation does not fall within the competence of the Inter-American Commission since the ACHR instrument cannot be given a retroactive effect. Any act or omission of instant or immediate execution attributed to the State of Peru and contained in the Petition, which took place prior to January 21, 1981, cannot be heard by the Commission, on the grounds of the principle of non-retroactivity of the treaty”*. With regard to point (ii), i.e. the delay in the judicial process of expropriation which caused the lack of payment of the fair price of the seized assets, the State holds that it has been unable to gather the different procedural components of such process' casefile, and *“requests the IACHR to bear in mind how aged both the facts and the process are, so as to allow the State to submit extended and detailed information on this matter in its next report”*. The Commission notes that the State's reply is dated August 10, 2017, and since then until the date of the present report, no additional information on this issue has been received from the State.

8. Finally, Peru argues that the requirement of exhaustion of local remedies has not been met. After making a detailed description of the different components of the expropriation trial's casefile provided by the petitioner as an annex to her petition –as described above–, the State holds there is no information concerning the lapse of time between 1981 and 1998, and that the Supreme Court's decision of November 22, 2010 *“refers to a request for the annulment of a judgment that was not provided by the Petitioner”*. In this line, recalling that it has been unable to gather the main components of such judicial expropriation process' casefile in order to provide them to the IACHR, the State argues that for the period between 1981 and 1998, years for which it considers there is a lack of information, *“there is no record of any procedural action that may prove the efforts made by the other party in order to protect and safeguard their right to property and/or to give procedural impulse to their case”*. The State concludes on these grounds that Mrs. Macedo Aguirre has not undertaken the pertinent procedural actions in order to uphold her rights, nor to give impulse to the judicial process in her capacity as an interested party, for which reason the petition must be declared inadmissible on account of not having properly exhausted the domestic judicial remedies.

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

9. In the present case the IACHR notes that the fundamental claim by the Petitioner refers to the judicial delay of almost forty-five years in reaching a definitive decision on the process of expropriation of her late father's assets, delay which has mainly resulted in the lack of payment of the fair compensation to which his heirs are entitled to, with the consequent violation of their right to private property. As decided in prior cases⁵, the IACHR considers that the adequate remedies to be exhausted in cases of alleged violations of the judicial guarantees and other human rights in the course of judicial procedures, are as a general rule those remedies established in the domestic procedural legislation which allow the parties to attack, in the course of the proceedings in question, the acts and decisions adopted during the process, particularly the ordinary judicial remedies which are available, or the extraordinary remedies if these were used by the alleged victims of the violations of judicial safeguards in order to uphold their rights.

10. In the instant case, there is no question that the petitioner, as well as her father until the time of his death, successively made use of the ordinary and extraordinary judicial remedies that were made available to them in order to uphold their fair trial guarantees and other possibly affected rights, as described above, given that since 1980 and up until 2009 they have filed numerous ordinary and extraordinary appeals and annulment requests in the course of the expropriation process. In spite of this, that judicial procedure has not been definitely decided, even though there is a decision adopted by the Supreme Court of Justice of Peru in 2010 ordering the adoption of a final ruling in accordance with the law. In light of this, the IACHR considers that the exception to the requirement of exhaustion domestic remedies set forth in article 46.2.c of the American Convention is applicable, because the judicial process initiated in 1975 has not been definitely decided after forty-five years of active litigation by the parties. Likewise, since the effects of the judicial indetermination of the case continue as of the present date; and given that, as proven in the casefile, the petitioner has continued litigating domestically in pursuit of her rights, the IACHR concludes that the petition was presented within a reasonable timeframe in terms of article 32.2 of its Rules of Procedure.

11. In the same line, the Commission notes a lack of consistency in the State's position according to which, on the one hand it excuses itself from providing full copies of this judicial process invoking the old age of the facts and the procedural actions, but on the other hand it infers from the alleged lack of judicial actions between 1980 and 1998 a supposed procedural omission and inactivity by the petitioner. The IACHR differs from the State on this point; rather, in application of the *prima facie* analysis criterion that pertains to the admissibility stage, the Commission considers that this matter must be thoroughly reviewed and resolved at the merits stage.

VII. ANALYSIS OF COLORABLE CLAIM

12. Firstly, the IACHR takes note of State's argument questioning the clarity of the petition regarding the allegedly violated rights and the facts which would configure such violations. Nonetheless, the Commission considers that both the petition and the subsequent communications by the petitioner are sufficiently clear on the matter, which is even corroborated by the State's own answer in the sense that, as shown above, immediately after posing this argument of lack of clarity it makes a precise synthesis of the violations alleged in the petition -namely, the excessive delay in the resolution of the judicial expropriation process and the lack of payment of fair compensation to the petitioner-.

13. Likewise, it is noted that the State has claimed that the Commission lacks *ratione temporis* competence, because the Supreme Decree that incorporated Mr. Macedo Zamora's lands to the agrarian reform and ordered to continue the expropriation process by judicial channels, was adopted in 1974, years before Peru deposited the instrument of ratification of the American Convention on July 28, 1978, and the instrument of recognition of the IACHR's and the Inter-American Court's competence under the American Convention on

⁵ See, among others: IACHR, Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, pars. 68 and following; IACHR, Admissibility Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and daughters. Argentina. November 5, 2013, pars. 24 y ss; y IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. and others, Ecuador. November 8, 2012, par. 23 and following.

January 21, 1981. The Commission agrees that it is after those dates that it has competence to hear possible violations of the American Convention attributable to the State of Peru, but it also recalls that, in light of the provisions of the OAS Charter, of its Statute and its Rules of Procedure, it has *ratione temporis* competence to examine under the American Declaration those facts that occurred prior to 1978, given that its competence to examine individual petitions initiated in 1965. Therefore, considering that Peru became a Member of the OAS through the deposit of the ratification instrument of the Charter of this organization on February 12, 1954, the IACHR will examine in this case, in light of the American Declaration, the claims concerning those facts that allegedly occurred between 1974 and 1978. The Commission insists that the fundamental rights that the States which have not yet ratified the American Convention have agreed to respect, as States Parties to the OAS Charter, are those stipulated in the American Declaration. According to the long-standing practice and jurisprudence of the Inter-American Human Rights System, the American Declaration is a source of international obligation for the OAS Member States which are not parties to the American Convention on Human Rights. It is understood that these obligations stem from the human rights commitments undertaken by the Member States through the OAS Charter, which the Member States agreed that are contained and defined in the American Declaration, as well as from the customary legal nature of the rights protected by the Declaration's basic provisions, for which reason the Commission is enabled by articles 18 and 20 of its Statute to receive and evaluate allegations of non-compliance with these commitments by the States⁶. Lastly, the alleged facts which took place after 1978, after the American Convention entered into force, or the effects of which persisted after such treaty came into force for Peru, will be analyzed in light of the Convention⁷.

14. In the present case, Ms. Macedo Aguirre has resorted to the IACHR in her capacity as heiress of Luis Ricardo Macedo Zamora, her father, who was the owner of the lands at the time of the expropriation and carried out several procedural actions within the subsequent judicial process, until the date of his death, in February 1987. After his passing, Mrs. Gloria Ofelia Macedo was judicially recognized as his heiress, and in such capacity she has since then carried out several procedural actions in the course of the expropriation trial, having been expressly recognized as procedural successor to her father by the competent judicial authorities, including the Supreme Court of Justice in its *cassation* sentence of November 22, 2010. In this line, the IACHR has declared similar cases admissible⁸, in which a possible violation of the right to property stems from judicial procedures which have extended over time and is claimed by the successors or heirs of the alleged initial victims – successors or heirs who in turn claim to have suffered the violation of their own human rights because of judicial acts which have taken place after the decease of the *de cuius*.

15. In this sense, considering that the Petition claims a delay of over forty-five years in the resolution of a judicial expropriation process initiated in 1975, which would have resulted in the lack of payment of the fair compensation to which the owners of the assets –the late father of Ms. Macedo Aguirre and his heirs– are entitled to under the Inter-American instruments, and after examining the legal and factual elements exposed by the parties, the Commission concludes that the petitioner's claims are not manifestly unfounded and require a study on the merits, because the alleged facts, if corroborated, may constitute violations to articles XVIII (fair trial), XXIII (property) and XXVI (due process of law) of the American Declaration, as well as articles 8 (fair trial), 21 (private property) and 25 (judicial protection) of the American Convention, in relation to its article 1.1 (obligation to respect rights).

VIII. DECISION

1. To find the instant petition admissible in relation to Articles XVIII, XXIII and XXVI of the American Declaration, and Articles 8, 21 and 25 of the American Convention, in relation to Article 1.1 thereof;

⁶ IACHR, Report 57/06, Petition No. 526-03, Hugo Armendáriz, United States, July 20, 2006, par. 30; Report No. 3/15, Petition 610-01, Admissibility, Natalio Kejner, Ramón Walton Ramis and others, Argentina, January 29, 2015, par. 52.

⁷ IACHR, Report No. 48/15, Petition 79-06, Admissibility, Pueblo Yaqui, México, July 28, 2015, par. 45; Report No. 70/19, Petition 858-09, Admissibility, Luiz José da Cunha "Crioulo" and family, Brazil, May 5, 2019, par. 10-11.

⁸ See in particular, due to its similarity, the following precedent: IACHR, Report No. 40/16, Petition 468-02, Admissibility, Gadala María Dada and others, Dominican Republic, September 4, 2016, par. 22.

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 17th day of the month of June, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.