

**REPORT N° 24/06**^[1]

CASE 10.720
ADMISSIBILITY
EL MOZOTE MASSACRE
EL SALVADOR
March 2, 2006

I. SUMMARY

1. On October 30, 1990, the Inter-American Commission on Human Rights (hereinafter referred to as the "Inter-American Commission," the "Commission" or the "IACHR") received a petition from the Legal Aid Office [*Oficina de Tutela Legal*] of the Office of the Archbishop of San Salvador (hereinafter referred to as "the petitioners") alleging the international responsibility of El Salvador ("the State") for violating the human rights of 765 persons (hereinafter referred to as "the alleged victims") executed extrajudicially during a military operation said to have been conducted by the Salvadoran military in the cantons of La Joya and Cerro Pando and in the hamlets of El Mozote, Jocote Amarillo, Ranchería and Los Toriles in December 1981. The petitioners alleged that the events infringed several rights protected by the American Convention on Human Rights ("the American Convention"), namely: the right to life (Article 4), to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), to honor and dignity (Article 11), the rights of children (Article 19), the right to private property (Article 21) and to judicial section (Article 25) all in violation of the general duty to respect and guarantee those rights (Article 1.1).

2. Concerning the admissibility of the petition, the petitioners in this case claimed an exception to the rule on prior exhaustion of internal remedies because of the climate of violence prevailing when the massacre took place, as well as the behavior of the authorities in investigating the case. In response, the Salvadoran State argued the inadmissibility of the complaint on the grounds that it did not meet the requirements of Article 46.1.a of the American Convention. The petitioners, the State contended, did not make proper use of the internal remedies, having had the possibility of appealing the final dismissal of the case ordered by a judge on September 4, 1994.

3. After reviewing the positions of the parties, the Commission concludes that it has jurisdiction to rule on the petition and that the case is admissible under Article 46 of the American Convention. Consequently, the Commission decides to make its decision known to the parties, to continue hearing the merits of the case in terms of the alleged violations of the American Convention, to publish this Admissibility Report and to include it in its Annual Report to the OAS General Assembly.

II. PROCEDURE BEFORE THE COMMISSION

4. On October 30, 1990, the Commission received from the Legal Aid Office of the Office of the Archbishop of San Salvador a complaint to which the number 10.720 was assigned. On November 9, 1990, the IACHR conveyed the complaint to the Government of El Salvador, asking for an answer within 90 days. On January 28, 1992, the IACHR again asked the State to supply the information requested in November 1990. On April 24, 1992, the petitioners submitted additional information. On May 28, 1992, the State filed its comments on the petition. On June 3, 1992, the IACHR conveyed to the petitioners the information supplied by the State. On August 27, 1992, the Commission again asked the petitioners for the information requested in June 1992. On September 27 and October 8, 1993, the State provided additional information on the status of its internal criminal proceedings.

5. On November 3, 1994, the IACHR again asked the petitioners to comment on the presentations made by the State. On January 10, 1995, the Commission again requested that information from the petitioners, warning them that failure to answer would cause the application to be archived. As the parties did not reply, on May 14, 1995, the Commission advised them of its decision to archive the case without prejudice to such comments as the petitioners might eventually file. In the seven years that followed, they did not reactivate the application and it was only ten years later that they requested the reopening of the case file, explaining their reasons.

6. On April 5, 2000, the petitioners presented the Center for International Justice and Law (CEJIL) [*Centro por la Justicia y el Derecho Internacional*] as co-petitioners in the case. On October 22, 2002, the petitioners submitted additional information on the events and on the exhaustion of internal remedies. On March 3, 2005, the petitioners requested the reopening of the case. On March 9, 2005, during its 122nd Regular Session, the Commission decided to reopen the case and resume hearing it. On March 10, 2005, the IACHR notified the parties of this decision and conveyed to the State the relevant portions of the additional information submitted by the petitioners, giving the State two months to file comments. On May 10, 2005, the State filed its comments on the admissibility of the petition. On June 2, 2005, the Commission conveyed to the petitioners the information filed by the State. On September 22, 2005, the Commission received from the petitioners their answer to the State's comments, which were relayed to the State by a note dated September 8, 2005. On October 12, 2005, the State asked for a 30-day extension to file its comments. On November 15, 2005, the IACHR received the State's answer to the petitioners' position.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners explained that the events known as the "Massacre of El Mozote" refer to the massacres committed in the course of an anti-guerrilla military operation called "Rescue Operation," which was carried out by joint units of the Atlacatl Battalion, the Third Infantry Brigade and the Commando Instruction Center of San Francisco Gotera. In this series of massacres at least 765 persons died (mostly children) and an unknown number were displaced and became refugees in Honduras.

8. The petition points out that the purpose of "Operation Rescue" was to eliminate the entire civilian population, including women and children, in the cantons of La Joya and Cerro Pando, as well as in the hamlets of El Mozote, Jocote Amarillo, Ranchería and Los Toriles, all of them located in the municipality of Meanguera, in the neighboring Department of Morazán. The petitioners say that the operation was conducted in a coordinated and systematic manner between December 8 and 16, 1981, with the massacres taking place on

the 11th (in El Mozote and La Joya), the 12th (in Ranchería and Los Toriles) and the 13th (in Cerro Pando and Jocote Amarillo).

9. According to the petitioners, troops from the Atlacatl Battalion entered the hamlet of El Mozote on December 10, 1981. At dawn the next morning, the villagers were gathered in the hamlet square and later divided into two groups, one for the men, the other for women and children. The soldiers locked up the men and teenagers in the church and the women, girls and younger children in a house facing the square.

10. About 8 a.m., the petitioners say, mass executions of the adult men and teenagers began. The victims were taken in groups of approximately ten persons to areas adjacent to the square, tortured and subsequently riddled with bullets from heavy-caliber guns. Around noon, several soldiers went into the house where the women and small children were. They selected a group of younger women and took them away to places near the hamlet, especially to the "El Chiringo" and "La Cruz" mountains, where they raped them. Then, all women were taken out in groups and shot to death in a house at one end of the square, where their piled-up bodies were left. The petitioners point out that there was only one survivor from this massacre, Mrs. Rufina Amaya Márquez, who has played a key role in reconstructing the events.^[2] When night fell, the soldiers took the children to a building next to the hamlet's church, known as "the convent," and executed them there. The petitioners assert that the children numbered more than one hundred.

11. After the killings, the petition states, the soldiers proceeded to set fire to the bodies and to the hamlet's houses. The petitioners say that the Legal Aid Office of the Office of the Archbishop has succeeded to date in identifying 364 persons murdered in this hamlet.

12. Also on December 11, 1981, according to the petitioners, the people of La Joya were subjected to a military operation similar to the one carried out in El Mozote. At about 8 a.m. soldiers came into the canton and murdered everyone in it. According to the petitioners, the Legal Aid Office of the Office of the Archbishop has succeeded to date in identifying 139 people murdered in this hamlet.

13. The petitioners indicate that on the morning of December 12, after taking part in the events at El Mozote, the Third Company of the Atlacatl Battalion proceeded northeast to the hamlets of Ranchería and Los Toriles. That same morning, having murdered everyone in Ranchería, they moved on to Los Toriles. There they repeated the operation and then headed to Guacamaya. The petitioners say that the remains of 54 persons executed in Ranchería and 62 persons executed in Los Toriles have so far been identified.

14. According to the petition, around 7 a.m. on December 12, 1981, another detachment of the Atlacatl Battalion reached the hamlet of Jocote Amarillo, where they shot to death everyone found there. The petitioners say that 17 victims executed there have so far been identified.

15. That same day, according to the petitioners, in the canton of Cerro Pando, some one hundred peasants were massacred by the military. When the troops arrived in Cerro Pando, many of its inhabitants had concealed themselves in the neighboring mountains, from which locations they heard the massacre. According to the Legal Aid Office of the Office of the Archbishop, 114 persons executed at Cerro Pando have so far been identified. In addition, the petitioners indicate that at least 15 people hiding in the fields were discovered and massacred by the military at a place known as "Cerro Ortiz" in the locality of Joateca, department of Morazán.

16. The petitioners allege that the authorities, despite being aware of the events, refused to launch an investigation. The massacres, they indicate, were public knowledge not

only in El Salvador but internationally. Evidence of this, they say, are the reports published simultaneously in The New York Times and The Washington Post days after the events.^[3] According to the petitioners, because of the risk involved in filing a complaint and the general ineffectiveness of the judiciary during the conflict, the complaint was formally filed only in October 1990. The investigation fell to the Second Judge of the lower courts of San Francisco Gotera. According to the petitioners, the investigation was marked from the outset by "a series of grave irregularities and flaws." Thus, it was pointed out, the judge showed himself reluctant to hear witnesses, thereby limiting without any legal basis the hearing of testimony in order to delay it.

17. Similarly, the petitioners claim, the judge refused without justification to carry out the inspections and exhumations required by law. Unjustifiably, they assert, inspections began 19 months after the criminal proceedings opened. Work to exhume the bodies was only partially done because the investigation was actually suspended by the judge in February 1993. The petitioners also allege that government officials hindered the investigation by obstructing the appointment of qualified forensic specialists to identify the remains. According to the petitioners, the Legal Medicine Institute has never had properly qualified staff to do this work; consequently, the Legal Aid Office of the Office of the Archbishop looked into the availability of international experts. The judge, according to the petition, raised many obstacles to hiring them. This behavior is said to have been ordered by the President of the Supreme Court of Justice according to the findings of the Report by the Truth Commission.^[4]

18. On March 15, 1993, the Truth Commission of El Salvador submitted its final report to the United Nations Secretary General. It included the massacre at El Mozote to illustrate the massacres of peasants carried out by the Salvadoran military. The Truth Commission concluded that the facts had been fully established, as had the perpetrators and military personnel responsible, including high-ranking officers that the Commission identified by name and rank.^[5]

19. On September 4, 1994, the judge issued a final dismissal of the case on the basis of the General Amnesty Law for Consolidation of Peace. He dismissed charges against any member of the Salvadoran military who had taken part in the events at El Mozote. The petitioners allege that the families of the victims were not properly notified of that ruling and therefore had no chance to appeal. In early 2000, the Legal Aid Office of the Office of the Archbishop, acting as legal representative of the families of the victims, won a resumption of the exhumation work to recover remains and deliver them to the families, because the General Amnesty Law prevents continuation of criminal proceedings. The petitioners say that this exhumation work made it possible to recover the remains of 37 persons; exhumations in 2001 yielded 22 skeletons.

B. Position of the State

20. Throughout the international proceedings the State contended that, from the very moment the events were reported, government officials had at all times diligently pressed ahead with the procedures set in motion to resolve the case. External circumstances, however, have made it impossible to identify the persons involved in the events.

21. The State maintained that the events occurred presumably between December 8 and 16, 1981, but there is no record of any family member or injured party reporting the events to the police or the courts. Consequently, it was only on October 26, 1990, when the complaint was filed, that an investigation and criminal proceedings were opened by the judge of the Second Court in the lower courts. According to the State, those criminal proceedings were conducted with full transparency; the Office of the Prosecutor General of the Republic,

the victims and their legal advisers actively participated in them.

22. Nevertheless, according to the State, the events took place in "a framework of armed conflict," so that it was very difficult to move the investigation forward. Considering the armed conflict in El Salvador at that time, the State asserts, "the investigation activities were conducted in due course, in other words, within a normal time frame."

23. The State rejected the charges of denial of justice, arguing that there was, at all times, judicial activity intended to arrive at the truth of the matter. This is shown by the opening of criminal proceedings, the hearing of testimony from many witnesses, inspections, exhumations, and the request for information about the alleged perpetrators. All these activities were conducted by the judiciary despite the atmosphere of armed conflict prevailing at the time, which made the area insecure, and even though court officials did not have adequate financial resources to properly discharge their task.

24. The timeliness of the investigation suffered, the State argues, not simply because the massacre was reported nine years after it happened. Access to the area was difficult, and the Ministry of Defense presumed the area to be mined. Furthermore, the investigation was hampered by a lack of forensic experts in anthropology and a lack of resources in the judiciary, because during the conflict most of the government budget was earmarked for defending the country and rebuilding the infrastructure attacked by the guerrillas.

25. The State pointed out that many efforts were made by the judiciary to investigate the alleged responsibility of government agents. The judge sent to the Office of the President of the Republic four requests for the records of military operations in the areas neighboring the massacre. However, since more than ten years had gone by, no records could be found. Thus, the State contended, despite government efforts "it has unfortunately not been possible to identify from the investigations the persons who took part in the massacre." And even though there is new evidence from exhumations conducted in 2000 and 2001, such evidence is circumstantial and inconclusive when it comes to the identity of the perpetrators of the massacre.

26. Concerning the lapsing of the criminal action and the application of the General Amnesty Law for Consolidation of Peace, the State indicated that this law was enacted for the good of Salvadoran society as a whole, as an essential part of the groundwork for the long-sought peace. The reasons for the law are set out in the Legislative Decree that enacted it, namely, to "promote and achieve national reconciliation." This made it necessary to grant a broad, absolute and unconditional amnesty as provided for in Article 1 of the law.

27. With that overriding concern in mind, the judge hearing the case applied the law, as it was consistent with the the lack of identification in the legal proceedings of the perpetrators of the massacre. The State stressed that the parties had available to them, at all times, the proper judicial remedies if they were dissatisfied with the decisions taken. According to the State, they could have disputed even the final dismissal of the case that had been based on the General Amnesty Law. The petitioners, however, did not exercise this right to appeal that final dismissal of September 27, 1993.

28. After that ruling, on September 26, 2000, the Constitutional Chamber of the Supreme Court of Justice confirmed the constitutionality of the Amnesty Law. According to the Supreme Court, the law is not unconstitutional *per se* and may be applied to certain persons; it is up to the judge in each case to decide whether to apply it. That ruling, consequently, opened up for the petitioners the possibility of appealing the dismissal in their specific case, something that did not happen.

29. Based on these considerations, the State concludes that the petitioners appealed to the Commission "as another venue in which to have their claims heard and upheld," even though they "had not, within the criminal proceedings, availed themselves of the remedies then provided by Salvadoran law to appeal judicial rulings." Thus, the petitioners did not appeal the final dismissal by the judge and consequently could not file a constitutional challenge. Likewise, in the view of the State, if the petitioners believed that their rights under the Constitution had been violated, they could have used the established constitutional remedies, but failed to do so. The State therefore wants the petition ruled inadmissible on the grounds that internal remedies were not adequately employed.

IV. ADMISSIBILITY

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

30. With respect to the State, the Commission notes that El Salvador is a party to the American Convention since June 23, 1978, when it deposited its instrument of ratification. The petitioners are empowered under Article 44 of the Convention to file petitions with the IACHR. The petition names as alleged victims in this case persons whose rights under the Convention El Salvador has undertaken to respect and guarantee. The Commission notes that the remains of 765 persons have so far been identified and, for purposes of admissibility, will be recognized as presumed victims, without prejudice to such new evidence as may be uncovered in the future and may prove the identity of other victims in the same events. Consequently, the Commission has jurisdiction *ratione personae* to hear the petition.

31. The Commission has jurisdiction *ratione materiae* because the petitioners allege violations of rights protected by the American Convention that, if proven, mined constitute violations of Articles 1.1, 2, 4, 5, 7, 8, 11, 19, 21 and 25 of the Convention.

32. The Commission has jurisdiction *ratione loci* because the alleged violations took place within the territory of a State party to the American Convention. The Commission has jurisdiction *ratione temporis* because, when the alleged events began, the obligation to respect and guarantee the rights established in the American Convention was already in force for the Salvadoran State.

B. Other admissibility requirements

1. Exhaustion of internal remedies

33. Article 46.1 of the American Convention provides, as an admissibility requirement, that a claim must first exhaust the remedies available under the internal jurisdiction of a State. Generally recognized principles of international law require that those internal remedies be formally in place, be adequate to protect the rights allegedly infringed and effective in securing the results envisaged in establishing them.^[6] The international protection of human rights referred to in Article 46.1 of the American Convention is based on the need to protect victims from the arbitrary exercise of government power.^[7] Consequently, exhaustion of internal judicial remedies cannot mean simply going through the motions of formal legal procedures; the reasonable prospect of obtaining the desired remedy must be analyzed in each case.^[8]

34. The State argued that the petition is inadmissible because the petitioners have had available to them internal remedies that they failed to use. In particular, the State pointed out that the petitioners (i) did not appeal the final dismissal of September 27, 1993, in

the criminal proceedings; and (ii) after the Supreme Court ruling of September 26, 2000, which raised the possibility of setting aside the application of the General Amnesty Law when the judge believed it should not apply, the petitioners filed no appeal along those lines.

35. The Commission notes, first of all, that this case deals with the alleged responsibility of members of the Salvadoran Army for the mass execution of civilians during an internal conflict in El Salvador. The Commission has said before that the time frame under consideration was marked by systematic violations of human rights and impunity, facilitated in part by the ineffectiveness of the Salvadoran judicial system. In light of the particular circumstances of the case and the aforesaid context, the Commission reiterates that when the alleged events took place it was not possible or necessary to file any complaint, as the situation came under the exception on exhaustion of internal remedies established in Article 46.c of the American Convention.^[9]

36. As to the alleged appeal possibility, the Commission reiterates its view that judicial dismissals issued on the basis of the General Amnesty Law effectively dispose of the case within the internal jurisdiction. Consequently, such dismissals exhaust the possibility of resolving the matter domestically and open the way for applying the international protection mechanisms established in the American Convention.^[10]

37. The State also alleges that the ruling of September 26, 2000, by the Constitutional Chamber of the Supreme Court of Justice would make it possible to reopen proceedings in this case, but the Salvadoran authorities have taken no action to that end. The Commission notes that in cases such as this one, involving offenses subject to public prosecution, that is to say, that may be prosecuted *ex officio*, the State has the legal obligation--which it may not delegate or waive--to investigate. To the Salvadoran State, in fact, belong the power to prosecute and the obligation to guarantee the right to justice of the victims and their families. This burden must be borne by the State as its own legal duty, not as an instrument of the interests of private individuals, and may not be contingent on the initiative of those individuals or on the evidence they may provide.^[11]

38. Based on the above, the Commission decides to apply to this case the exception established in the second part of Article 46.2.b of the American Convention. Consequently, the requirements prescribed for exhaustion of internal remedies in the Convention do not apply.

2. Filing deadline

39. Under Article 32 of the Rules of Procedure of the IACHR, when exceptions apply to the requirement on exhaustion of internal remedies, the petition must be filed within a reasonable time frame, in the judgment of the Commission, bearing in mind the date of the alleged violation and the circumstances in each case. Considering the date of the alleged events, the impossibility of exhausting remedies during the armed conflict, and the subsequent government actions and omissions, the Commission believes that this petition was filed within a reasonable time.

3. Duplication of proceedings and international *res iudicata*

40. The Commission finds that, in substance, the petition is not pending in another international settlement procedure and does not substantially duplicate a previous petition examined by the Commission or other international organizations. Accordingly, the requirements of Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the events alleged

41. Article 47.b of the Convention provides that the Commission will declare inadmissible any petition or communication that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." The Commission finds that the events alleged by the petitioners in section III of this report may be characterized at first sight as violations of Articles 4, 5, 7, 8, 11, 19, 21 and 25 of the American Convention in relation to the obligations established in Articles 1.1 and 2 thereof. Consequently, the IACHR concludes in this connection that the case is admissible under Article 47.b.

V. CONCLUSION

42. The Commission concludes that the case is admissible and that the Commission has jurisdiction to hear the petitioners' claim concerning the alleged violation of Articles 4, 5, 7, 8, 11, 19, 21 and 25 of the American Convention in relation to the obligations established in Articles 1.1 and 2 thereof.

43. By virtue of the above facts and law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible under Articles 4, 5, 7, 8, 11, 19, 21 and 25 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 thereof.
2. To convey this report to the petitioners and the State.
3. To continue examining the merits of the matter.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo and Víctor E. Abramovich, Members of the Commission.

[1] Commissioner Florentín Meléndez, a Salvadoran national, did not take part in the discussion and decisions on this report, as provided in Article 17.2.a of the Rules of Procedure of the IACHR.

[2] The petitioners pointed out that Mrs. Rufina Amaya was forced to come out with the second-to-last group of women and took advantage of a distraction by her captors to hide behind an apple tree. She remained there in hiding, witnessing the murder of the women and children. In her account she asserts that she recognized the voice of her four children asking for help before being murdered.

[3] See "*Alma Guillermoprieto, Salvadoran peasants Describe Mass Killing*", The Washington Post, January 27, 1982, cover page and page A-16; and Raymond Bonner, "*Massacre of Hundreds Reported in Salvadoran Village*," The New York Times, January 27, 1982, cover page.

[4] The Truth Commission concluded that "The President of the Supreme Court of Justice of El Salvador, Dr. Mauricio Gutiérrez Castro, has exerted undue negative influence, with biased political views, on the judicial

proceedings in the case." *De la locura a la esperanza, la guerra de 12 años en El Salvador*," Report of the Truth Commission for El Salvador, United Nations, San Salvador-New York 1992-1993.

[5] "*De la locura a la esperanza, la guerra de 12 años en El Salvador*," Report of the Truth Commission for El Salvador, United Nations, San Salvador-New York 1992-1993, p. 124.

[6] I/A Court H.R., *Velásquez Rodríguez Case*, cited, paragraphs 62-66; I/A Court H.R., *Fairén Garbí and Solís Corrales Case, Preliminary Objections*. Judgment of March 15, 1989, paras. 86-90; *Godínez Cruz Case*, Judgment of January 20, 1989, paras. 65-69.

[7] I/A Court H.R., *Godínez Cruz Case*. Judgment of June 26, 1987, para. 95.

[8] I/A Court H.R., *Velásquez Rodríguez Case*, cited, paragraph 72; *Fairén Garbí and Solís Corrales Case*, cited, paragraph 97; I/A Court H.R., *Godínez Cruz Case*, cited, para. 75.

[9] IACHR, Report No. 11/05 (Admissibility), Petition 708/03, Gregoria Herminia, Serapio Cristián and Julia Inés Contreras (El Salvador), February 23, 2005, para. 25.

[10] IACHR, Report N° 37/00 (Merits), Msgr. Oscar Arnulfo Romero y Galdámez (El Salvador), April 13, 2000, para. 25.

[11] IACHR, Report N° 25/98, Cases 11505, 11532, 11541, 11546, 11549, 11569, 11572, 11573, 11583, 11585, 11595, 11652, 11657, 11675 and 11705 (Chile) in the 1998 Annual Report of the Inter-American Commission on Human Rights.